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Strasbourg, 20/11/2006

PC-OC (2006) 16

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Committee of Experts
on the Operation of European Conventions
on Co-Operation in Criminal Matters
(PC-OC)

SUMMARY REPORT
of the 52nd meeting of the PC-OC

Strasbourg, 18-20 October 2006

Secretariat memorandum prepared by the
Directorate General of Legal Affairs

1. OPENING OF THE MEETING

The Chair, Mr **Eugenio Selvaggi** (Italy) opened the meeting and welcomed all participants.

The Head of the Criminal Justice Division, Ms **Bridget O'Loughlin**, informed the participants about the high level conference of the European Ministries of Justice and of the Interior "improving European co-operation in criminal matters", to be held in Moscow on 9-10 November 2006.

She also provided information on the 27th Conference of European Ministers of Justice held in Yerevan on 12-13 October 2006 on "victims: place, rights and assistance". The adopted Resolution shows the need for more co-operation in assisting victims of transnational crimes but also in preventing such crimes and where necessary, to prosecute such criminals. The need for enhanced co-operation and for future work has also been confirmed on legal and technical aspects of crimes such as counterfeit medicines/pharmaceutical crimes.

2. ADOPTION OF THE AGENDA

The agenda was adopted.

3. DISCUSSION ON POSSIBLE STEPS AND INITIATIVES TO IMPROVE THE EFFICIENCY OF INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS.

The Committee discussed this item on the basis of the elements prepared by the limited Group of experts, following its first two meetings (doc PC-OC Mod (2006)06).

I. PRACTICAL MEASURES

a. Publications

The Committee welcomed the two publications which are expected to be in the bookshops by end of 2006:

- a) a **compendium of CoE criminal Conventions** (in French, English and possibly in Russian language);
- b) the **“explanatory notes and relevant CoE documents on extradition”**.

This latter publication was particularly welcomed, as it presents the results of discussions held in the PC-OC on concrete questions regarding the application of specific provisions of the extradition treaties.

The Committee underlined the need that such “explanatory notes” be regularly updated and accessible to the public at large through the web site of the Committee (even if a time period is to be respected between the distribution in the bookshops and the –free- access on the web or through CD-Roms).

The preparation of additional publications is foreseen, such as explanatory notes on the transfer of sentenced persons and, subsequently, on mutual assistance in criminal matters. The publications would also be sold to the public and, at a later stage, be made available on the web site (and on CD-ROMs). The Secretariat would ensure their regular updating.

b. Web site and data base

i. CoE web site on transitional criminal justice

The web site of the Committee presents the latest news relating to co-operation in criminal matters as well as the documents related to Committee meetings and links with other web sites and databases. The Committee found this new presentation of the web site to be a real improvement.

It suggested that additional news and links be inserted, notably to

- CoE web sites on economic crimes (GRECO, Moneyval, Assistance programmes such as CARDS, PACO) on terrorism, on the Court of Human Rights
- Europol, European commission, ...

ii. CoE database on national information on co-operation procedures

An ideal database was first considered, comprising all relevant norms (multilateral, regional and national) in the field of co-operation in the criminal field, as well as links to case law of international (and national) jurisdictions, and possibly to commentaries.

Considering the available resources (financial and human), and considering also the real needs of practitioners, the committee agreed on a simpler form of database. Sixteen members of the committee supported this initiative.

The database should be as simple as possible (“light weight database”) and should reply to basic questions related to co-operation with the other States parties to the CoE conventions. Extradition, mutual assistance and transfer of sentenced persons will be contemplated in a first step.

The elements or data to be inserted would include:

- the competent authority (name of the institution, address, telephone, fax and e-mail where available)
- languages requirements
- time limits
- documentation
- statutes of limitation for special offences
- double criminality
- extradition of nationals
- means of communication
- other particularly relevant information (which could include national legislation, national guides on procedure, ...).

As relates the transfer of sentenced persons, specific questions could deal with matters such as: conditional release, transfer of “residents”, transfer of mentally disordered persons, continued enforcement or transformation of the sentence;...

The database would be hosted on the CoE web site. The CoE will provide with the software.

The data could be sent to the Secretariat in any of the two official languages (French and English); the data in the database would however, for practical and financial reasons, be available only in English.

The committee agreed that the database would be accessible to the public. However, if the details of the contact person of the network mentioned below under c) are to be found on the database, some members of the Committee asked that such data should not be accessible to the public but should be limited to PC-OC members and to the members of the network, through a password.

The Committee agreed on the principle that it would be the responsibility of the Committee members to forward the data, on a regular basis (yearly), to the Secretariat. It agreed on the clear understanding that any database is useful only at the condition that the data are accurate and regularly updated. This shared database would exist under shared responsibility.

The Committee welcomed the idea that a “guide” for practitioners could introduce the database (see document from the Chair, PC-OC Mod (2006)04) and would for instance stress the need for practitioners to consult the lists of signatures and ratifications as well as the declarations and reservations of any convention, etc .

Conclusion:

The Committee agreed on a database to be set up. The database should be as simple as possible and should reply to basic questions related to co-operation in criminal matters. The definition of elements to be inserted and the modus operandi, including updating, of the database will be further elaborated by the limited Group of experts. Links to national websites and to national guides of procedures (where they exist) should be provided. A “guide” for practitioners could introduce the database.

c. *Networking*

The Committee held a discussion on the basis of documents PC-OC (2006)13 and PC-OC Mod (2006)5.

It started by referring to the list of officials in charge of judicial co-operation, put together since several years by the PC-OC (document: PC-OC Inf 06). That list is very detailed and for some States presents a full list of competent civil servants. The list is found to be very useful for practitioners who need specific information with a view to prepare a request for judicial co-operation or to enquire about the status of an ongoing co-operation. Such a list is considered to be the forerunner of the European Judicial Network set up by the European Union.

The Committee felt however that there is a need to have a simpler list of one person of contact per State (possibly with names of (a) substitute(s)), with his/her full details and to consider that these persons form part of a CoE network of contact persons in the field of judicial co-operation. Ten members of the Committee strongly supported the initiative.

The existing “list of national officials in charge of international co-operation” (PC-OC Inf 6) constitutes a good basis for the development of a network – that list will be updated and will remain available to all Committee members, in addition to the network, once created.

The Portuguese expert made a presentation on the functioning of existing networks: the European Judicial Network (EJN) and the lbeRed network. She drew the following main lessons from these experiences:

- the efficiency of the networks depends to a large extent of its individual members; a careful appointment is therefore essential;
- these persons should:
 - o be able to speak several languages
 - o be competent in judicial co-operation matters
 - o be motivated and available.

The Committee referred to and agreed on the note appended to this document outlining the role and requirements of contact persons.

The network would aim at facilitating as much as possible, through better interpersonal relations, co-operation in preparing and in executing requests. As an example: if a requesting State is willing to obtain information on the period of detention pending extradition in a requested State, such information could easily and rapidly be given by a person of contact in that State rather than through the formal channels of judicial co-operation.

The Chair underlined that the development of a CoE network of national points of contact would have no negative impact on already existing networks of the same type. Considering the existence of the EJM, the creation of a network would in particular be relevant as regards the co-operation with non EU member States. Links with existing networks, i.a. EJM and IbeRed, would be ensured.

