

**AD HOC DRAFTING GROUP ON TRANSNATIONAL ORGANISED CRIME
(PC-GR-COT)**

1st MEETING

24 -26 June 2013

**Council of Europe,
Paris Office – Room 1**

SUMMARY MEETING REPORT

**Document prepared by the Directorate General
Human Rights and Rule of Law**

BRIEF FOREWORD

The PC-GR-COT:

- elected Ms Lorena Bachmaier Winter as its Chair;
- adopted the agenda;
- took note of the information provided by the Secretariat on reasons to deal with the issue of transnational organised crime;
- considered the Council of Europe's main work and legal instruments to be taken into consideration in the development of a future policy document in the field of transnational organised crime;
- considered the information presented by the scientific expert to the PC-GR-COT on the current trends in Europe in the field of transnational organised crime;
- held a discussion regarding the current main issues in the field of organised crime in a transversal perspective;
- considered and defined the scope and structure of the drafting of a White Paper report;
- identified and agreed upon the main areas of transnational organised crime to be developed in the White Paper report;
- considered the presentation of a preliminary draft White Paper report at its next meeting.

1. The Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT) held its first meeting in Paris on 24-26 June 2013. The list of participants is appended to this report (Appendix II).

I & II. Opening of the meeting and adoption of the agenda

2. The agenda was adopted as it appears in Appendix I.

III. Election of the Chair

3. The PC-GR-COT elected Ms Lorena Bachmaier Winter as its Chair for the duration of the mandate of the ad hoc drafting group.

IV. Information by the Secretariat

4. Mr Carlo Chiaromonte, Head of the Criminal Law Division, provided the Group with some information concerning the setting-up of the PC-GR-TOC: it was felt that at pan-European level (47 States) developing of an integrated strategic approach to combating transnational serious organised crime and identifying common responses to major threats to the rule of law and security of citizens was to considered a valuable exercise. Discussing this matter in a transversal and interdisciplinary way was important to achieve more coordinated and effective results.
5. He also presented the terms of reference of the PC-GR-COT as adopted by the Committee of Ministers on 21 November 2012, focussing in particular on the main tasks that the Group was entrusted to achieve and notably the preparation of a White Paper for consideration by the Committee of Ministers, after validation by the CDPC, on selected trends and developments in transnational organised crime in the Council of Europe (CoE) member states which may be considered as priority areas. He introduced other members of the Criminal Law Division: Mr Oscar Alarcón, the Secretary of the PC-GR-COT, and Laurent Braulio, responsible for police co-operation programmes.

V. Preliminary consideration on Transnational Organised Crime

6. Each representative of the PC-GR-COT introduced herself/himself.
7. The PC-GR-COT took note of the presentation provided by the scientific expert, Mr Michael Levi, on the current trends and developments in Europe in the field of Transnational Organised Crime (TOC) and held a discussion on the main items of his report.
8. The PC-GR-COT:
 - a) took note of the main work already carried out by the CoE in the field of TOC and the existing legal instruments that should be taken into consideration when drafting the White Paper;
 - b) agreed that there is no need for new conventions but that it would be necessary to proceed for a co-ordinated and comprehensive assessment of the existing tools by identifying gaps in the field of TOC with a view to overcoming them;
 - c) considered the purpose of the White Paper report and concluded inter alia that it should not provide a definition of TOC, as this is not included in its mandate.

VI. Round Table

9. The representatives of the PC-GR-COT presented in a *tour de table* the main topics that in their opinion should to be dealt with by the Ad hoc Drafting Group and which they had already submitted in written to the Secretariat beforehand.
10. The representatives of the different monitoring bodies of the CoE presented the main activities carried out in their monitoring work focussing on the transnational perspective of organised crime. Their input to the Group's work was very much appreciated and considered essential in the identification of possible areas to be covered in the white paper. They also welcomed the added value of meeting together and working in such multidisciplinary manner.

