



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

**PC-OC (2006) 12**

Strasbourg, 6 October 2006  
[PC-OC/Documents/OC 12 report 51<sup>st</sup> mtg]  
<http://www.coe.int/tcj/>

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

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

**SUMMARY REPORT**  
**of the 51<sup>st</sup> meeting of the PC-OC**

**Strasbourg, 1-3 March 2006**

Secretariat memorandum prepared by the  
Directorate General of Legal Affairs

**Executive summary:**

At its 51<sup>st</sup> meeting, the PC-OC

- adopted a report on the follow-up to the New Start report, with concrete proposals to improve the visibility and the consistency of the European norms
- adopted a note on the modernisation of the European Conventions on international co-operation in the criminal field
- adopted draft terms of reference which include the specific task to improve the efficiency of international co-operation in criminal matters
- adopted opinions on:
  - witness protection (application of Art 23 of ETS 182)
  - the additional protocol (ETS 167) to the European Convention on the transfer of sentenced persons
  - counterfeiting.

**1. OPENING OF THE MEETING**

1. The meeting was opened by the Chair of the Committee, Mr E. SELVAGGI (Italy).
2. Bridget O'LOUGHLIN, Head of the Division on Criminal Justice in the Department of Crime Problems, informed the Committee of the changes brought by **Resolution (2005)47** of the Committee of Ministers on "Committees, subordinate Committees, terms of reference and working methods". Pursuant to this Resolution, all Committees shall have a limited duration of life and procedures for convocations as well as working methods are reviewed.
3. The Chair underlined the importance of the Committee's work, to be seen as a continuous work. He underlined that PC-OC fulfils a twofold objective. On the one hand, it is assisting in improving the operation of the CoE criminal Conventions and, on the other hand, he completes ad hoc tasks, such as the preparation of normative texts.
4. Furthermore, the Committee has developed over the years a network of practitioners in the field of judicial co-operation. This network of national officials has proved very useful in developing effective judicial co-operation and is considered to be the forerunner of the European Judicial Network. This non visible achievement should not be underestimated.

**2. ADOPTION OF THE AGENDA**

5. The Committee adopted the agenda as is set out in Appendix I to this document.
6. The list of participants forms the Appendix II of the document.

**3. REPORT OF THE 50TH MEETING (27-29 JUNE 2005): [PC-OC \(2005\) 16REV2](#)**

7. The Committee took note of the report and confirmed that it reflected accurately the discussions and conclusions from the 50<sup>th</sup> meeting.
8. It took also note of the report of the meeting of the Committee's Bureau (Strasbourg, 24-25 October 2005; [PC-OC Bu \(2005\) 03](#)).

#### **4. FOLLOW UP TO THE NEW START REPORT: PROPOSALS TO THE CDPC ON THE VISIBILITY AND CONSISTENCY OF THE COUNCIL OF EUROPE NORMS**

9. The Committee considered the draft report to the CDPC on follow-up suggestions to the "New Start" report (PC-OC (2005) 17rev2).
10. This report is mostly based on the work carried out by the PC-OC Working Party, which reported to the Committee at its 50<sup>th</sup> meeting (June 2005). It has been updated taking into account the comments made at that meeting as well as at the meeting of its Bureau, in October 2005.
11. The draft report was in general well received and the Committee approved it to a large extent.
12. The following points were discussed in particular:
  - the drafting of model Conventions was seen as potentially helping States in their relations with third countries and would contribute to improve the consistency in judicial co-operation;
  - the drafting of a general clause on judicial co-operation in future Conventions would be useful, it should however leave the possibility for Conventions dealing with specific forms of crimes to foresee specific forms of judicial co-operation, where necessary as to reach the Convention's objectives;
  - the criteria to be considered when discussing the accession of non Member States to CoE Conventions should include the respect of Human Rights by the State concerned. The Committee agreed that the reference to political opportunity should be removed from the document, as the appreciation of such opportunity belongs to the CoE political bodies.

#### *Conclusion and follow-up*

13. The Committee asked the Secretariat to incorporate the changes agreed in a new document (PC-OC (2006)10), to be sent to the CDPC for its plenary session.
14. The document PC-OC (2006)10 has been circulated at the end of the meeting and approved by its members.

#### **5. MODERNISATION OF THE COUNCIL OF EUROPE CONVENTIONS IN THE CRIMINAL FIELD**

15. Ms O'LOUGHLIN, as Secretary to the CDPC, informed the Committee on a letter sent on 22 February 2006 by the Chair of the CDPC, Mr C. DEBRULLE (Belgium), to Mr SELVAGGI. The letter asked for a specific report on the results on this point of the agenda.<sup>1</sup>
16. The Chair introduced the matter by reminding the Committee of the need to modernise the existing Conventions. Such need derives from the changes in the nature of crime: they become transnational in nature and call for effective and rapid co-operation. In addition, changes in other fora, such as in the EU, make judicial co-operation evolving and should be taken into account within the CoE.
17. As a matter of methodology, it is proposed to start the discussion with concrete elements of judicial co-operation which would need to be revised, and then to identify the type of normative or non normative tools which would reach the fixed objective.