The committee could prepare best practices for the network's members, once appointed.

Some members of the Committee suggested that the list of persons of contact in each State be communicated to judges and prosecutors; this would enable them to directly contact the person of contact in the other states. Some other members considered that inter-States contacts, in the context of CoE conventions, should always be done through central authorities and that therefore, the access to the contact persons should be limited to the network's members and to central authorities. It has also been proposed that each State decides the authorities (judges, prosecutors) to which it gives access to the contact of network's members.

Conclusion:

The Committee decided the setting up of a network of national points of contact in order to facilitate the efficiency of international co-operation through enhanced personal relations.

It requested its limited Group of experts to further deal with some modalities of the operation of this network and with matters linked to the access to the list of contact persons (possibly through the database mentioned under b)).

A comprehensive presentation should be agreed by the Committee in time before the next plenary session of the CDPC.

d. Office of specialists

The Committee concluded that an Office of specialists in the CoE Secretariat, which would help practitioners on various aspects of the application of the CoE conventions, would be possible only with additional resources, which are presently not available.

e. Newsletter

The Committee welcomed the suggestion that a newsletter be produced, presenting regularly the latest developments in the field of international co-operation, i.e. for instance, accession to conventions, important events or conferences, important decisions by international (or national) jurisdictions such as the ECtHR, important national developments.

II. NORMATIVE MEASURES

The Chair recalled the specific terms of reference of the committee, by which the Committee is asked to work on normative measures upon instruction of the CDPC. At this stage, the committee should prepare suggestions for normative changes to be presented to the CDPC

The Committee decided to deal in a first stage with extradition matters. The European convention on extradition (1957) is indeed one of the oldest European conventions in the criminal field and deserves to be fully reconsidered. The Convention also directly impacts on individuals' rights and freedoms, on which the CDPC asked the PC-OC to pay particular attention.

The Committee also agreed that in doing so, it could also raise aspects of international co-operation relating to other CoE conventions. Matters linked to extradition can also have an impact on mechanisms foreseen by other conventions and would therefore lead to a necessary change to that instrument.

a. Extradition

i. Simplified extradition

General

The 1957 European Convention on Extradition could be revised in order to include mechanisms of simplified extradition when the person consents to his or her extradition. If such consent is expressed, many committee members were of the opinion that there is indeed no need to go through all the formalities of an extradition procedure.

The simplified extradition mechanism proposed in the EU convention on simplified extradition of 1995 could serve as a reference for normative changes in the CoE context.

Several committee members underlined that forms of simplified extradition already exist in practice (one expert informed that 2/3 of extradition requests are dealt with through such simplified procedures). It would be desirable to elaborate a treaty basis for this, accessible to a high number of States. However, any new norm should not have any negative or limitative impact on the current practice.

Need for formal extradition request?

If a person is arrested in State A under a request for provisional arrest or under an arrest warrant issued by Interpol and consents to his or her extradition in front of a competent authority of that State, is there a need for a formal request of extradition from State B or could State A surrender the person to State B without such request?

Practice varies widely among States. In some of them, there is a need for such extradition request. The consent of the person would, in this case, be taken into account in the extradition procedure in order to have a quicker final decision and a quicker surrender. In other States, there is no need for the formal extradition request; the person can be rapidly surrendered, once the consent has been given.

Conclusion

Following a discussion showing the differences in practice among States, the Chair suggested leaving this question opened at this stage, while noting that this could be left to a decision by each State whether to ask or not for the extradition request.

Need of documents required under Art 12 of the convention?

The practice among States differs also in this matter. In some States, the documents required under Art 12 are needed with a view to proceed on an extradition request, even in a simplified way. In other States essential information is sufficient in order to proceed with a simplified extradition. This depends on the law of the requested State, by which the competent authority, according to the documentation or information received, can either decide to deal with the matter through an accelerated procedure or through the normal extradition process (e.g. if a critical legal issue arises or if the person is also an asylum seeker).

Reference has been made Art 3 and 4 of the EU Convention on simplified extradition ("information to be provided").

The information to be provided should in any case enable the requested State to assess notably whether the case deals with an extraditable offence, the double criminality requirement (for which a description of the facts and of the applicable legislation is needed), as well as possible grounds for refusal.

A Committee member suggested that the requirements of Art 12 be reviewed not only in the perspective of simplified extradition but also in the "normal" extradition procedures. The aim would be to avoid costs and delays, in particular in cases of the purpose of extradition for the purpose of executing a sentence, where the decision (which can be of hundreds of pages) has to be sent (and translated). As an alternative, in such cases, only the relevant information (e.g.: Mr/s A was sentenced, for these facts – summarised- by Court X, on date xx, to a penalty of xxx; that decision is final) and a copy of the decision could be sufficient.

Conclusion:

Committee requested its limited Group of experts to proceed with additional work on the application of Art 12 of the convention relating to the requirements of a request of extradition and of documents; the Group will envisage the cases in which the possibility of having information (instead of documents) could suffice in order to proceed with simplified extradition. This could lead to amendments to the extradition convention and/or to recommendations on the application of Art.12.

Consent

The committee agreed that the consent expressed by the person sought should be voluntary, conscious and in full awareness of the legal consequences. The person should not be deprived from the procedural guarantees defined by each State, notably the access to a defence lawyer and to an interpreter.

Many states foresee cases where the consent may be withdrawn. The consequences of such withdrawal, both practical and legal will need further consideration (could the time limit for the production of the documents be for instance suspended until the withdrawal?). The principle mentioned by Art 13.4 EAW according to which the consent should not be revocable was also mentioned.

The consequences of the consent

The Committee agreed that

- the consent should not deprive the requested State to invoke a ground for refusal set forth in the Convention.
- In terms of the speciality rule (Art 14 ECE), the Committee briefly considered the following different options (see Art 7.1 EU Convention '95):
 - o either the person's consent has no consequence on the speciality rule, or
 - o the person can consent and renounce to the speciality rule or
 - o it is to the Requesting State to inform the requested State of a non application of the speciality rule, with a possibility for the requested State to oppose.
 (For other applications of the speciality rule, see below item V. See also Art 10 of the EU 1996 Convention).

The Committee also briefly examined the application of Art 15 of the convention on the re-extradition to third States or surrender to international tribunals.

Time limits

The question of inserting shorter time limits is closely linked to solutions to questions related to the necessity of a formal request and of documents (possibly to be translated).

Time limits could be envisaged for the decision on surrender, once the consent is given, and for the actual surrender, after the decision is taken (20 days maximum?).

Conclusion (on the last three items)

Committee requested its limited Group of experts to proceed with additional work on:

- the consequences of the consent as to:
 - o the application of Art 14 of the convention on the speciality rule
 - o the application of Art 15 of the convention on the re-extradition to third States or surrender to international tribunals.
- the nature of consent and the possibility of withdrawal.
- the possibility to insert time limits for a decision, after consent, and for actual surrender of the person.

ii. Grounds for refusal (Art 3, 4, 5 ECE)

The Committee agreed not to deal with fiscal or military offences at this stage.