- 12 The Ad hoc Drafting Group considered some good examples of judicial co-operation in criminal matters such as the European Judicial Network (EJN) as well as the Ibero-American Network for International Legal Cooperation (IberRed), which is a co-operation tool, for both civil and criminal matters, at the disposal of judicial operators from 22 Ibero-American countries (including Spain, Portugal and Andorra) and the Supreme Court of Puerto Rico.
- 13 In the light of the discussions, the PC-GR-COT identified a certain number of subjects to be retained in its work :
1. Proactive investigation: at national and international level and the possibility of establishing specialized bodies dealing with TOC;
 2. Joint Investigation Teams (JITs): the idea of expanding this model throughout CoE member states was raised;
 3. Proceeds of crime: asset recovery, sharing of assets and management. Identification of gaps, establishing good practices and drafting guidelines on confiscation.
 4. Protection of witnesses and collaborators with justice. Although there are various CoE legal instruments, witnesses are threatened and often refrain from co-operating. There is a need to find out why the current legal instruments are not properly implemented. Need to improve the protection programmes between different countries. The CoE recommendation of 2005¹ could be revised, if necessary.
 5. Collecting evidence in transnational investigations. Consideration should be given to whether the European Investigation Order could be further expanded at a pan-European level;
 6. The issue of having centralised units in every country was also discussed by the Ad hoc Drafting Group. There was not a common approach on this specific matter, which depended notably on the institutional structure of any single State;
 7. The level of protection of judges and investigators was also considered;
 8. The importance of building networks, personal contacts also with the private sector, which are now a key component of of potential organised crime control;
 9. Electronic evidence in investigation at international level and in international co-operation : in particular their adequate and efficient use, their regulation;
 10. Synergies between administrative entities and law enforcement units, for example in the administrative approach to controlling organised crime;
 11. Lack of tools for sharing information about and prosecution of corporate criminal liability, what sanctions are available and how dissuasive they are;
 12. Incentives and disincentives in the performance indicators of judges and prosecutors and investigators dealing with cases of TOC;
 13. Enhancement of mutual legal assistance and international co-operation;
 14. The use of special investigative techniques (SIT). The conference on that subject that took place in November 2011 in Strasbourg² was mentioned, and a possible update of the Recommendation Rec(2005)10 of the Committee of Ministers to member states on “special investigation techniques” in relation to serious crimes including acts of terrorism was also considered.

¹ Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice (adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies).

² International Conference on “The use of special investigation techniques to combat terrorism and other forms of serious crime” (Strasbourg, 14 - 15 May 2013), organised by the Council of Europe in close co-operation with United Nations, the League of Arab States and the OSCE.

VII. Drafting of a White Paper on Transnational Organised Crime

14 On the basis of the above-mentioned issues, the PC-GR-COT identified and agreed upon the different areas to be further developed in the White Paper:

I. Enhancing mutual legal assistance international co-operation in criminal matters

- i. Setting-up a judicial network of contacts (models of EJM and IberRed);
- ii. the possible promotion of JIJs;
- iii. taking into account the challenges and difficulties of prosecuting legal persons;
- iv. more proactive investigative approach (best sharing of information in a less formal way).

II. Assets/Confiscation:

1. Freezing
2. Confiscation
3. Sharing assets
4. Management
5. International co-operation
6. Training (Good practices and guidelines).

This issue is still a concern as it has not been handled adequately. The EU models could be enhanced or further developed at a pan-European level. The White Paper should try to explain how to do this and also propose the setting-up of a central database banking account register for Council of Europe Member States.

III. Shortcomings in witness protection programmes:

In spite of the existence of exchange programmes, platforms and the CoE recommendation (Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice), it is important to evaluate whether these tools are properly implemented.

IV. Improvement of special investigative measures:

Particular attention should be given to electronic investigations and devices which produce electronic evidence in the cybercrime field.

V. Synergies between the administrative authorities and criminal law units:

This is a key issue with regard to an efficient (preventive) coordinated action against TOC. Administrative authorities play an important role in identifying organised criminal groups who infiltrate the state and private legal activities in particular to launder their money.

VI. Other issues:

The Group also identified some, other issues that could be tackled as well:

- the strengthening of mutual trust in the fight against TOC ;
- the necessity of having adequate funding to combat TOC;
- the continuation of capacity-building activities;
- the signature/ratification of treaties dealing with TOC and the review of the reservations to these treaties by member states;
- the consolidation of the monitoring activities related to TOC and the need to strengthen the synergies between the different existing bodies (the PC-GR-TOC is a good practice in this respect);
- the compilation of a handbook (not necessarily a printed one) on TOC legislation contained in international texts.

- 15 The PC-GR-COT agreed upon the necessity to include some introductory remarks on the following topics: the usefulness (or not) of this exercise, the excellent work carried out by the different monitoring bodies, the need for a more co-ordinated approach on TOC issues among CoE member states as well as further provisions on a proactive approach.
- 16 The members of the Ad hoc Drafting Group decided that the White Paper report should also contain some concrete examples of poor co-operation in the fight against TOC, which would illustrate the *raison d'être* of the White Paper.

