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PC-OC –BU (2005) 03

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Committee of Experts on the Operation
of European Conventions in the Penal Field
(PC-OC)

MEETING REPORT
of the PC-OC Bureau

Strasbourg, 24-25 October 2005

Secretariat memorandum
prepared by
the Directorate General of Legal Affairs

EXECUTIVE SUMMARY

The Bureau of the PC-OC decided that

- **on the modernisation of the European conventions in the criminal field:**

1. Dispute settlement
2. Extradition
3. Mutual assistance in criminal matters

the Secretariat will prepare documents, with clear proposals, and where appropriate, draft specific terms of reference, to be discussed at the next plenary meeting of the Committee (March 2006), in order to be submitted to the CDPC at its next plenary meeting (April 2006).

- **on the requests put by the CDPC to the PC-OC:**

1. Witness protection
2. Ratification of the protocol to the European convention on the transfer of sentenced persons
3. Counterfeiting

On the basis of the national replies to the questionnaires addressed to the PC-OC members on items 1 and 2, the Secretariat will prepare position papers to be discussed at the next plenary meeting, in order to be submitted to the CDPC. A position paper on the issue of counterfeiting will also be prepared, confirming the interest of the PC-OC in a possible future work on drafting a Convention to fight this scourge.

INTRODUCTION

The Bureau of the PC-OC composed of:

- the Chair of the PC-OC, Mr E. Selvaggi (Italy)
- the two vice Chairs of the PC-OC, Ms A. Offner (Switzerland) – apologised- and Ms I. Markus (Estonia)

met in Strasbourg on 24-25 October 2005.

The Bureau decided to invite at this meeting the PC-OC members which were appointed at the 50th meeting to follow in particular the most important points entrusted to the Committee. These members are:

- Mr B. Bohacik (Slovakia)
- Mr S. Daniell (Germany)
- Mr P. Hedvall (Sweden)
- Ms A. Sampo (Monaco)
- Mr V. Zimin (Russian Federation).

Mr S. Regis (United Kingdom) has been apologised.

The list of participants appears in Appendix II.

The participants discussed the items of the agenda (Appendix I), on the basis of the annotated agenda (Appendix III).

1. The participants adopted the Agenda
2. **REPORT OF THE 50TH MEETING OF THE PC-OC, 27-29 JUNE 2005**

The participants considered and welcomed the report of the meeting. They agreed on a few amendments which are reflected in a revised version of the report (document PC-OC (2005)16 REV2).

They dealt in particular with the issues of

- 1- § 84 of the report: translation of cover letters and subsequent correspondence used in extradition procedures. The participants referred to previous discussions held in the PC-OC on this question. These reflections should be considered by the Committee for further work to be done according to point 4 of the agenda of the present meeting.
- 2- § 56: transfer of a sentenced person who has contracted a contagious or other serious disease: is there an obligation to inform the administering State? Would there be a need to complement Convention 112 with a Recommendation on this issue? The PC-OC plenary could discuss these questions at a future meeting.

Follow-up by the Secretariat:

- the revised version of the meeting report should be sent to all PC-OC members,
- the agenda of the next plenary meeting should include issues 1 and 2.

3. **FOLLOW-UP TO THE “NEW START REPORT”**

The participants considered the draft report to the CDPC (PC-OC (2005)17). They were generally satisfied with the document.

They suggested:

- 1- reinforcing the elements dealing with the consistency of the normative work of the Council of Europe
- 2- clarifying the part dealing with the obstacles to the co-operation in criminal matters.

Follow-up by the Secretariat:

Circulate the revised version of the document to all PC-OC members, asking for any comments on it, to be sent well before the next plenary meeting. The report, once adopted by the plenary committee, will be sent to the CDPC, for its April 2006 session.

4. FRIENDLY SETTLEMENT OF DISPUTES

The participants considered the memorandum prepared by the Secretariat (PC-OC (2005) 02) as well as the contributions by Mr Zimin (Russian Federation, PC-OC (2005)18) and by Mr Bohacik (Slovakia).

They confirmed the importance of the matter of dispute settlement as a key element in ensuring an effective implementation of judicial co-operation in criminal matters.

The participants agreed that the document prepared by the Secretariat (PC-OC (2005) 02) clearly identifies the various types of mechanisms envisaged in the Council of Europe conventions in the criminal field as well as the lacunae to be observed in some Conventions.