It took note of the question related to political offences and suggested that its members further reflect on possible developments in this matter and send ideas to the Secretariat. Due consideration should be given notably to developments in the CoE recent Conventions (ex. the Convention on the prevention of terrorism) and in the EU, in particular the European Arrest Warrant (EAW) where, in view of political prosecution, a general clause of non discrimination was included in its Preamble (para. 12)¹.

¹ Art 12 of the Preamble on the EAW: "This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union(7), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons."

iii. Lapse of time (Art 10 ECE)

The Committee agreed that Art 10, which foresees that the laws of either the requesting or the requested State can be considered, could be revised.

Several experts considered that the laws on lapse of time in the requesting State should prevail in order to decide on extradition. The Schengen agreement (Art. 62²) provides for such a rule. It was however observed that this can lead to legal or practical difficulties. As a matter of fact, it can be difficult for the requested State to interpret the application of the legislation of another State, i.e. the requesting State.

On the other side, the Committee observed that the EAW foresees (Art 4.4³), as an optional ground for refusal, the situation where the prosecution or the punishment is statute barred according to the law of the requested state and where that State has jurisdiction over the acts according to its law. This legal basis appeared to be supported by several experts.

An expert from a non EU State informed the committee on its national practice, developed under bilateral treaties, by which the legislation of the requesting State is to be considered in this matter. As a possible way forward, the idea to keep the optional basis (the laws of either the requesting or the requested State) could be kept.

The committee instructed the limited Group of experts to work further on this matter.

iv. Reservations (Art 26 ECE)

The Committee decided to bring the following proposals to the CDPC for consideration:

- reservations should be limited to specific provisions;
- existing reservations should be reviewed and, where necessary, updated or withdrawn,
- a limited duration of validity could be envisaged, through a new legal basis, for future reservations. The interest of such a limitation should however be balanced with the interest to have as many States as possible ratifying the instrument and with the necessity of an efficient co-operation.

v. Rule of specialty (Art 14 ECE)

The Committee agreed with the preparatory work done by its Working Party in that:

- ❖ the principle of the application of the speciality rule should be reaffirmed
- ❖ renunciation to the speciality rule could be envisaged:
 - a. in case of simplified extradition, if the person consents
 - b. following the surrender, before the requesting State's judicial authorities.
- ❖ In the latter situation, the following practical questions would need further discussion: should such consent be transmitted to the requested State? Would the requesting State need the agreement of the requested State before prosecuting the person? Should safeguards set forth in Art 13 EAW apply in this case as well (the consent should be expressed "voluntarily and in full awareness of the consequences", right to legal

² Art 62, Schengen agreement: "As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply."

³ Art 4.4 EAW: "The executing judicial authority may refuse to execute the European arrest warrant: 4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law"

counsel)? Could the requesting State assess the circumstances in which the consent was given, e.g. through its consulates? Should all documents and evidence be sent to the requesting State? How? Should a model form be used for receiving the consent of the person?

As a conclusion, the Committee

- ❖ suggested that its members would analyse these questions and send proposals to the Secretariat in time before the next meeting of the working party and
- ❖ instructed the limited Group of experts to prepare, on this basis, elements for further consideration by the committee.

vi. Time limits

Following a discussion on the ways in which time limits are applied in the various States party to the conventions, the Committee considered that it would not be realistic to insert strict time limits in a binding instrument, as national procedures differ too widely among States.

The need for expedient procedure applies for extradition for the purpose of prosecution as well as for the purpose of executing a sentence. In the latter case, shorter procedures are needed notably because the period of detention pending extradition seems to be not always taken into consideration by States.

As a conclusion, it requested its limited Group of experts to identify possible measures to include in a **non binding instrument** addressing a set of principles, including on time limits, on extradition procedures, so as to reduce time limits and avoid long extradition procedures (and long detention before extradition). Such an instrument could also address matters of co-operation such as languages, sending of documents etc.

vii. Compensation

The committee discussed the three hypotheses identified by the working party:

- ❖ the person is extradited and then acquitted in the requesting State:
Some States consider that the requesting State could be held responsible and be asked to pay compensation (at least to cover the detention period) and to provide with the possibility for the person to return to the requested State. Some States compensate for detention and pay for the return of the person.
Some other States do not consider that they would be liable to compensate in such cases.
Some members observed that the acquittal may be caused by factors not dependent from the requesting State (ex: the requested State did not provide with evidence or the person's lawyer provide with information on a decision related to same facts in a third country - *ne bis in idem*).
- ❖ the person is arrested in the requested State and the requesting State withdraws its request of extradition:
Compensation could be provided by the requesting State.
A member underlined that this could also apply if the requesting State sends the extradition request too late.
In one State, compensation is paid by the requested State, which took the responsibility to affect the person's rights and freedoms.

The same could apply for instance if an authority from the requesting State does not in fact take the person over, despite a positive decision on extradition.

❖ the person is arrested in the requested State which refuses to extradite the person, following a period of detention:

If a compensation is to be granted in such a case, it could be provided either by the requesting State, which issued the request and led to the detention, or by the requested State, who effectively arrested the person.

As it seems, practice in terms of compensation widely varies among States. Several members of the committee were of the opinion that an approximation of legislation or practice would be desirable in this matter, in particular as it directly concerns the individual's rights. Any future work should therefore carefully consider the case law of the ECtHR in this matter. In conformity with the idea of the development of a transnational criminal justice, the idea has been raised that the treatment of persons in transnational criminal procedures such as extradition should not in principle be too different than the treatment of nationals in the same circumstances.

As a conclusion, the Committee took note of the question of compensation which should be dealt with in a careful manner. In addition, it took note of the question of the return of the extradited person to the requested State in case of acquittal. It requested that the limited Group of experts further explore the need for (a) new binding or non binding instrument(s) on these issues and report with possible suggestions.

viii. Language (Art 12 ECE)

A proposal was made to the effect that a request for extradition would have better chances to be quickly handled in the requested State if the request is addressed in the language of that State. As it seems, this constitutes a usual practice for some States. However, this could create practical difficulties in some States where access to translators to the various languages of CoE member States is difficult. Such States would easier find translators in CoE official languages (with the risk that the same documents would have to be translated again in the language of the requested State).

A distinction could be made between the two types of requests

- ❖ an extradition for the purpose of executing a sentence: it could be sufficient to have the most relevant information (person X has been sentenced by court Y + date for facts Z, constituting crimes ZZ) without having to translate the full verdict.
- ❖ An extradition for the purpose of prosecution: information that "person X is charged with crime Y with a possible sentence of Z" could be sufficient. As such, there is little use of having a full national arrest warrant with all the appendices to be sent and translated.

As a conclusion, the Committee concluded that, considering the wide variety of national legislation and practice among States, various solutions could be envisaged in a **non binding instrument** outlining best practices to be followed by States (cf. to the conclusions adopted under *vi. Time limits*, above). Such legal text could identify which documents or which information should be transmitted and translated, with reference to Art 12 ECE. This would not exclude a possible modification of Art 12 ECE, if need be.

ix. Channels/means of communication (Art 12 ECE and Art 5, 2nd Protocol)

The committee examined the application of Art 5 of the 2nd additional protocol to the ECE, ratified by 40 States: "The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties." Parties could also be encouraged to make agreements on the use electronic means of communication (e-mails), at least in order to facilitate the exchange of information regarding the preparation or the execution of co-operation requests.