##### **5.1. Dispute settlement mechanisms**

18. The Committee considered the information note on the friendly settlement of disputes on the application or the interpretation of the Council of Europe criminal conventions ([PC-OC \(2006\) 02](#)).

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<sup>1</sup> Mr Selvaggi replied to Mr Debrulle on 17 March 2006, on the results of the discussions held at this meeting.

### Proposal by the Russian Federation

19. Reference has been made to the proposal made by the expert from the Russian Federation that an additional Protocol to the European Convention on Extradition be envisaged, dealing with the settlement of disputes, in a way which is similar to the one proposed in the Additional Protocol (ETS 190) to the European Convention on the suppression of terrorism (ETS 090).
20. Several experts raised questions on this proposal. They identified possible difficulties linked to the obligatory/binding nature of the mechanism proposed. They felt that friendly settlement of disputes should be based on a voluntary attitude of the parties.

### Prevention of disputes

21. The Committee believed that an increased assistance to States in terms of communication about the concrete application of the co-operation mechanisms, as well as an increased guidance for a coherent interpretation of the Conventions' provisions would help in avoiding the appearance of disputes.
22. Such preventive role was considered essential in this field. The Committee referred to its concrete proposals made under the follow-up report to the New Start report (item 4 of this agenda), in particular the proposals related to the visibility of the European norms: setting up of a data base of the existing instruments and of the tools to assist in their implementation, assisting in networking among national officials in charge of judicial co-operation and setting up of an office of specialists to help practitioners.

### Interpretation of Conventions

23. In terms of possible future interpretations on the extradition mechanisms, the Committee's attention was brought to the facts that the decisions by Court of Justice (EU) on the application of the European Arrest Warrant might have an impact on the way that EU member States apply extradition mechanisms with other Council of Europe Member States. It was also pointed out that the ECtHR could also be seized of cases involving questions on human rights in application of the European Arrest Warrant. The Committee will follow possible developments of the case law in this regard.

### Conclusion

24. The Committee considered it opportune to have this matter further considered in the framework of the modernisation of the Conventions in the criminal field (see next agenda item) and to propose that it is included among the matters to be covered by draft terms of reference for future improvements of international co-operation in criminal matters.

## **5.2. Extradition and mutual assistance in criminal matters**

25. The Committee considered the information note on the need to modernise the European Conventions on judicial co-operation in criminal matters: extradition and mutual legal assistance ([PC-OC \(2006\) 01](#)).
26. As a matter of substance, the Committee discussed the matters related to extradition procedures as proposed under §§ 7 and 8 of the Secretariat document. It discussed in particular the following points.

On the points raised in § 7 of the document:

a. as to time limits

27. The Committee observed that legislation and practice vary widely among States on the minimum and maximum time for provisional arrest pending extradition (between 18 and 40 days).
28. On the question of the opportunity to define stricter time limits, some states stressed that it would be, in certain circumstances, difficult to respect shorter time limits, notably for reasons of e.g. translations and obtaining *prima facie* evidence.
29. It would also be difficult to envisage a shorter time limit for a decision of surrender of a person. Many elements intervene in the national procedures, and it might not be the interest of the person subject to an extradition procedure, nor the interest of justice, to have too strict time limits on the decision on surrender.
30. The fact that the person consents to his or her extradition ("simplified extradition") could be an element to be considered when defining shorter time limits.
31. The following matters could also be further discussed in relation to this:
  - whenever a State has good reasons to ask for a speedy treatment of an extradition request, it should explicitly ask for a quick reaction and States should, to the extent possible, deal with such request with celerity;
  - the question of languages and translations of documents (in application of Art 23 of the Convention): possibility to translate only relevant extracts of documents?
  - the means of communication, including electronic media;
  - the channels of communication for formal requests (as well as for complementary information needed by a Court: possibility to directly address such request to a competent judicial authority?);
  - co-operation in extradition matters would be facilitated if legal practitioners had a clearer view on the other States' legislation and practice.

b. as to additional issues

32. Some experts underlined additional issues which could be considered, such as:
  - the application of the rule of speciality, in relation with cases where a person consents to his or her extradition (simplified extradition);
  - the compensation for a person extradited and then acquitted: it was felt that when compensation is available for a national who has been acquitted, it should also be made available for persons who have been extradited and acquitted in similar circumstances;
  - the application of the status of limitation: should it be applied according to the legislation in the requesting State, as set forth in the 1996 Dublin Convention?;
  - the possibility and the consequences of a trial in absentia in the requesting State.
33. While further discussing these issues, the Committee should keep in consideration the International Criminal Court's status and developments related to its application, in addition to the developments in other multilateral and regional fora, such as in the EU.