The following preliminary remarks were made:

- Mr Zimin underlined that the suggestions presented in his document (i.e. the elaboration of a Protocol to the extradition convention dealing with arbitration) could be also applicable to the European convention on mutual assistance in criminal matters;
- This issue will have to be considered also when dealing with the revision of these conventions (extradition and legal assistance);
- The work conducted by the PC-TJ will also have to be considered;
- The preventive role of the PC-OC in avoiding formal disputes or helping in solving disputes should be underlined (see the report of the 50th meeting, § 94);
- The setting up of a dispute settlement mechanism could have a dissuasive effect and could ensure a better consideration of the requests for judicial assistance;
- It can be the interest of several States to have a dispute on a specific question between two States duly settled.

The participants also identified a series of questions which would need to be answered:

- to what extent would the nature of the decision (judicial or administrative/political) on an extradition request influence the nature of the dispute settlement mechanism (friendly settlement, arbitration or a judicial body)?
- In cases where a dispute has been brought before an arbitral tribunal in conformity with the provisions of a convention, can a decision by such arbitral tribunal have authority over a definitive national judicial decision?
- Which type of question can be brought to an arbitral tribunal: only legal issues or also non legal questions (practical or political); e.g. when extradition is refused on grounds of public order?
- Could arbitration be organised on the request of one party concerned only?

Mr Zimin noted that, in accordance with general international law, it does not matter which State body acted contrary to the treaty provisions. The State as a whole would be liable for non compliance with the treaty obligations.

Considering the nature of these questions, which belong largely in the public international law domain, the participants agreed that, in order to proceed further, they should receive external expert advice on these questions. Such expert contribution could come either from the competent Services and Committees of the Council of Europe or from an external expert who could be suggested by such Services or Committees.

Follow-up by the Secretariat:

- forward these points, together with the Secretariat document and the two contributions, to all PC-OC members for their comments (by 1st December 2005);
- identify, in consultation with the Chair, the best ways to receive the expert advice to the questions referred to above, and
- prepare, on the basis of the existing documents, the comments by the PC-OC members and any elements received on the questions, a consolidated paper. This paper would be discussed at the next PC-OC plenary and further submitted to the CDPC (April 2006).

5. NEED TO MODERNISE THE EUROPEAN CONVENTION ON EXTRADITION

With a view to identifying the main elements to be submitted to the CDPC, the participants considered the proposals made under the document PC-OC (2005)06 REV as well as the outcomes of the 50th meeting of the Committee (§ 26 s.) and the suggestions made by Mr Zimin (PC-OC(2005)22) .

In addition to these proposals, it was felt that future work should also address

- the possibility to insert time limits into the convention, when dealing with extradition requests, surrenders, etc
- the question of language and translation of requests, correspondence and documents
- the opportunity to promote the use of electronic media in implementing extradition procedures
- the need, for some aspects, of developing a non binding instrument, in addition to a new Convention.

They agreed to consider these proposals as a basis for future work, while keeping in mind

- the developments in the EU, notable on the European Arrest Warrant, which, although not directly transposable in the Council of Europe Member States (as far as mutual recognition is concerned), brings novelties which should be considered in the Council of Europe,
- the interest in criminal legislation among European States getting closer,
- the future outcome of the PC-TJ works.

Having also in mind the 5th Resolution adopted by the European Ministers of Justice in Helsinki (April 2005), the participants also discussed to need to modernise the European Convention on mutual assistance in criminal matters. They went deeper on this matter under the point 10 of the agenda.

Follow-up by the Secretariat:

- compile these different proposals and circulate these to all PC-OC members in a consolidated document,
- ask all PC-OC members for their comments, in particular on the extent to which these proposals meet concerns or other lacunae which they have experienced in dealing with extradition cases.
- ask PC-OC members to provide the Secretariat with copies of applicable bilateral and/or regional treaties or agreements on extradition (with a view to completing [PC-OC Inf 8](#), which provides useful elements for future discussions).

6. COUNTERFEITING

The participants considered the conclusions of the seminar on "Counteract the counterfeiters – limiting the risks of counterfeit medicines to public health in Europe" and agreed with the conclusion expressed in the note CDPC-Bu (2005)13, in particular its Chapters IV and V on the need for a Convention on this matter.

They agreed that the protection of the health and life of the population is of first importance and that a Convention should be elaborated. Such a Convention could deal with various counterfeit or illegal goods putting public health or even the life of the consumers at risk, not only goods in the medical sphere but also counterfeited veterinary products, medical devices, as well as children's toys, tobacco, alcohol, spare parts, etc.