VIII. Other business

- 17 The PC-GR-COT:
 - agreed to contact the CDPC representatives with a view to keeping them informed of the results of the first meeting;
 - took note of the work plan and methodology to be followed for the presentation of the White Paper;
 - decided to present a preliminary draft White Paper at its next meeting as a basis for discussion.
- 18 The next meeting of the PC-GR-COT was scheduled for 28-30 October 2013.

APPENDIX I

Strasbourg, 13 June 2013

PC-GR-COT (2013) OJ EN

AD HOC DRAFTING GROUP ON TRANSNATIONAL ORGANISED CRIME (PC-GR-COT)

Paris, 24 June 2013, 10 a.m. - 26 June 2013, 1 p.m.

Council of Europe Office, 55 av. Kléber / Room 1

DRAFT AGENDA

1. OPENING OF THE MEETING	
<i>The meeting will be opened at 10 a.m. by Mr Carlo Chiaromonte, Head of the Criminal Law Division, Action against Crime Department, Directorate General of Human Rights and Rule of Law.</i>	
2. ADOPTION OF THE AGENDA	
<i>The Ad hoc drafting Group on Transnational Organised Crime (PC-GR-COT) is invited to adopt the agenda for its first meeting and decide on the order of business.</i>	PC-GR-COT (2013)OJE
3. ELECTION OF THE CHAIRPERSON	
<i>The members of the PC-GR-COT are invited to elect its Chairperson.</i>	
4. INFORMATION BY THE SECRETARIAT	
4.1 Terms of reference of the European Committee on Crime Problems (CDPC)	CDPC ToR
4.2 Terms of reference of the PC-GR-COT	PC-GR-COT ToR
4.3 Last meeting of the CDPC, 28-31 May 2013	List of Decisions
<i>The members of the PC-GR-COT are invited to take note of the information provided by the Secretariat on the main reasons for setting up this group and its expected results.</i>	

5. PRELIMINARY CONSIDERATION ON TRANSNATIONAL ORGANISED CRIME	
<p>5.1 Presentation of the members, participants and observers of the PC-GR-COT</p> <p><i>Each member of the group, both participant and observer, present at the meeting is invited to briefly introduce her/himself as well as her/his field of activity related to transnational organised crime.</i></p> <p>5.2 Presentation by the scientific expert on the current trends and main concerns in Europe in the field of transnational organised crime</p> <p><i>The scientific expert is invited to present his working document, which is the basis for opening the debate on the subject of transnational organised crime.</i></p> <p>5.3 Discussion</p>	<p>PC-GR-COT (2013)3 PC-GR-COT (2013)2</p>
6. ROUND TABLE	
<p>6.1 Presentation of the topics of discussion/subjects to be dealt with by the PC-GR-COT submitted to the Secretariat:</p> <ul style="list-style-type: none"> • <i>Each member of the PC-GR-COT is invited to make a presentation on their written proposals submitted to the Secretariat beforehand;</i> • <i>Each member is also invited to expand on these proposals during the round table by notably providing examples of national practices related to transnational organised crime, i.e. in a transnational perspective.</i> <p>6.2 Presentation of the work implemented by every participant/observer in the field of transnational organised crime:</p> <ul style="list-style-type: none"> • <i>Each participant and observer of the PC-GR-COT is invited to make a general presentation on his/her monitoring body/institution to the members of the Ad hoc drafting Group;</i> • <i>Each participant and observer is also invited to provide information on the cross-cutting issues under the transnational perspective of organised crime.</i> <p>6.3 Discussion</p>	<p>PC-GR-COT (2013)1 Reference Documents</p>

7. DRAFTING OF A WHITE PAPER ON TRANSNATIONAL ORGANISED CRIME		
7.1	<p>Main items to be included in the draft White Paper</p> <p><i>The members of the group are invited to identify the skeleton of the White Paper on selected trends and developments in transnational organised crime in Council of Europe member states, in particular by focusing on identifying possible gaps in criminal law co-operation and providing recommendations for possible action by the Council of Europe in this regard.</i></p>	
7.2	Discussion	
8. OTHER BUSINESS		
8.1	Forthcoming meeting of the PC-GR-COT (28-31 October 2013)	
8.2	Other	

APPENDIX II

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

MEMBERS OF PC-GR-COT / MEMBRES DU PC-GR-COT

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GREECE / GRÈCE

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