On the points raised in § 8 of the document:

Individual rights and guarantees

34. The committee endorsed the proposal to promote the protection of rights and fundamental freedoms of persons subject to a transnational criminal procedure and to fully consider the proposals enshrined in the final report of the PC-TJ to this end.

35. The current works devoted by the European Commission on minimum procedural rights as well as on conflicts of jurisdiction and *non bis in idem* should also be duly considered in this regard.

Diplomatic assurances

36. Several experts suggested that the matter of diplomatic assurances be added among the matters to be considered.
37. On the latter, reference was made to the current works of the DH-S-TER, a Group of Specialists subordinated to the Steering Committee on Human Rights, to which the CDPC appointed a representative, Mr Simon Regis (UK). DH-S-TER deals with the use of diplomatic assurances primarily in cases of expulsion or deportation of suspected terrorists but also considered, as it seemed, their application in extradition cases.
38. The Committee was informed that diplomatic assurances have also been asked in a case of a transfer of a mentally disordered offender. The sentencing state wanted assurances that the administering state had the necessary means to ensure adequate treatment to the offender.
39. The main questions identified were related to the monitoring of the respect of the assurances given: by whom? And which consequences would follow the non respect of such assurances (could it be considered as a dispute to be settled)?

“Aut dedere aut judicare”

40. In relation to the application of the principle “*aut dedere aut judicare*”, some experts referred to the application of the European Arrest Warrant and to the “Dutch clause” by which a State can accept to surrender a national provided that, if sentenced, he or she would be transferred back in order serve the sentence in his or her national country. The question of the legal basis for such re-transfers could be considered in further discussions.
41. In future works, the possibility of a wider application of such clause could be discussed, as well as possible ways to ensure the application of the principle *aut dedere aut judicare*.
42. The Secretariat was also asked to find information on current works carried out by the UN on the principle “*aut dedere aut judicare*” and to keep the Committee informed of the results.

“Ne bis in idem”

43. The application of the principle of “*ne bis in idem*” would require careful consideration, taking duly the work carried out by the EC on the same matter, in relation to the conflict of jurisdiction. Some experts considered that the feasibility to draft normative proposals on this matter will need further discussion. Future work could consider the application of this principle to judicial decisions given in third States. Reference was also made to the possibilities offered by the Convention on the transfer of criminal proceedings (ETS 073) in this regard.

Double criminality

44. On the requirement of double criminality, future discussions should assess the extent to which its application raise problems in practice, the types of problems raised and the types of solutions which can be proposed. Such reflection should cover extradition cases, but also other forms of co-operation, such as mutual legal assistance or transfer of sentenced persons.

### **Conclusion in respect of items 5.1 and 5.2:**

45. The Committee adopted document PC-OC (2006) 09 which summarises the main elements to be considered in future work to improve international co-operation in criminal matters.
46. In view of this objective and having in mind Resolution (2005)47 of the Committee of Ministers, the Committee adopted a proposal for **revised terms of reference** (Appendix III). In order to elaborate proposals to improve international co-operation in criminal matters, the draft terms of reference foresees the setting up of a Working Group within the Committee; it would be composed of a maximum of 9 members.<sup>2</sup>
47. The Committee decided that document PC-OC (2006) 09, as well as the draft revised terms of reference, will be transmitted to the CDPC.

## **6. REPLIES TO CDPC REQUESTS ON**

### **6.1. Witness protection**

48. The Committee took note of document [PC-OC \(2005\)19rev2](#), comprising the questionnaire on the application of the Art 23 of ETS 182, the national replies and a brief analysis.
49. Some experts informed the Committee on some national aspects of the cooperation in terms of witness protection. The expert from Israel informed the Committee on the newly (2006) operational Witness Protection Unit.
50. The Committee underlined that, in addition to Art 23 of ETS 182, Member States are encouraged, while co-operating on witness protection, to apply
  - Recommendation R (97)13 concerning intimidation of witnesses and the rights of the defence
  - Recommendation R (2005)09 the protection of witnesses and collaborators of justice.

### **PC-OC's opinion and conclusion:**

51. On the basis of the national replies to the questionnaire, the Committee found that
  - States already co-operate with each other on the basis of bilateral agreements and they consider in general that Art. 23 is an appropriate basis for entering into such an agreement;
  - the implementation of the Protocol is relatively recent (2004) and has entered into force only with regard of the 11 States which have ratified it so far, as a consequence, not much practice can be reported yet and no real statistical data exists;
  - the difficulties mentioned as far as co-operation is concerned seem to refer mostly to the variety in the national legislation on this matter, as well as on the logistical limits in Member States.
52. It adopted its opinion on the matter (document PC-OC (2006)11). The opinion and the national replies will be transmitted to the CDPC.
53. The Committee decided to follow closely the development of the international co-operation in this field.