The Committee agreed that these articles could possibly be updated in order to refer not only to diplomatic channels or to Ministries of Justice, but to the central authority "as defined by each Party by declaration", which can be, as it is the case for some States, the Prosecutor's Office. **It decided to present this proposal to the CDPC for consideration.**

It further instructed the limited Group of experts to consider the possibility of normative developments as regards the **practical measures of communication** in application of the Convention (post, fax, e-mail). Any new instrument should however remain as flexible as to possibly be applicable to future technological innovations and hence avoid the need to be regularly updated.

x. Model form for request

The Committee agreed that there is no added value in developing a model form for extradition requests. It might consider such a form for MLA requests (on the basis of previous PC-OC works).

xi. Dispute settlement

The Committee had a discussion on this issue taking into account notably the documents made available to the Committee (i.a. the note prepared by the Secretariat, the proposal from the Russian Federation) as well as the mechanisms foreseen in the recent CoE conventions.

It underlined some legal difficulties linked, for instance, to the authority that any arbitral decision on a dispute could possibly have on a final judicial decision taken by a national – independent- competent jurisdiction. Several States underlined that such authority could hardly be compatible with current constitutional provisions.

It instructed its limited Group of experts to further explore this matter, on the additional basis of the documents and results of the Conference in Moscow (9-10 November 2006) on improving European co-operation in the criminal justice field.

xii. Documentation (Art 12 ECE)

The Committee discussed on the application of Art 12.2 as related to the transmission of documents or information in the context of extradition procedures. Further work will have to be carried out by the Group of experts on this (cf. also viii above).

xiii. Procedural safeguards

The committee examined the detailed proposals prepared by the working group (doc PC-OC Mod (2006)06). It held a discussion on the opportunity to insert individual's rights in the CoE instruments on extradition⁴.

Two main issues were considered:

- the insertion of a “general clause on human rights” in the convention.
The Committee agreed that the fundamental rights (mainly right to life, rights not to be tortured or to be subject to inhumane or degrading treatment) are protected by the ECHR and by the UN Convention on torture. There is no need to amend the extradition Convention on this. The case law of the Court provides with sufficient guarantees.
A general clause on human rights could be envisaged, by which States are recalled that extradition treaties have to be implemented in full respect of obligations deriving from international human rights treaties, including ECHR. This would primarily be addressed to non CoE member States.
A general non discrimination clause could also be envisaged, as foreseen in the preamble of the FD on the European Arrest Warrant.
- The insertion of “procedural safeguards” for the person involved in an extradition procedure.
The committee agreed that these rights should be respected in the requested State. They should however be subject to more discussions at a subsequent meeting of the Group. These safeguards would include notably: obligation to inform, access to legal counsel, access to interpreter, right to expedient procedure, possibility to challenge the lawfulness of the detention, obligation to hear the person on his/her extradition, obligation to compensate. The safeguards applicable to a person who was tried in absentia should also be included.

Several experts found that these rights or safeguards were already in some ways guaranteed by the ECHR and the development of its case law. The insertion of such safeguards in the extradition treaties could therefore, according to these experts, not be needed. Furthermore, these additional procedures could impede the efficiency of extradition procedures and thus be contrary to the main objective of the “modernisation” exercise, i.e. to increase the efficiency of international co-operation.

In addition, a discussion is currently underway in the EU context on a draft framework decision on procedural rights. Future discussions in the CoE committees should take duly into account these works and their results.

⁴ Background information is to be found essentially in the PC-TJ final report ([PC-TJ\(2005\)10](#)) and in the research made by Ms Azaria ([PC-TJ\(2005\)07](#)).

While working on possible legal development, due consideration should also be given to the difficulties that some States may have in acceding to any new legally binding instrument which would include such rights or safeguards in a mandatory manner.

As a conclusion, the Committee agreed that this was an important question and instructed its limited Group of experts to work further on concrete suggestions (e.g., through non binding guidelines to States on the concrete modalities of implementing these safeguards).

xiv. Concurrent requests (Art 17 ECE)

The Committee instructed the limited Group of experts to deal further with this issue, notably in cases of concurrent requests for surrender issued by a State and by an international criminal jurisdiction.

Longer term issues

The Committee, according to the instructions of the CDPC, discussed the following issues in the perspective of longer term results:

i. Extradition of nationals (Art 6 ECE)

The Committee discussed this matter in connexion with the application of the principle “*aut dedere aut judicare*”. While being aware of the difficulty of this question, which is directly linked to constitutional guarantees in several States, the committee agreed that discussion should be resumed at a later stage.

In future discussions, the following matters could be discussed in more details:

- the introduction of the “Dutch clause”, by which States can extradite their nationals on the condition that the person is sent back for the execution of his/her sentence
- the prosecution in the requested State if the extradition is refused, bearing in mind possible difficulties of having a mandatory application of this principle and
- the opportunity to elaborate a non binding instrument on the co-operation by the requesting case to the requested State in cases where the latter refuses extradition and initiates prosecution against the person sought.

As a conclusion, the committee instructed its limited Group of experts to envisage concrete suggestions regarding that matter, notably as relates to the transmission of evidence by the requesting State in cases of a prosecution initiated in the requested State and the links with the application of the convention on the transmission of criminal proceedings (ETS 73).

ii. Ne bis in idem (Art 9 ECE)

The Committee noted the need to come back later to this issue, notably in order to clarify some ambiguities in the languages of the instruments (“offences” against “faits”). It also referred to recent decisions by the Court of Justice in Luxembourg on the matter.

b. As to other Conventions:

i. Mutual assistance

The Committee agreed that it is too early to discuss the modernisation of a mechanism which has been recently updated by a 2nd additional Protocol (ratified by 12 States). Some practical applications of the convention and its Protocols could however be discussed further, such as the application of Art 22 on the transmission of information from criminal records and the application of MLA mechanisms to requests for DNA samples.

ii. Transfer of sentenced persons

Area of possible developments

The Committee agreed that normative developments, binding or not binding, could be envisaged as regards notably:

- the consent of the detainee, which should be given freely and in full awareness of the legal consequences and its revocability, as well as suitable time limits for the withdrawal ;
- an obligation to inform the executing State of any contagious illness contracted by the sentenced person;
- the transfer of mentally disturbed offenders.

It will also discuss the question linked to the application of the European Arrest Warrant when a person, national from the requested State, was extradited and sentenced in the requesting State and was “re-transferred” in its State of nationality. The legal basis of such “re-transfer” could be further discussed.

Greek initiative

The Greek expert submitted to the Committee a proposal to envisage legal developments in the field of transfer of prisoners in order to bring the CoE legal instruments closer (e.g. in the form of an additional Protocol) to the initiative which is currently under consideration in the EU. The Council of the European Union is considering the adoption of a framework decision which would allow the EU member states to transfer prisoners to their EU member State “of origin” in view of enforcing their sentence in that State.