They welcomed the idea of setting up a multidisciplinary committee to deal with the matter and suggested that the PC-OC be associated in the elaboration of such an instrument, in particular as it would relate to international co-operation in the criminal field. They also underlined the link between counterfeiting and organised crime in general. In that context, due consideration should be given on the existing works and instruments, like the UN Convention, to fight this form of criminality.

Follow-up by the Secretariat:

Prepare a note transmitting these elements to the Secretariat of the CDPC, as a reply to the CDPC request.

7. PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

The participants examined the elements to be incorporated in a reply to the CDPC request. The reply could state that the Protocol has 28 ratifications; that, when dealing with cases of escape of prisoners, it ensures that the prisoner does not escape justice and, when dealing with prisoners subject to an expulsion or a deportation order, it ensures the start of the re-socialisation process at an early stage. States are encouraged to take into account the opinion of the prisoner, although the consent is not required.

They agreed that:

- the part of the report of the 50th meeting dealing with this matter (chapter 6.1) should be included in the reply
- the national replies (PC-OC (2005)21rev) to the PC-OC questionnaire should be appended, when completed by the replies from members who have not yet replied
- the PC-OC should continue to follow closely the application of this Protocol.

Follow-up by the Secretariat:

Prepare the PC-OC reply to the CDPC request; forward it to all PC-OC members for comments. The final reply should be adopted by the Committee in March 2006 in order to be submitted to the CDPC session in April 2006.

8. WITNESS PROTECTION

The participants agreed with the elements mentioned in the annotated agenda of the meeting, as reflecting a preliminary general trend to be observed in the (18) national replies to the questionnaire, namely:

- States already co-operate with each other on the basis of bilateral agreements;
- they consider that Art. 23 is an appropriate basis for entering into such agreements;
- the difficulties in co-operation seem to relate mostly to the diversity in the national legislation on this matter, as well as on the logistical limits in Member States.

As the entry into force of the Protocol is relatively recent (2004), not much practice has been experienced yet and no real statistical data exist. Two States indicate that it would be desirable to have a binding instrument on this issue.

The participants felt however that it would be appropriate to come back to these elements at the PC-OC plenary, when more States would have replied to the questionnaire.

Follow-up by the Secretariat:

- encourage the PC-OC members who have not yet done so to forward their replies to the Secretariat, by 1st December 2005 (paying a particular attention to the issue of international co-operation)
- prepare a short analysis of the replies, which should be submitted to the PC-OC members before the next plenary meeting in March 2006. The Committee would then have to adopt a position on this matter and forward it to the CDPC.

9. APPLICATION OF THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS TO MENTALLY DISTURBED OFFENDERS

The 11 national replies to the questionnaire were considered (document PC-OC(2005)05 Rev). The replies provide with useful information on the legislation and procedures applicable in the Member States on requests of transfer of mentally disturbed offenders as well as on the domestic organisation of forensic care.

It is observed that most countries do not have problems in organising the transfer of mentally ill offenders either to another country or on their own territory.

Follow-up by the Secretariat:

- encourage the PC-OC members who have not yet done so to forward their replies to the Secretariat, by 1st December 2005
- have the data from the replies easily accessible, for instance on the Committee's web site.
- elaborate, before the PC-OC plenary meeting a consolidated paper with some general observations deriving from the national replies as well as with some examples of bilateral or regional convention (such as the 1997 CIS convention) and some extracts from previous PC-OC meeting reports on this issue (notably the ones collected in the document [PC-OC Inf 67](#), "explanatory notes"). The next PC-OC plenary meeting will consider this paper and will discuss, if appropriate, any follow-up.

10. EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (ETS 030), NEED FOR MODERNISATION AND REQUESTS FOR COLLECTION OF DNA SAMPLES

Mr Daniell (Germany) informed the participants on the latest developments in the G8, in the EU (a seminar is being held in the UK on the same dates as this meeting of the Bureau) and among some EU member States (the "Prüm Convention" of May 2005). Mr Daniell suggested informing the Committee at its next meeting on the latest developments.

The participants took note of the information and agreed to continue to monitor very closely these developments in their future meetings.

They will keep these developments in mind when they will identify the elements to be considered in future work aiming at modernising the European Convention on mutual assistance in criminal matters.

The Chair insisted that such work should be carried out in a way which would allow any future legal instrument to be broad enough as to possibly set up co-operation mechanisms which apply to the evolution of technology and ways of communication.