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<sup>2</sup> In case of a positive decision by the Committee of Ministers on the Committee's Terms of Reference, this drafting Group would be composed of the Bureau (Chair and 2 Vice Chairs) and the experts from Austria, Estonia, the Netherlands, Slovakia, Sweden and the Russian Federation.

## 6.2. Protocol to the Convention on the transfer of sentenced persons<sup>3</sup>

54. The Committee took note of document [PC-OC \(2005\)21 rev2](#), comprising the questionnaire on the Protocol (ETS 167) to the European Convention on the Transfer of Sentenced Persons and the national replies.
55. In its discussion, the Committee underlined the fact that the application of Convention ETS 112 and of its protocol (ETS 167) is left to States' discretion. It was also reminded that since the Convention ETS 112 was designed to serve prisoners' interests by encouraging their re-socialisation, States have to obtain their consent for any transfer.
56. However, the Protocol provides for two circumstances in which prisoners (or their sentence) might be transferred without their consent, i.e. the prisoner escaped from prison to its country of origin and the prisoner is subject of an expulsion or a deportation order to its country of origin.
57. The Committee was of the opinion that, when dealing with cases of escape of prisoners, the Protocol 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.
58. It further underlined that, when applying the Protocol, States parties should seek the *opinion* of the sentenced person, as required by the Art 3.2 of the Protocol, and the competent authorities should take particular account of this in deciding whether or not a transfer was appropriate, although *consent* of the person is not required.
59. The Committee took note of the existing case law of the European Court of Human rights and decided to continue to follow closely the application of this Protocol, especially with regard to the development of the case law of the European Court of Human Rights<sup>4</sup>.
60. The PC-OC adopted its opinion (PC-OC (2006)05 rev) and decided to send it to the CDPC.

### Question from Sweden

61. It also discussed a question submitted by the expert from Sweden ([PC-OC \(2006\)07](#)).
62. While noting that the Protocol ETS 167 does not create an obligation to transfer between Parties, the Committee was of the opinion a refusal to transfer on the grounds that the sentenced person did not consent to the transfer or refused to give his or her opinion to the transfer, is contrary to the spirit of the Protocol. (see also § 56 above)

### General remark

63. **Following this discussion, the Chair underlined the interest, for the Committee, to discuss such concrete questions related to the practical application of the European Conventions on co-operation in criminal matters.**
64. He encouraged national experts in the PC-OC to raise such questions which lead to discussions in the Committee in order to identify the most efficient and most coherent ways to implement the Conventions.
65. Experts are encouraged to send, wherever possible, their questions in writing and in advance to the Secretariat, in order to prepare the Committee's discussion on the question.

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<sup>3</sup> The Protocol has so far 29 ratifications.

<sup>4</sup> The Committee has been informed that a new case has been brought to the European Court of Human Rights. As it was the case in the two previous cases, it involves an Estonian citizen sentenced in Finland and transferred back to its country of nationality to serve its sentence.



### 6.3. Counterfeiting

66. The Committee discussed proposals for follow-up actions in the field of counterfeiting, as requested by the CDPC (54<sup>th</sup> session, 7-11 March 2005).
67. The Committee took into account the following elements:
- Parliamentary Assembly Recommendation 1673 (2004) on “counterfeiting: problems and solutions”
  - documents (in particular the “Harper report”) and conclusions of the seminar on “Counteract the counterfeiters! Limiting the risks of counterfeit medicines to public health in Europe by adequate measures and mechanisms” (Strasbourg, 21-23 September 2005)
  - the Secretariat memorandum prepared by DGI-Legal Affairs presenting to the Bureau of the CDPC the main legal findings from this seminar (document CDPC-BU(2005)13)
  - the report of the meeting of the Bureau of the PC-OC (24-25 October 2005), which held a preliminary discussion on the matter.
68. It took note in particular of the conclusions reached at the seminar on the need to develop an international legal instrument, possibly a convention within the Council of Europe, in co-operation with other relevant international instances, such as the WHO, to combat pharmaceutical/health-care crimes.
69. The Committee held an exchange of views with two experts:
- Mr Hugo Bonar (Ireland), Co-Chair Ad Hoc Group on Counterfeit Pharmaceuticals/ Medicines Anti-Counterfeiting, Council of Europe, and Irish Medicines Board;
  - Dr. Torbjörn Arvidsson (Sweden), Director, Medical Products Agency.
70. In its discussion, the Committee confirmed the need to fight counterfeit medicine/pharmaceutical crimes and that CoE could play a role to this end.
71. In particular, the following needs were mentioned:
- definition of the offence,
  - definition of appropriate penalties,
  - need for quick and efficient exchange of information and international co-operation.