The Chair took note of the initiative, while noting the differences between the EU and the CoE approaches to the transfer of prisoners: in the CoE 1983 convention, the consent of the prisoner is an essential element of the transfer, as transfer is mainly considered in view of his/her rehabilitation. Such a consent is however not required in the EU instrument.

As a conclusion, it instructed the limited Group of experts to work further on these issues, taking also into account the outcomes of the conference on “improving European co-operation in the criminal justice field” (Moscow 9-10/12/2006) as well as the evolution of the case law of the ECtHR.

iii. Transmission of criminal proceedings

The Committee underlined the positive aspects of the Convention on the transmission of criminal proceedings (ETS 73) and instructed its Group of experts to look further into its status of ratification and into matters pertaining to its application.

4. QUESTIONS RELATED TO THE PRACTICAL APPLICATION OF THE CONVENTIONS

The Committee discussed the application of the European Convention on Extradition on the basis of a concrete question raised by the expert of the Russian Federation, related to requests of extradition in cases of crimes of lesser importance.

Although the convention does not foresee any threshold of penalty, members of the Committee were of the opinion that, with a view to enhance co-operation among States, extradition mechanisms could be used primarily to fight forms of serious and organised crime. Extradition requests for lesser crimes might also not meet the condition of double criminality (to be seen in concreto).

5. POINTS FOR INFORMATION

Information from the representative of the EU Presidency (Finland)

The Committee took note of the presentation made by the expert from Finland on behalf of the EU Presidency, on initiatives in the EU related to matters of international co-operation.

Information on the future conference in Moscow (9-10 November 2006)

The Committee was informed on the status of preparation of the conference on "improving European co-operation in the criminal justice field" (Moscow, 9-10 November 2006), in which many Ministers from CoE member States are expected to participate. The Committee asked to be kept informed of the results of the Conference, which will be important for its future work.

Information on ongoing work in the CoE

The Committee was also informed on the status of work in the PC-ES, notably as far as judicial co-operation is concerned. The Committee referred to previous works which may be of interest of the PC-ES, notably on collecting DNA samples.

6. ELECTION OF A NEW CHAIR OF THE COMMITTEE

The Committee elected Mrs Barbara GOETH-FLEMMISH (Austria) as chair of the Committee, for a period of one year. Mrs Joana GOMES FERREIRA (Portugal) will continue to act as Vice Chair, following her election in March 2006.

7. NEXT MEETINGS, CONCLUSION AND CLOSING OF THE MEETING

The Committee was informed that, for budgetary reasons, it would have only one meeting in 2007. It suggested organising two meetings of its limited Group of experts before the plenary session of the CDPC (June 2007). The results of the Group's meetings would be communicated to the PC-OC members for comments by written procedure. On that basis, the PC-OC findings and suggestions will be brought to the CDPC for decisions and instructions, mainly as far as normative developments are concerned. The next plenary meeting of the PC-OC could take place after the summer of 2007.

APPENDIX I

[PC-OC\Docs 2006\PC-OC (2006)OJ2 bil
<http://www.coe.int/tcj/>
Strasbourg, 03/10/2006

PC-OC (2006) OJ 2

**COMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS****COMITE D'EXPERTS
SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES
SUR LA COOPERATION DANS LE DOMAINE PENAL
(PC-OC)**

52nd meeting / 52^{ème} réunion
Strasbourg, 18-20/10/2006
Room /Salle 3

Draft Agenda
Projet d'ordre du jour

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters - Elements prepared by the Group of limited experts/
Discussion sur les démarches et initiatives envisageables pour améliorer l'efficacité de la coopération internationale dans le domaine pénal- Eléments préparés par le Groupe restreint d'experts:
 - 3.1 Practical measures / *mesures pratiques*
 - Publications
 - Web site, data base / *Site web, base de données*
 - Networking / *Mise en réseau*
 - Office of specialists / *Bureau de spécialistes*
 - *Other ? / Autres ?*
 - 3.2 Normative texts / *textes normatifs*
 - Extradition / *Extradition*
 - 1- Simplified extradition / *Extradition simplifiée*
 - 2- Grounds for refusal / *Raisons de refus*
 - 3- Lapse of time / *Echéances*
 - 4- Reservations / *Réserves*
 - 5- Rule of speciality / *Principe de spécialité*
 - 6- Time limits / *Délais*
 - 7- Compensation
 - 8- Dispute settlement / *Règlement des différends*
 - 9- Language / *langues*
 - 10- Means of communication / *Modes de communication*
 - 11- Model form for request / *Formulaire de demande*

- 12- Rights of individuals / *Droits des personnes*
 Longer term issues / *Questions à long terme*
 13- Extradition of nationals / *Extradition des nationaux*
 14- *Ne bis in idem*

- Mutual assistance / *Entraide judiciaire*
 - Transfer of sentenced persons / *Transfèrement des personnes condamnées*
 - Other (Transfer of criminal proceedings ?) / *Autres (transfèrement des procédures répressives ?)*
4. Questions on the application of the Conventions/ *Questions sur l'application des Conventions*
5. Points for information / *Points d'information*
6. Election of a new Chair of the Committee / *Election d'un nouveau Président du Comité*
7. Conclusion and closing of the meeting / *Conclusion et clôture de la réunion*

Useful references :

- PACO "co-operation manual" on judicial co-operation for the South East Europe: [click here](#) (English only)
- European convention on extradition and Protocols: [click here](#)
- EU Convention on simplified extradition procedure (1995): [click here](#)
- EU Convention on extradition (1996):



EU Convention on
extradition '96.doc

- EU European Arrest Warrant (2002): [click here](#)
 - PC-TJ final report ([PC-TJ\(2005\)10](#))
 - Code of minimum standards in transnational criminal proceedings, by Ms Azaria ([PC-TJ\(2005\)07](#)).
 - [CoE Recommendation Nr R\(80\)7](#) concerning the practical application of the European Convention on extradition.
-
- *PACO "co-operation manual" on judicial co-operation for the South East Europe: [click here](#) (English only)*
 - *Convention Européenne d'extradition et Protocoles: [cliquez ici](#)*
 - *Convention de l'Union européenne relative à la procédure simplifiée d'extradition entre les États membres de l'Union européenne (1995) : [cliquez ici](#)*
 - *Mandat d'arrêt européen de l'UE : [cliquez ici](#)*
 - *Rapport final du PC-TJ : [cliquez ici](#)*
 - *Code of minimum standards in transnational criminal proceedings, by Ms Azaria ([PC-TJ\(2005\)07](#)).*
 - *Recommandation du CdE R (80)7 sur l'application pratique de la convention européenne d'extradition : [cliquez ici](#)*

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

Apologised / Excusé

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

M. Jean-Yves MINE, Ministère de la Justice, BRUXELLES
Mme Maria MOONS, Ministère de la Justice, BRUXELLES

Apologised / Excusé

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Selma DZIHANOVIC, Ministry of Justice, SARAJEVO
Mr Eddie GRATZ, Ministry of Justice, SARAJEVO

BULGARIA / BULGARIE

Mrs Vesselina MALEVA, Ministry of Justice, SOFIA

CROATIA / CROATIE

Ms Melanija GRGIC, Ministry of Justice, ZAGREB
Ms Maja RAKIĆ, Ministry of Justice, ZAGREB

