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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
PC-OC

**13th meeting of the restricted Group of experts on international co-operation
(PC-OC Mod)
enlarged to all PC-OC members**

**Strasbourg, 22 – 23 March 2012
AGORA, Room G 06**

Working paper
Outline for draft guidelines on practical measures
to improve co-operation in respect of transfer of proceedings

Prepared by the Secretariat

***Draft guidelines on practical measures
to improve co-operation in respect of transfer of proceedings***
*inter alia in application of the European Convention on the Transfer of Proceedings in Criminal
Matters, of Article 21 of the European Convention on Mutual Assistance in Criminal matters and
Article 6, paragraph 2 of the European Convention on Extradition.*

General introduction exposing rationale of guidelines¹

Accelerate and facilitate procedures to combat impunity
Avoid unnecessary efforts and costs

Guidelines²

A. Guidelines to the Requesting State

When considering making a request concerning transfer of proceedings, laying of information etc, States should:

1. Consider the proportionality of the case with regard to the procedure initiated as well as its appropriateness (criteria?)
2. Proceed with an informal prior consultation (by phone, e-mail or videoconference) with the requested state so as to discuss:
 - *appropriateness and potential successfulness of request
 - * ways to deal with differences in national legislation (eg. extraterritorial jurisdiction, admissibility of evidence, mandatory or discretionary prosecution.)³
 - * the timeframe and practicalities of cooperation (contact persons, special elements to be included in request, translation requirements and costs etc)
3. Submit the request according to the agreement and in the following form (model to be developed)
4. Consult with the requested state to ensure that the request is clearly understood, complete and that evidence is admissible and agree on timeline/date for decision on the request.
- [5. Once the requested State has decided
 - to accept the request, ask the requested State to give feedback on the follow up
 - to reject the request, ask the requesting State to explain the reasons, if needed.]

B. Guidelines to the Requested State

In order to facilitate cooperation the requested State should:

1. Take organisational measures to facilitate informal consultation with requesting state, (for example by appointment of contact persons)
2. During the consultation prior to the request, give clear indications to the requesting state on the legal and practical issues of importance to a successful and rapid follow-up to the request(see above under 2)
3. If a request received is unclear or incomplete, consult the requesting state without delay.

¹ The proposed structure is based on a practical approach: a step by step check-list of procedure for the requesting and the requested state. It is proposed that both the requesting and requested state appoint a contact person to follow the whole procedure on a particular case and solve problems when they occur.

² The guidelines are drafted in very general terms. Is it necessary to add technical details or requirements for each type of request (transfer of proceedings, laying of information under MLA, or Art 6§2 of the extradition convention)?.

³ It might be considered that the guidelines, instead of proposing a case by case discussion on differences in legislation, contain some more general considerations on how to deal with issues such as extraterritorial jurisdiction, admissibility of evidence, and mandatory or discretionary prosecution.

4. Take all possible measures to ensure that a decision is taken within the timeframe agreed or no later than....If unforeseen delays occur, inform the requesting country accordingly.
5. Once the decision has been taken
 - to accept the request for cooperation, keep the requesting state informed on the follow-up of the case
 - to reject the request, inform the requesting state about the reasons.