### Conclusion and follow-up

72. The Committee is convinced of the need to develop prevention, criminalisation and co-operation strategies and mechanisms to fight this phenomenon.
73. It confirmed the need to study the feasibility of elaborating a legal instrument under the auspices of the Council of Europe to combat pharmaceutical/health-care crimes.
74. The Committee adopted its opinion on the matter (PC-OC (2006) 04 rev), which proposes to the CDPC the preparation of a feasibility study on the elaboration of a legally binding instrument on counterfeiting/pharmaceutical crimes.

## 7. OTHER MATTERS ON THE APPLICATION OF THE CONVENTIONS IN THE CRIMINAL FIELD

### 7.1. Transfer of mentally disturbed offenders

75. The Committee took note of document [PC-OC \(2005\) 20rev2](#), comprising the questionnaire on the application of the European Convention on the transfer of mentally disturbed offenders, the national replies and a brief analysis of the replies.

76. On the basis of the national replies, the Committee observed that:
- 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.
77. It decided to invite States which have not done so to send their replies to the Secretariat, to forward the document to the CDPC for information as well as to make it available to practitioners and to the public via the web site of the Committee.

## **7.2. Transfer of prisoners with contagious or other serious diseases**

78. The Committee suggested to further deal with this matter in a subsequent meeting.

**Regarding items 7.1 and 7.2**, it agreed that the follow-up will be considered in the wider context of the proposed future exercise of modernising the conventions and improving international co-operation in criminal matters.

## **8. MISCELLANEOUS**

### **8.1 Application of the European Convention on mutual assistance in criminal matters to collect DNA samples**

79. The Committee decided to continue to follow this matter, notably in the wider context of the future exercise on modernisation of international co-operation in criminal matters.

### **8.2 Application of the European Convention on the transfer of criminal proceedings: question by the expert from Slovakia**

80. The Committee discussed the question raised by the expert from Slovakia ([PC-OC \(2006\)03](#)).
81. The Committee members agreed, in general, that the European Convention on the transfer of criminal proceedings does not foresee the possibility to require guarantees on the application of its Art 21 (discontinuation of prosecution in the requesting State). Should such a request for such guarantees be expressed by a requested State, the Committee understands that the failure to provide such guarantees by the requesting State should not constitute a ground for refusal nor a reason for postponing a decision on the request for transfer.
82. It was also understood that in the framework of the application of Conventions, each State appoints its national authority competent to deal with related requests. States parties are therefore not supposed to question such national/internal decisions and to question the competence of such national authority appointed.
83. In addition, several experts were of the opinion that once criminal proceedings are transferred, in application of the Conventional mechanisms foreseen in ETS 073, the requesting country has no more competence to prosecute the case and that, as a consequence, there should be no need for formal guarantees that that State would discontinue prosecutions.

84. The Chair recognised the interest of the Convention ETS 073, proposing mechanisms to deal with positive conflict of jurisdictions and with the *ne bis in idem* principle. He encouraged the States which haven't done so yet to consider the possibility to accede to this Convention.
85. He also suggested considering the application of this Convention in the proposed exercise to modernise the European Conventions in criminal matters and to improve international co-operation (item 5 of the agenda).

### **8.3 Election of a 2<sup>nd</sup> Vice-Chair of the Committee**

86. The Committee unanimously elected Ms Joanna GOMMES FERREIRA (Portugal) as 2<sup>nd</sup> Vice Chair of the Committee for one year. She will replace Ms Imbi MARKUS (Estonia). The Committee thanked her for her committed work as Vice-Chair over the last year.

### **8.4 Information: 27<sup>th</sup> Conference of the European Ministers of Justice in Yerevan (Armenia) 12-14 October 2006 on "victims: place rights and assistance".**

### **8.5 Information: new web site on transnational criminal justice: [www.coe.int/tcj](http://www.coe.int/tcj)**

### **8.6 Dates of next meeting – working methods –**

87. The Committee was informed of the new resolution of the Committee of Ministers (Res (2005)47) and its impact on the limitation in time of the terms of reference for all Committees, as well as on convocations, elections and working methods. It adopted draft revised terms of reference accordingly (Appendix III).
88. The proposed dates for the next plenary meeting are 4-6 October 2006, subject to the availability of meeting rooms. Alternative dates could be 15-17 November 2006.
89. The following information was brought to the attention of the Committee:
  - The Austrian expert, whose State exercises the Presidency of the European Union, informed the Committee on the legislative initiatives in progress within the EU in the criminal field;
  - The Russian expert informed the Committee on the preparation of a High Level Conference of the Ministries of the Interior and of Justice on "Improving European co-operation in the criminal field", to be held in Moscow in June 2006 (exact dates to be confirmed).
90. As to the PC-OC representatives to other Committees:
  - To CODEXTER: following the presence of Per HEDVALL (Sweden) during the works of the CODEXTER on the elaboration of the Council of Europe Convention on the prevention of terrorism, opened to signature in April 2005, the PC-OC asked the Secretariat to follow the works of CODEXTER and to report to it on future works related to international cooperation.
  - To PC-ES (committee of experts on the protection of children against sexual exploitation and abuse): the Committee appointed Ms Antonella SAMPO (Monaco).