11. NEW WEB SITE ON "TRANSNATIONAL CRIMINAL JUSTICE" www.coe.int/tcj

Participants expressed their great satisfaction on the new structure of the TCJ web site. Not only it gives an easy access to the documents for the Committee's meetings, but it

also efficiently promotes the work and documents elaborated over the years by the PC-OC. The web site becomes a real tool for the PC-OC members, but also for other practitioners in the criminal field.

They also appreciated the work currently underway to review the “explanatory notes”, or compendiums, on the convention on extradition and transfer of sentenced persons. They look forward to receiving the final result of this work.

OTHER

The participants were informed orally on

- the future Conference of the European Ministers of Justice, which will take place in Yerevan (Armenia) in October 2006 and could deal with the issue of victims,
- the outcome of the meeting of the Bureau of the CDPC (12-14 October 2005),
- the next meeting of the CODEXTER, in November 2005, to which the PC-OC will be represented by Mr P. Hedvall.

They expressed their satisfaction on the format of this meeting of the Bureau, where the Bureau of the PC-OC is enlarged to persons involved in the follow-up of important matters identified by the PC-OC. To the extent possible, they would like this format to be used in future meetings of the Bureau.

The Chair of the Committee confirmed that this format helps in preparing the documents and the positions which will have to be formally discussed and endorsed by the Committee in its plenary meeting. Considering the important matters to be dealt with by the PC-OC, including the settlement of disputes and the modernisation of Conventions, such meetings are considered very efficient in order to facilitate the work of the Committee.

AGENDA OF THE PLENARY MEETING (1-3 MARCH 2006)

The participants agreed that the following items should put on the agenda of the next plenary meeting:

- Proposals to the CDPC on the visibility and consistency of the Council of Europe norms, following the New Start report
- Modernisation of the Council of Europe Conventions in the criminal field
 1. dispute settlement mechanisms
 2. extradition
 3. mutual assistance in criminal matters
- Replies to CDPC requests on
 1. witness protection
 2. protocol to the convention on the transfer of sentenced persons
 3. counterfeiting
- Other matters on the application of the Conventions in the criminal field
 1. transfer of mentally disturbed offenders
 2. transfer of prisoners with contagious or other serious diseases

APPENDIX I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

- Mr Eugenio SELVAGGI, Procura Generale presso la Corte di Appello, ITALY
– **Chair of the PC-OC-**
- Ms Astrid OFFNER, Office Fédéral de la Justice, SWITZERLAND – **1st Vice Chair**
Apologised
- Ms Imbi MARKUS, Ministry of Justice, ESTONIA – **2nd Vice Chair**
- Mr Stefan DANIEL, Ministry of Justice, GERMANY
Ms Antonella SAMPO, Palais de Justice, MONACO
Ms Joana GOMES FERREIRA, Procuradoria Geral da República, PORTUGAL
Mr Vladimir P. ZIMIN, Ministry of Justice, RUSSIA
Mr Branislav BOHÁČIK, Ministry of Justice, SLOVAKIA
Mr Per HEDVALL, Ministry of Justice, SWEDEN
Mr Simon REGIS, Home Office, UNITED KINGDOM **Apologised**

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Mr Philippe QUAINÉ

APPENDIX II

AGENDA

Meeting of the Bureau of the PC-OC – Strasbourg – 24-25 October 2005

1	ADOPTION OF THE AGENDA	
2	REPORT OF THE 50TH MEETING OF THE PC-OC, 27-29 JUNE 2005: comments	PC-OC (2005)16 REV
3	FOLLOW-UP TO THE “NEW START REPORT”: preparation of the PC-OC report to the CDPC	PC-S-NS (2002) 7 PC-OC WP (2004)07 PC-OC (2005)17
4	FRIENDLY SETTLEMENT OF DISPUTES: preliminary discussion on the proposal from the Russian Federation on extradition matters	PC-OC (2005) 18 PC-OC (2005) 02 CDPC-BU (2005)10 REV
5	NEED TO MODERNISE THE CONVENTIONS ON EXTRADITION: discussion on possible elements	PC-OC (2005)06 REV
6	COUNTERFEITING: discussion on the contribution to the CDPC (reply to the Recommendation 1673 (2004) “Counterfeiting: problems and solutions”)	Rec1673 (2004) CDPC-BU(2005)13 Seminar on "Counteract the counterfeiters" - Conclusions (21-23 September 2005 Survey report
7	PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS: preparation of the elements for a PC-OC reply to the CDPC request on the basis of the replies to the questionnaire	PC-OC (2005)15 (questions) PC-OC (2005)21Rev (replies)
8	WITNESS PROTECTION: analyses of the replies to the questionnaire on the application of the Article 23 of the 2 nd additional protocol to the European Convention on the mutual assistance in criminal matters	PC-OC (2005)13 (questions) PC-OC (2005)19Rev (replies)
9	APPLICATION OF THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS TO MENTALLY DISTURBED OFFENDERS: Analysis of the replies to the questionnaire	PC-OC (2005)14 (questions) PC-OC (2005) 20Rev (replies)
10	REQUESTS FOR COLLECTION OF DNA SAMPLES, on the basis of the European Convention on Mutual Assistance in Criminal Matters (ETS 030)	
11	New web site on “transnational criminal justice	www.coe.int/tcj