CYPRUS / CHYPRE

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

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr. Miroslav KUBÍČEK, Ministry of Justice, PRAGUE 2
Ms Olga SOLCOVA, Ministry of Justice, PRAGUE 2

*****DENMARK / DANEMARK****ESTONIA / ESTONIE**

Ms Imbi MARKUS, Ministry of Justice, TALLINN

FINLAND / FINLANDE

Mrs Merja NORROS, Ministry of Justice, HELSINKI - GOVERNMENT

FRANCE

Mr Loïc GUERIN, Ministère de la Justice, PARIS Cedex 01

***** GEORGIA / GEORGIE****GERMANY / ALLEMAGNE**

Mr Jürgen SCHNIGULA, Federal Ministry of Justice, BERLIN

GREECE / GRECE

Ms Irini CHISOYANNI, Ministry of Justice, PANORAMA -THESSALONIKI

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Mme Klara NEMETH-BOKOR, Ministère de la Justice, BUDAPEST

***** ICELAND / ISLANDE****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 *Apologised / Excusé*

Mr Gert ZIMMERMANN, Regierung des Fürstentums Liechtenstein, VADUZ *Apologised / Excusé*

LITHUANIA / LITUANIE

Mr Andrada BAVEJAN, Ministry of Justice, VILNIUS

***** LUXEMBOURG******* MALTA / MALTE****MOLDOVA**

Ms Irina DUMITRESCU, Ministry of Justice, CHIȘINĂU

MONACO

Mme Antonella SAMPO, Palais de Justice, MONACO

NETHERLANDS / PAYS-BAS

Ms Linda BREGMAN, Ministry of Justice, THE HAGUE

Mr H.Alexander T.G. KONING, Ministry of Justice, THE HAGUE *Apologised / Excusé*

NORWAY / NORVEGE

Mrs Liv Christina H. EGSETH, Ministry of Justice and the Police, OSLO

Ms Kari MELING, Ministry of Justice and the Police, OSLO

POLAND / POLOGNE

Mr Tomasz CHALANSKI, 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 / SERBIE****SLOVAKIA / SLOVAQUIE**

Mr Branislav BOHÁČIK, Director, Ministry of Justice, BRATISLAVA

SLOVENIA / SLOVENIE

Ms Maja GABRIJELČIČ, Ministry of Justice, LJUBLJANA

SPAIN / ESPAGNE

Mme Isabel VEVIÀ ROMERO, Ministère de la Justice, MADRID

SWEDEN / SUEDE

Mr Per HEDVALL, Ministry of Justice, STOCKHOLM

Mr Joakim ZETTERSTEDT, Ministry of Justice, STOCKHOLM

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L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE****TURKEY / TURQUIE**

Ms Ülkü GULER, 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

Mr Kevin WARWICK, Home Office, LONDON

* * * *

EUROPEAN COMMUNITY / COMMUNAUTE EUROPEENNE**COMMISSION**

M. Peter CSONKA, Commission Européenne, BRUXELLES

*Apologised / Excusé***GENERAL SECRETARIAT OF THE COUNCIL OF THE EUROPEAN UNION /
SECRETARIAT GENERAL DU CONSEIL DE L'UNION EUROPEENNE**

Mr Hans NILSSON, Council of the European Union, BRUSSELS

Apologised / Excusé

Ms Anna Halina LIPSKA, Council of the European Union, BRUSSELS

**OBSERVERS WITH THE COUNCIL OF EUROPE /
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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

Mr Takayuki HARADA, Ministry of Justice, TOKYO

MEXICO / MEXIQUE

Mr Miguel NAVA, General Attorney Office, MADRID

***** MONTENEGRO****OBSERVERS WITH THE COMMITTEE /
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ISRAEL

Mr Gal LEVERTOV, Ministry of Justice, JERUSALEM

Ms Tal WERNER KLING, Ministry of Justice, JERUSALEM

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APPENDIX III

Strasbourg, 20/10/2006

PC-OC (2006) 15

**COMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)**52nd meeting**Strasbourg, 18-20/10/2006****List of adopted decisions****1. Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters.**

The Committee discussed this item on the basis of the elements prepared by the limited Group of experts, following its first two meetings (doc PC-OC Mod (2006)06).

1) *PRACTICAL MEASURES***a. *Publications***

The Committee welcomed the two publications which have been presented and are expected to be in the bookshops by end of 2006:

- a) a compendium of CoE criminal Conventions (in French, English and possibly in Russian language);
- b) the “explanatory notes and relevant CoE documents on extradition”.

The preparation of additional publications is foreseen, such as explanatory notes on the transfer of sentenced persons and, subsequently, on mutual assistance in criminal matters. The publications will be sold to the public. At a later stage, they will be made available on the web site (and on CD-ROMs). The Secretariat would ensure their regular updating.

b) *Web site, data base*

The web site of the Committee presents the latest news relating to co-operation in criminal matters as well as the documents related to Committee meetings and links with other web sites and databases. **The Committee found this new presentation of the web site to be a real improvement.** It suggested that additional news and links be inserted.

In addition, **the Committee agreed on a database to be set up.** The database should be as simple as possible and should reply to basic questions related to co-operation with the

other States parties to the CoE conventions; extradition, mutual assistance and transfer of sentenced persons will be contemplated in a first step. The Committee requested that the definition of elements to be inserted and the modus operandi, including updating, of the database be further elaborated by the limited Group of experts. The Committee also stressed the usefulness of having links to national websites and to national guides of procedures where they exist. The Committee welcomed the idea that a “guide” for practitioners could introduce the database (see document from the Chair, PC-OC Mod (2006)04).

c. Networking

The Committee decided to propose the setting up of a network of national points of contact in order to facilitate the efficiency of international co-operation through better personal contacts. The Committee referred to and agreed on the note appended to this document outlining the role and requirements of contact persons. The Committee requested its limited Group of experts to further deal with some modalities of the operation of this network and with matters linked to the access to the list of contact persons. The existing “list of national officials in charge of international co-operation” (PC-OC Inf 6) constitutes a good basis for the development of a network – that list will be updated and will remain available to all Committee members.

d. Office of specialists

The Committee concluded that an Office of specialists in the CoE Secretariat, which would help practitioners on various aspects of the application of the CoE conventions, would be possible only with additional resources, which are presently not available.

e. Newsletter

The Committee welcomed the suggestion that a newsletter will be produced, presenting regularly the latest developments in the field of international co-operation, i.e. for instance, accession to Conventions, important events or conferences, important decisions by international (or national) jurisdictions, important national developments.

2) NORMATIVE MEASURES

The Committee decided to deal in a first stage with extradition matters.

a. Extradition

i. Simplified extradition

The Committee agreed that the 1957 European Convention on Extradition could be revised in order to include mechanisms of simplified extradition when the person consents to his or her extradition.

The Committee requested its limited Group of experts to proceed with additional work on:

- the application of Art 12 of the convention relating to the requirements of a request of extradition and of documents; the Group will envisage the cases in which the possibility of having information (instead of documents) could suffice in order to proceed with simplified extradition.