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**APPENDIX I**

Strasbourg, 08 February 2006  
[PC-OC/Documents/OC 51 Draft Agenda]  
<http://www.coe.int/tcj/>

**PC-OC (2006) OJ 1 rev**

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

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

**51<sup>st</sup> meeting**  
**Strasbourg, 1-3 March 2006**  
**Room 3**

**AGENDA**

1. Opening of the meeting
2. Adoption of the Agenda
3. Report of the 50<sup>th</sup> meeting (27-29 June 2005)
4. Follow up to the New Start report: proposals to the CDPC on the visibility and consistency of the Council of Europe norms
5. Modernisation of the Council of Europe Conventions in the criminal field
  - 5.1. dispute settlement mechanisms
  - 5.2. extradition
  - 5.3. mutual assistance in criminal matters
6. Replies to CDPC requests on
  - 6.1. witness protection
  - 6.2. protocol to the convention on the transfer of sentenced persons
  - 6.3. counterfeiting
7. Other matters on the application of the Conventions in the criminal field
  - 7.1. transfer of mentally disturbed offenders
  - 7.2. transfer of prisoners with contagious or other serious diseases
8. Miscellaneous

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## **APPENDIX II**

### **List of participants**

\*\*\* : *No nomination / Pas de nomination*

#### **MEMBER STATES / ETATS MEMBRES**

##### **ALBANIA / ALBANIE**

Mr Erton KARAGJOZI, Ministry of Justice, TIRANA

##### **ANDORRA / ANDORRE**

M. André PIGOT, Magistrat Honoraire, ANDORRA-LA-VELLA

##### **ARMENIA / ARMENIE**

Mr Hovhannes POGHOSYAN, Police of the Republic, YEREVAN

##### **AUSTRIA / AUTRICHE**

Ms Barbara GOETH-FLEMMICH, Ministry of Justice, VIENNA

##### **AZERBAIJAN / AZERBAÏDJAN**

Mr Hamlet A. BABAYEV, Ministry of Internal Affairs, BAKU

##### **BELGIUM / BELGIQUE**

Mme Julie DE HULTS, Ministère de la Justice, BRUXELLES

##### **BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

Ms Natasa VUKOVIC, Ministère de la Justice, SARAJEVO

##### **BULGARIA / BULGARIE**

Mrs Vesselina MALEVA, Ministry of Justice, SOFIA

##### **CROATIA / CROATIE**

Ms Melanija GRGIC, Ministry of Justice, ZAGREB

Ms Ljiljana Vodopija CENGIC, Ministry of Justice, ZAGREB

##### **CYPRUS / CHYPRE**

Mrs Elli KANARI-MORPHAKI, Ministry of Justice and Public Order, NICOSIA

##### **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Ms Dita LUKASOVA , Ministry of Justice, PRAGUE 2

Ms Svetlana KLOUCKOVA, Supreme Public Prosecutor's Office, BRNO

##### **DENMARK / DANEMARK**

Mr Joachim KROMANN, Ministry of Justice, COPENHAGEN K

*Excusé*

*Apologised /*

##### **ESTONIA / ESTONIE**

Ms Imbi MARKUS, Ministry of Justice, TALLINN

##### **FINLAND / FINLANDE**

Mr Juhani KORHONEN, Ministry of Justice, HELSINKI - GOVERNMENT *Apologised /*

*Excusé*

Ms Jenni KLEMOLA, Ministry of Justice, HELSINKI - GOVERNMENT

**FRANCE**

Mme Aude WESSBECHER, Ministère de la Justice, PARIS Cedex 01

\*\*\* **GEORGIA / GEORGIE**

**GERMANY / ALLEMAGNE**

Mr Jürgen SCHNIGULA, Bundesministerium der Justiz, BONN

**GREECE / GRECE**

Ms Irini CHISOYANNI, District Attorney, PANORAMA -THESSALONIKI

**HUNGARY / HONGRIE**

Mme Klara NEMETH-BOKOR, Ministère de la Justice, BUDAPEST *Apologised / Excusée*

Ms Szilvia KIRALY, Ministry of Justice, BUDAPEST

**ICELAND / ISLANDE**

Mr Jón Þór ÓLASON, Ministry of Justice, REYKJAVIK

*Apologised / Excusé*

**IRELAND / IRLANDE**

Ms Eileen MCGOVERN, Department of Justice, Equality and Law Reform, DUBLIN 4

**ITALY / ITALIE**

Mr Eugenio SELVAGGI, Deputy District Attorney General, ROMA **CHAIRMAN / PRESIDENT**