APPENDIX III

Annotated Agenda**1. ADOPTION OF THE AGENDA****2. REPORT OF THE 50TH MEETING OF THE PC-OC, 27-29 JUNE 2005: comments**

[PC-OC \(2005\)16 REV](#)

3. FOLLOW-UP TO THE “NEW START REPORT” (3)

The Bureau could examine the document prepared by the Secretariat (1). It follows the final report of the PC-OC Working Party (2) and the discussion held at the 50th meeting. The Bureau is informed that no particular suggestion or comment have been forwarded to the Secretariat on this matter.

A final document can then be elaborated and presented for adoption by the PC-OC in plenary and submitted to the CDPC (April 2006).

(1) [PC-OC \(2005\)17](#)

(2) [PC-OC WP \(2004\)07](#)

(3) [PC-S-NS \(2002\) 7](#)

4. FRIENDLY SETTLEMENT OF DISPUTES

The Bureau should identify the elements to be incorporated in a document to be adopted by the PC-OC and submitted to the CDPC.

This would reply to the request from its Bureau (3) which “requested the PC-OC, at its 50th meeting (27-29 June 2005), to consider the question of the dispute settlement mechanisms foreseen in the Council of Europe conventions. The PC-OC was requested, in particular, to report to the CDPC, before its next plenary meeting, on:

- *the various types of mechanisms envisaged in the conventions,*
- *the efficiency of these mechanisms and the problems encountered,*
- *the further work it could carry out in this field and in particular by making concrete suggestions indicating how to promote the effective implementation of co-operation mechanisms provided for by the Council of Europe conventions in criminal matters.”*

The document prepared by the Secretariat (2) could be a useful base to this end.

The Bureau could consider in particular the proposal made by the Russian Federation (1). The proposal deals in particular with an additional Protocol to the European Convention on extradition, providing for the settlement of disputes.

(1) [PC-OC \(2005\) 18](#)

(2) [PC-OC \(2005\) 02](#)

(3) [CDPC-BU \(2005\)10 REV](#)

5. NEED TO MODERNISE THE EUROPEAN CONVENTION ON EXTRADITION

The Bureau should discuss the elements related to the extradition mechanisms which could be presented by the PC-OC to the CDPC.

The CDPC could be invited to discuss, on this basis, a possible specific mandate to review the Convention on extradition and its Protocols (see also the point 4 of the agenda).

In addition to the elements discussed at the 50th meeting (see para 27 of the report (1)), the Bureau should also keep in mind the informal suggestions contained in the document PC-OC (2005)06rev (2).

(1) [PC-OC \(2005\)16 REV](#)

(2) [PC-OC \(2005\)06 REV](#)

6. COUNTERFEITING

At its last plenary, the CDPC “recognised the importance of preventing the trafficking of cultural goods. It also noted that the issue of counterfeiting in general should be addressed. The CDPC therefore instructed the PC-OC to make proposals to the CDPC for follow-up actions concerning the status of judicial cooperation, and its possible lacunae, with regard to these two fields”. (1)

The Bureau could adopt the elements to be integrated in a document to be adopted by the PC-OC.

Such document would be presented to the CDPC, in order to contribute to the opinion which the latter will submit to the Committee of Ministers for a reply on the Parliamentary Assembly Recommendation 1673 (2004) “Counterfeiting: problems and solutions” (4).

Due consideration should be given to the conclusions of the seminar on “counteract the counterfeiters” (21-23 September 2005) (2) and to the need for a binding Convention on this matter, which has been suggested (3) and discussed at the meeting of the CDPC Bureau (12-14 October 2005).