- the consequences of the consent as to:
 - o the application of Art 14 of the convention on the specialty rule
 - o the application of Art 15 of the convention on the re-extradition to third States or surrender to international tribunals.
 - the nature of consent and the possibility of withdrawal.
 - the possibility to insert time limits for a decision, after consent, and for actual surrender of the person.
- ii. Grounds for refusal (Art 3, 4, 5 ECE)

The Committee **agreed not to deal with fiscal or military offences at this stage. It requested the limited Group of experts to explore further the matter of political offences**, according notably to developments in the CoE recent Conventions (ex. the Convention on the prevention of terrorism) and in the EU, in particular the European Arrest Warrant (EAW) where, in view of political prosecution, a general clause of non discrimination was included in its Preamble (para. 12).

- iii. Lapse of time (Art 10 ECE)

The Committee agreed that Art 10, which foresees that the laws of either the requesting or the requested State can be considered, could be revised. Several experts considered that the laws on lapse of time in the requesting State should prevail in order to decide on extradition. It was however observed that this leads to legal or practical difficulties. The Committee also observed that the EAW foresees (Art 4.4), as an optional ground for refusal, the situation where the prosecution or the punishment is statute barred according to the law of the requested state and where that State has jurisdiction over the acts according to its law. The committee instructed the limited Group of experts to work further on this matter.

- iv. Reservations (Art 26 ECE)

The Committee decided to bring the following proposals to the CDPC for consideration:

- reservations should be limited to specific provisions;
- existing reservations could be reviewed and, where necessary, updated or withdrawn,
- a limited duration of validity could be envisaged for future reservations. The interest of such a limitation should however be balanced with the interest to have as many States as possible ratifying the instrument and with the necessity of an efficient co-operation.

- v. Rule of specialty (Art 14 ECE)

The Committee took note of the various questions presented by the limited Group of experts and by Committee members related to the situation where a person renounces the benefit of the specialty rule after his or her extradition. It instructed the limited Group of experts to prepare elements of reply to these questions as well as suggestions for possible normative developments.

- vi. Time limits

The Committee considered that it would be difficult to insert strict time limits in a binding instrument. It requested its limited Group of experts to identify possible measures to include

in a **non binding instrument** so as to reduce time limits and avoid long extradition procedures.

vii. Compensation

The Committee took note of the difficult question of compensation, in particular in the following cases: where a person was extradited and then acquitted; where a person is arrested and the extradition request is subsequently withdrawn and where a person is arrested and the requested State then refuses the extradition. It also took note of the question of the return of the extradited person to the requested State in case of acquittal. It requested that the limited Group of experts explore further the need for normative developments on these issues and report with possible suggestions.

viii. Dispute settlement

The Committee instructed its limited Group of experts to return to this issue taking into account notably documents made available to the Committee as well as the results of the forthcoming conference in Moscow (9-10 November 2006) on international co-operation in criminal justice matters.

ix. Language (Art 12 ECE)

The Committee agreed that, considering the wide variety of national legislation and practice among States, various solutions could be envisaged, for instance in a **non binding instrument outlining best practices** to be followed by States. Such an instrument could identify which documents or which information should be transmitted to the requested State and translated, with reference to Art 12 ECE.

x. Documentation (Art 12 ECE)

The Committee discussed on the application of Art 12.2 as related to the transmission of documents or information in the context of extradition procedures. Further work will have to be carried out by the Group of experts on this.

xi. Channels/means of communication (Art 12 ECE and Art 5, 2nd Protocol)

The Committee agreed that these articles could possibly be updated in order to refer not only to diplomatic channels or to Ministries of Justice, but to the central authority “as defined by each Party by declaration”. **It decided to present this proposal to the CDPC for consideration.**

It further instructed the limited Group of experts to consider the possibility of normative developments as regards the **practical measures of communication** in application of the Convention (post, fax, e-mail).

xii. Model form for request

The Committee agreed that there is no added value in developing a model form for extradition requests.

xiii. Procedural safeguards

The Committee examined the suggestions aiming at increasing the protection of individual freedoms and guarantees in extradition procedures. Several members observed that States were already bound to respect such rights and guarantees according to existing Conventions

and that, in addition, due consideration will have to be taken on the results of the discussions in the EU on a draft Framework Decision on procedural guarantees. **The Committee agreed that this was an important question and instructed its limited Group of experts to work further on concrete suggestions.**

xiv. Concurrent requests (Art 17 ECE)

The Committee instructed the limited Group of experts to deal further with this issue, notably in cases of concurrent requests for surrender issued by an international criminal jurisdiction.

Longer term issues

The Committee, according to the instructions of the CDPC, discussed the following issues in the perspective of longer term results:

i. Extradition of nationals (Art 6 ECE)

The Committee agreed that discussion should be resumed at a later stage notably in connection with the application of the principle "*aut dedere aut judicare*". It instructed its limited Group of experts to envisage concrete suggestions regarding that matter, notably as relates to the transmission of evidence by the requesting State and the links with the application of the convention on the transmission of criminal proceedings (ETS 73).

ii. *Ne bis in idem* (Art 9 ECE)

The Committee noted the need to come back later to this issue, notably in order to clarify some ambiguities in the languages of the instruments ("offences" against "faits"). It referred to recent decisions by the Court of Justice in Luxembourg on the matter.

b. *As to other Conventions:*

i. Mutual assistance

The Committee agreed that it is too early to discuss the modernisation of a mechanism which has been recently updated by a 2nd additional Protocol (ratified by 12 States). Some practical applications of the convention and its Protocols could however be discussed further, such as the application of Art 22 on the transmission of information from criminal records.

ii. Transfer of sentenced persons

The Committee agreed that normative developments, binding or not binding, could be envisaged as regards notably:

- the consent of the detainee and its revocability;
- an obligation to inform the executing State of any contagious illness contracted by the sentenced person;
- the transfer of mentally disturbed offenders.

It instructed the limited Group of experts to work further on these issues.

iii. Transmission of criminal proceedings

The Committee underlined the positive aspects of the Convention on the transmission of criminal proceedings (ETS 73) and instructed its Group of experts to look further into its status of ratification and into matters pertaining to its application.

iv. Other

The Committee agreed that, while working in priority on extradition matters, it might identify elements related to the application of other Conventions, which would be dealt with at a later stage.

2. Questions related to the practical application of the Conventions

The Committee discussed the application of the European Convention on Extradition on the basis of a concrete question raised by the expert of the Russian Federation, related to requests of extradition in cases of crimes of lesser importance.

3. Points for information

The Committee took note of the presentation made by the expert from Finland on behalf of the EU Presidency, on initiatives in the EU related to matters of international co-operation.

The Committee was informed on the status of preparation of the conference on "improving European co-operation in the criminal justice field" (Moscow, 9-10 November 2006), in which many Ministers from CoE member States are expected to participate. The Committee asked to be kept informed of the results of the Conference, which will be important for its future work.

It took note of the presentation by the expert from Greece on the discussions, in the EU, on a Framework Decision on the enforcement order and the transfer of sentenced persons and underlined the relation with the CoE Convention on transfer and its Protocol. It suggested that the presentation be made available in writing to the members.

It was also informed on the status of work in the PC-ES, notably as far as judicial co-operation is concerned. The Committee referred to previous works which may be of interest of the PC-ES, notably on collecting DNA samples.