Mme Nadia PLASTINA, Ministère de la Justice, ROMA

**LATVIA / LETTONIE**

Mr Maris STRADS, Office of the Prosecutor General, RIGA

**LIECHTENSTEIN**

Mr Harald OBERDORFER, Regierung des Fürstentums Liechtenstein, Vaduz

**LITHUANIA / LITUANIE**

Ms Skaiste KIULKYTE-BARKAUSKIENE, Ministry of Justice, VILNIUS

**LUXEMBOURG**

M. Jérôme WALLENDORF, Parquet Général, LUXEMBOURG

\*\*\* **MALTA / MALTE**

**MOLDOVA**

Ms Irina LUPUSOR, Ministry of Justice, CHIȘINĂU

**MONACO**

Mme Antonella SAMPO, Palais de Justice, MONACO

**NETHERLANDS / PAYS-BAS**

Mr Teun VAN NOORD, Ministry of Justice, THE HAGUE

Ms Chantal JOUBERT, Ministry of Justice, THE HAGUE

**NORWAY / NORVEGE**

Mr Eirik LINDSTRØM, Ministry of Justice and the Police, OSLO

Ms Linn EDVARTSEN, Ministry of Justice and the Police, OSLO

**POLAND / POLOGNE**

Mme Anna ZALEWSKA, Ministère de la Justice, VARSOVIE

**PORTUGAL**

Mme Joana GOMES FERREIRA, Procuradoria Geral da República, LISBOA

**ROMANIA / ROUMANIE**

Mr Florin Răzvan RADU, Ministère de la Justice, BUCAREST

**RUSSIA / RUSSIE**

Mr Vladimir P. ZIMIN, Ministry of Justice, MOSCOW

**\*\*\*SAN MARINO / SAINT-MARIN**

**SERBIA AND MONTENEGRO / SERBIE-MONTENEGRO**

Ms Snezana MARAS, Ministry of Justice, MONTENEGRO

**SLOVAKIA / SLOVAQUIE**

Mr Branislav BOHÁČIK, Director, Ministry of Justice, BRATISLAVA

**\*\*\* SLOVENIA / SLOVENIE**

**SPAIN / ESPAGNE**

M. Antonio ROMERO REINARES, Ministère de la Justice, MADRID

**SWEDEN / SUEDE**

Mr Per HEDVALL, Ministry of Justice, STOCKHOLM

Ms Hanna LEMOINE, Ministry of Justice, STOCKHOLM

**SWITZERLAND / SUISSE**

Mme Astrid OFFNER, Office Fédéral de la Justice, BERNE

*Apologised / Excusée*

**THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA /  
L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE**

Mme Snezana MOJSOVA, Ministère de la justice, SKOPJE

**TURKEY / TURQUIE**

Mr Bilal ÇALIŞKAN, Ministry of justice, ANKARA

**UKRAINE**

Mr Herman HALUSCHENKO, Office of the President, KYIV

Ms Tetiana SHORTSTKA, Ministry of Justice, KYIV

**UNITED KINGDOM / ROYAUME-UNI**

Mr Richard BRADLEY, Home Office, LONDON

\* \* \* \*

**EUROPEAN COMMUNITY / COMMUNAUTE EUROPEENNE**

**COMMISSION**

M. Peter CSONKA, Commission Européenne, BRUXELLES

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SECRETARIAT GENERAL DU CONSEIL DE L'UNION EUROPEENNE**

Mr Bent MEJBORN, Council of the European Union, BRUSSELS

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OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE**

**HOLY SEE / SAINT-SIEGE**

*Apologised / Excusé*

**UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE**

Ms Paula A. WOLFF, Department of Justice, WASHINGTON,

**CANADA**

Ms Elaine KRIVEL, Canadian Mission to the European Union, BRUSSELS

Mr Jacques LEMIRE, Embassy of Canada, PARIS

**JAPAN / JAPON**

Mr Yasushi FUKU, Consulate-General of Japan, STRASBOURG

Ms Miho AKADA, Ministry of Justice, TOKYO

**MEXICO / MEXIQUE**

Mr Miguel NAVA, Mexican Embassy, MADRID

**OBSERVERS WITH THE COMMITTEE /  
OBSERVATEURS AUPRES DU COMITE**

**States Observers / Etats Observateurs**

**ISRAEL**

Mr Gal LEVERTOV, Ministry of Justice, JERUSALEM

Mr Yitzchak BLUM, Ministry of Justice, JERUSALEM

**EXPERTS**

**European Network of Official Medicines Control Laboratories (OMCL) and Biological  
Standardisation / Réseau Européen des Laboratoires Officiels de Contrôle des  
Médicaments (OMCL) et Standardisation Biologique**

Dr. Torbjörn ARVIDSSON, Président du Comité Consultatif, Directeur du laboratoire de  
contrôle des autorités suédoises, représentera le réseau des OMCLs.