(1) [CDPC \(2005\)12](#) – paras. 101-102

(2) Seminar on "Counteract the counterfeiters" - [Conclusions](#) (21-23 September 2005)

(3) [CDPC-BU\(2005\)13](#)

(4) [Rec1673 \(2004\)](#)
[Survey report](#)

7. PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

At its meeting in January 2005, the Bureau of the CDPC “asked the PC-OC to proceed with the matter by preparing a document on the difficulties deriving from the Additional Protocol to the Convention on the Transfer of Sentenced Persons”.

The PC-OC discussed the matter at its 50th meeting, notably on human right aspects. It decided to complete its information through a questionnaire to all its experts.

The Bureau of the PC-OC could agree on some preliminary elements to be included in

a reply to be adopted by the PC-OC plenary before being submitted to the CDPC.

On 18 October 2005, 16 replies reached the Secretariat (12 from countries having ratified the Protocol). The following trends can be observed:

- limited use of bilateral or other treaties to deal with the circumstances covered by the Protocol (except the Schengen agreement which covers the case of escape)
- limited availability of statistical data on transfers according to the Protocol; large use of the Protocol by Nordic countries (up to 90 transfers by Sweden)
- some countries underline the importance of the sentenced person's opinion and of the need to assess the existence of social links in the administering State
- possibility of appeal: replies vary greatly: absence of such possibility; possible appeal either against the administrative decision to grant transfer or against a judicial decision on the conversion of the sentence.
- the main difficulties seem to concern the length of the transfer procedures, the low level of ratification of the Protocol, the conditions of detention as well as aspects of the legislation (early release) in the administering State.

[PC-OC \(2005\)21rev](#) : national replies to the questionnaire

8. WITNESS PROTECTION

At its previous plenary meeting, the CDPC “instructed the Committee of experts on the Operation of European Conventions in the penal field (PC-OC) to carry out a specific overview of the national laws and practices on witness protection and assess these practices and the application of the relevant provision of the 2nd Protocol to the MLA Convention. In this regard the members of the PC-OC were invited to contact their national witness protection programmes to obtain such information. The PC-OC was invited to report back to the CDPC on this issue at the next plenary session.” (1)

On 18 October, 18 national replies (2) to the questionnaire elaborated by the PC-OC reached the Secretariat (of which 3 from States parties to ETS 182). As a general trend, the replies show that

- States already co-operate with each other on the basis of bilateral agreements;
- they consider that Art. 23 is an appropriate basis for entering into such agreement;
- the difficulties in co-operation seem to relate mostly to the variety in the national legislation on this matter, as well as on the logistical limits in Member States.

As the entry into force of the Protocol is relatively recent (2004), not much practice has been experienced yet and no real statistical data exist. Two States indicate that it would be desirable to have a binding instrument on this issue.

The Bureau could take note, at this stage, of the replies and could encourage the States which have not yet replied to do so as soon as possible (in particular the States which have not replied to both the PC-PW nor the PC-OC questionnaires). In their replies, States could be encouraged to deal in particular with the aspects of international co-operation.

(1) [CDPC \(2005\)12](#)

(2) [PC-OC \(2005\)19 rev](#) : national replies to the questionnaire

9. APPLICATION OF THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS TO MENTALLY DISTURBED OFFENDERS

The PC-OC discussed the matter at its 50th meeting. It concluded that further information on the legislation and practice of the Member States would be needed and decided to proceed through a questionnaire.

On 18 October, 11 national replies reached the Secretariat.

The replies provide with useful information on the procedures applicable in the Member States on requests of transfer of mentally disturbed offenders as well as on the domestic organisation of forensic care.

Most countries do not have problems in organising the transfer of mentally ill offenders either to another country or on their own territory. Two countries however could not organise such transfers. One country would agree to proceed with a transfer only in the case where an offender has become mentally disturbed after his or her conviction.

In order to agree to a transfer to another State, countries would primarily assess the level of conditions of detention and care as well as the treatment offered in the administering State.

The Bureau could reflect on these preliminary elements and consider which, if any, follow-up would be needed.

PC-OC (2005)20 rev : national replies to the questionnaire

- 10. REQUESTS FOR COLLECTION OF DNA SAMPLES**, on the basis of the European Convention on Mutual Assistance in Criminal Matters (ETS 030)

This point is for information – as the Secretariat did not receive any information on developments on this matter.

- 11. New web site on “transnational criminal justice”**

www.coe.int/tcj