4. Election of a new Chair of the Committee

The Committee elected Mrs Barbara GOETH-FLEMMISH (Austria) as chair of the Committee, for a period of one year. Mrs Joana GOMES FERREIRA (Portugal) will continue to act as Vice Chair, following her election in March 2006.

5. Next meetings, conclusion and closing of the meeting

The Committee was informed that, for budgetary reasons, it would have only one meeting in 2007. It suggested organising two meetings of its limited Group of experts before the plenary session of the CDPC (June 2007). The results of the Group's meetings will be communicated to the PC-OC members for comments by written procedure. On that basis, the PC-OC findings and suggestions will be brought to the CDPC for decisions and instructions, mainly as far as normative developments are concerned. The next plenary meeting of the PC-OC could take place after the summer of 2007.

APPENDIX IV

1. The Finnish Presidency

Finland is now in the middle of its Presidency.

During its Presidency Finland is, on her part, concentrating on challenges now facing Europe, such as globalisation, improving competitiveness, population ageing, management of climate change and security in Europe.

2. The Ministry of Justice focus during the Finnish Presidency

In respect of horizontal issues, the Ministry of Justice is stressing better EU regulation, and improving the transparency of the work of the EU. Transparency is to be a general theme and guiding rule during the Finnish Presidency, providing a model for all. Transparency is promoted through greater public access to documents, improved provision of information, and the holding in public at least those parts of Council proceedings that deal with co-decision matters.

In the field of justice and home affairs our priority is the mid-term review of the Hague Programme. As you may know, the Hague Programme was adopted in November 2004 by the European Council. An action plan for implementation of the Hague Programme was approved by the JHA Council in June 2005. When planning the Presidency we thought this assessment review would provide an opportunity to review progress, and if needed give political impetus to re-launch work on key priorities, such as operational co-operation, mutual recognition, cooperation in civil law, and crime prevention. Attention is also paid to the possibilities of improving decision-making in the third pillar, in particular to the so called passerelle option (article 42 TEU).

The Tampere informal Justice and Home Affairs Council meeting was determined to enhance decision making process. From PC-OC point of view notable was that the ministers stressed the necessity of further strengthening cooperation in criminal matters, especially importance of practical cooperation.

3. Assessment of active files during the Finnish Presidency and the outlook for progress

From the beginning of our Presidency, Finland emphasised the development of practical operational cooperation, for example through Eurojust. In addition the work of the European judicial network is promoted, and the European Crime Prevention Network strengthened and professionalised. Practical cooperation is further improved with the assistance of the judicial training network proposed by the Commission.

The principle of mutual recognition is the cornerstone of judicial cooperation in the EU. During the Finnish Presidency, the stress is on initiatives that promote this principle, and that promote the mutual trust and confidence on which the successful application of mutual recognition depends. Conclusions from Tampere will be brought to JHA Council in December.

Work will continue on

- proposal for a framework decision on transfer of sentenced persons to their country of citizenship permanent residence. this is based on the joint Austrian, Finnish and Swedish initiative; it is close to the Council of Europe Convention's additional protocol; our goal is to have a political understanding on the main issues.
- e.g. data protection in the third pillar, I would like to tell you more about this...
- the instruments on procedural rights (binding/not binding), The council secretariat has kindly promised to comply with this and the rest of items which are
- disqualifications,
- entries into criminal records, and the taking into account of previous convictions. "Proposal for Framework decision on taking accounts of convictions in MS of the EU in the course of new criminal proceedings."

In the justice field, eight meetings were scheduled to be held in Finland during the Finnish Presidency. Now it is half way and for example the following meetings are still left: a meeting of the EU-Russian Permanent Partnership Council, one meeting related to the work of the European Union Crime Prevention Network, a meeting of the European Judicial Network in Rovaniemi.

A further goal is approval during the Finnish Presidency of the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia towards a Fundamental Rights Agency.

In the field of JHA external affairs, Finland will continue along the lines set out during the UK and Austrian Presidency. So-called "troika meetings" on the ministerial level are organized with the Russian Federation (in the form of a Permanent Partnership Council meeting), the United States, Ukraine, and the Western Balkan countries. The largest meeting was the so-called ASEM meeting, which focused on cooperation between the EU and Asian countries. The ASEM meeting covered a broad range of topics, among them justice and home affairs.

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APPENDIX V**Increasing the efficiency of international co-operation in criminal matters:
Proposal to promote networking among points of contacts
from the Council of Europe member States**

Strasbourg, 17 October 2006

Presentation

The PC-OC already fulfils an essential role in promoting networking among national authorities in charge of judicial co-operation. In addition, regional and multilateral activities conducted under the CoE programmes of assistance further promote networking among practitioners and judicial actors.

It is felt that the existing "list of national officials in charge of international co-operation" set up by the PC-OC (PC-OC Inf 6) constitutes an excellent basis for the development of a network. That list could however be simplified: the number of persons presented by each member States as contact persons could be reduced to a maximum of 2 to 3 per State, with their complete contact details, including e-mails (and, where available the contacts to be reached beyond the working hours). These contact persons would form a network aimed at increasing the efficiency of international co-operation. be easily reachable and could be contacted

Role of contact persons

The contact person is expected to:

- a) Reply to requests related to co-operation or contacting the proper person or giving information on how to contact the proper person. The elements to be included inter alia:
 - a. Preliminary information on the competent authority
 - b. Information on feasibility of action necessary in view of investigation or on the best way to tailor a proper request of judicial co-operation;
- b) Speed up, upon request, the execution of a request for judicial co-operation notably by contacting the proper person, body or institution;
- c) Giving information on the relevant applicable (national or foreign) law or on specific questions on the national legal system;
- d) Diffusing the relevant information both towards the other members of the network and to their national competent authorities;
- e) Updating or securing the updating by the competent national authorities as to the information given to the CoE's Secretariat which are put on the web site/database
- f) Developing personal contacts in order to increase the efficiency of transnational procedures;
- g) Be the national correspondent of the newsletter, i.e. collecting information at national level, transmitting to the CoE Secretariat and diffusing at national level.

Requirements

The contact persons should have

- a) the necessary competence on judicial co-operation at large,
- b) be available, easily contactable and committed to efficiently deal with requests put to him/her,
- c) knowledge of languages (English, French).

The list of names of contact persons (CP) would be available among all persons present on the list and to the PC-OC members. It could be accessible through the database. If the Committee decides that the access should be restricted, a password would be provided to each CP and PC-OC members. The possibility to have it available to the judicial authorities and to the law enforcement agencies dealing with judicial co-operation could be envisaged (should this be left to the discretion of each State/central authority)?

Newsletter

The Group agreed that better and more extensive diffusion of information pertaining to judicial co-operation is needed. Practitioners / PC-OC members will be encouraged to communicate news to the Secretariat which could disseminate them through the web site and by e-mail, for instance in the form of a **newsletter**.

The Newsletter could present:

- information on new measures (legislative or non normative) at national level
- information on relevant decisions (case law) at national level (in particular supreme court), relevant information on ECHR and on CJEC might be useful
- questions in relations to conventions.

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