**Service de la Santé et de l'Accord Partiel dans le domaine social et de la santé publique,  
Division de l'Accord Partiel dans le domaine social et de la santé publique  
Department of Health and of the Partial Agreement in the Social and Public Health Field /  
Partial Agreement Division in the Social and Public Health Field**

**Mr Hugo K. BONAR, CO-CHAIR, Enforcement Officer in the Irish Medicines Board**



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Ms Agnès ARTIGES, Director / Directrice

*Apologised / Excusée*

Mr Jean-Marc SPIESER, Head of Division / Chef de Division

**DIRECTION GENERALE III - COHESION SOCIALE /  
DIRECTORATE GENERALE III - SOCIAL COHESION**

**Service de la Santé et de l'Accord Partiel dans le domaine social et de la santé publique,  
Division de l'Accord Partiel dans le domaine social et de la santé publique**

**Department of Health and of the Partial Agreement in the Social and Public Health Field /  
Partial Agreement Division in the Social and Public Health Field**

Mr Thorsten AFFLERBACH, Head of Division / Chef de Division

Ms Sabine WALSER, Administrative officer / Administratrice

**Interpreters / Interprètes**

Mr Didier JUNGLING

Mr William VALK

Mme Isabelle MARCHINI

\* \* \* \*

**APPENDIX III****DRAFT Terms of Reference for the PC-OC**

1. **Name of committee:** COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS ON CO-OPERATION IN CRIMINAL MATTERS (PC-OC)
2. **Type of committee:** Committee of Experts
3. **Source of terms of reference:** European Committee of Crime Problems (CDPC)

4. **Terms of reference:**

Under the authority of the European Committee of Crime Problems (CDPC), and in relation with the implementation of Project [2004/DG1/199](#) - Monitoring the operation of Conventions on Co-operation in the criminal field, of the Programme of Activities, the Committee is instructed to:

- i. review the operation of the conventions on international cooperation in criminal matters with a view to facilitating their practical implementation<sup>5</sup>;
- ii. consider various steps and initiatives to improve the efficiency of international co-operation in criminal matters, in particular through the elaboration of normative proposals for binding or non binding legal instruments and through other measures to improve practical co-operation;
- iii. follow developments in other international frameworks (e.g. United Nations, European Union) in the fields covered by these conventions and, where appropriate, propose measures likely to ensure their conformity with such developments;
- iv. follow the application of the European Convention on Human Rights with regard to international cooperation in criminal matters.

5. **Composition of the Committee:**5.A. **Members**

Governments of member states are entitled to appoint representatives in the field of criminal law and with the following qualifications: experience and/or expertise in the field of international co-operation in criminal matters.

The Council of Europe budget will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

5.B. **Participants**

- i. The following Committees may each send a representative to meetings of the Committee, without the right to vote and at the charge of the corresponding CoE budget sub-heads:

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<sup>5</sup> These conventions are i.a.: ETS nr. 24, 30, 51, 52, 70, 71, 73, 82, 86, 88, 97, 98, 99, 101, 112, 116, 119, 156, 167 and 182.

- the Steering Committee for Human Rights (CDDH)
- the Consultative Council of European Prosecutors (CCPE)
- the European Commission for the Efficiency of Justice (CEPEJ)

### **5.C Other participants**

- i. The European Commission, the Council of the European Union, [Eurojust and the European Judicial Network] may send representatives to meetings of the Committee without the right to vote or defrayal of expenses.
- ii. The states with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send representatives to meetings of the Committee without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send representatives to meetings of the Committee without the right to vote or defrayal of expenses:
  - United Nations Office for Drugs and Crime (UNODC)
  - United Nations Interregional Crime and Justice Research Institute (UNICRI)
  - United Nations High Commissioner for Human Rights (UNHCHR)
  - International Criminal Court (ICC)
  - International Criminal Tribunal for former-Yugoslavia (ICTY)

### **5.D. Observers**

The following non-member state may send representatives to meetings of the Committee without the right to vote or defrayal of expenses:

Israel

## **6. Working Methods and Structures**

The Committee may have recourse to consultants or scientific experts. It can organise hearings or exchange of views with external experts/personalities.

The Bureau of the Committee is composed of the Chair and 2 Vice-Chairs.

The Committee may set up a Drafting Committee to elaborate steps and initiatives to improve the efficiency of international co-operation in criminal matters mentioned under 4.ii.above. It would be composed of a maximum of 9 members.

The Committee will report to the CDPC.

## **7. Duration**

These terms of reference will expire on 31/12/2008.