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PC-OC (2008) 29

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

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

**SUMMARY REPORT**  
**of the 55<sup>th</sup> meeting of the PC-OC**

**Strasbourg, 4-7 November 2008**  
**AGORA, Room G 01**

**EXECUTIVE SUMMARY**

At its 55th meeting, the PC-OC:

***Simplified Extradition***

- adopted the draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition and amended its draft Explanatory report (paragraphs 4-8, Appendices IV and V);

***Rule of speciality and Lapse of Time***

- having examined various contributions relating to the rule of speciality and lapse of time, instructed the PC-OC Mod to examine new proposals for a binding instrument to be prepared by the Secretariat (paragraphs 9-13);

***Ways and means of Communication***

- invited all delegations to submit their comments on a threefold proposal made by Mr Vladimir Zimin (Russian Federation) on this issue (paragraphs 14-19);

***Compensation of persons***

- reported the results of its stock-taking exercise to the CDPC and request further instructions (paragraphs 20-23);

***Follow-up of the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote) : the relationship between asylum procedures and extradition procedures***

- extended the deadline for replies on its questionnaire on this issue (31 January 2009) and invited UNHCR to submit comments (paragraphs 24-26);

***Co-operation between the Council of Europe and the EU in the criminal law field***

- took note of information provided by the Secretariat and by the representative of the General Secretariat of the Council of the European Union (paragraphs 30-33);

***Mutual Legal Assistance in computer-related cases***

- instructed the PC-OC Mod to examine the replies to the questionnaire on this issue and report the results to the Cybercrime Convention Committee (paragraph 37);
- renewed the composition of the PC-OC Mod;
- elected Mr Erik Verbert (Belgium) as Chair and Ms Barbara Göth-Flemmich (Austria) as Vice-Chair for one year;
- set the dates for its next meetings as 25-27 February 2009 for the 7<sup>th</sup> meeting of the PC-OC Mod and 12-14 May 2009 for the 56<sup>th</sup> meeting of the PC-OC.

## **1. OPENING OF THE MEETING**

1. The Chair, Ms Barbara Göth-Flemmich (Austria) opened the meeting and thanked all delegations for their contributions to the preparation of the plenary meeting through their replies to the various questionnaires and their written comments on the draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition.
2. The Director of Standard Setting of the Directorate General of Human Rights and Legal Affairs (DG-HL), Mr Jan Kleijssen, informed the PC-OC about recent developments within the Council of Europe in the criminal law field, and in particular about the adoption by the CDPC of the Recommendation on the European Rules for Juvenile Offenders and the developments concerning the preparation of a draft Convention against counterfeiting of medical products and similar crimes involving threats to public health. The PC-OC also took note of the appointment of Mr Jörg Polakiewicz as the new Head of the Law Reform Department.

## **2. ADOPTION OF THE DRAFT AGENDA**

3. The agenda was adopted, as it appears in Appendix II to the report. Appendix I contains the list of participants.

## **3. PREPARATION OF NORMATIVE TEXTS CONCERNING THE EUROPEAN CONVENTION ON EXTRADITION**

### **3.1 SIMPLIFIED EXTRADITION**

4. The PC-OC examined the issue of simplified extradition on the basis of the revised draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition (PC-OC (2008) 05 rev 3). This document had been amended by the PC-OC Mod at its enlarged 6<sup>th</sup> meeting and submitted to the plenary. The PC-OC amended this draft text and adopted it, as it appears in Appendix IV to the report, with a view to submitting it to the CDPC.
5. In connection with Article 7 of the draft 3<sup>rd</sup> Additional Protocol, the French delegation considered that the deadline of 20 days for the requested State to notify the decision on extradition, even where this decision is not final, would be difficult to implement in France and asked this difficulty to be reflected in the present report.
6. One delegation raised the question whether the declarations provided for under Article 4, paragraph 5 and Article 5 of the draft 3<sup>rd</sup> Additional Protocol would qualify as reservations and hence would need to be covered under Article 17 of the draft Protocol. The PC-OC decided to refer this question to the Directorate of Legal Advice and Public International Law, and to transmit the corresponding opinion to the CDPC along with the draft Protocol.
7. The PC-OC also examined and amended the draft Explanatory Report to the 3<sup>rd</sup> Additional Protocol. It agreed on the substance of this text, with the exception of the paragraphs relating to Article 1 of the draft 3<sup>rd</sup> Additional Protocol. It instructed the Secretariat to revise the draft Explanatory Report in the light of the discussions held during the meeting and requested delegations wishing to make stylistic amendments to this text to submit them to the Secretariat by 31 January 2009.
8. The PC-OC instructed the PC-OC Mod to finalise the draft Explanatory Report at its 7<sup>th</sup> enlarged meeting and submit this text to the PC-OC plenary for approval at its next meeting.

### **3.2. RULE OF SPECIALITY**

9. The PC-OC examined the possibility of amending Article 14 on the rule of speciality of the European Convention on Extradition on the basis of the replies to its questionnaire on this issue (PC-OC (2008) 01), the summary of replies prepared by the Secretariat and written contributions submitted by Mr Per Hedvall (Sweden), Mr Eugenio Selvaggi (Italy) and Mr Branislav Boháčik (Slovakia). It also took note of a pending case before the European Court of Justice concerning the interpretation of the provisions on the rule of speciality of the EU Framework-Decision on the European Arrest Warrant, which was brought to its attention by the Finnish delegation.

10. The PC-OC recalled the difficulties and differences of interpretation highlighted in the replies to the questionnaire and the evolution of criminality and means of co-operation since 1957, which would justify a reform of the rule of specialty. The PC-OC took note of a wide support among its members to modernise this aspect of the European Convention on Extradition, although some delegations urged caution, in particular as regards the proposal to introduce an “emergency custody procedure”.
11. The PC-OC instructed the Secretariat to prepare a new proposal for amending Article 14 of the Convention on the basis of the contributions considered by the PC-OC and the discussions held during the meeting. It instructed the PC-OC Mod to examine this proposal, amend it as necessary and submit it to the plenary for consideration.

### **3.3. LAPSE OF TIME**

12. The PC-OC discussed the possible modification of Article 10 of the European Convention on Extradition relating to lapse of time, on the basis of a background information document prepared by the Secretariat (PC-OC (2008) 06) and a proposal made by Mr Vladimir Zimin (Russian Federation). It also examined Article 8 of the Convention relating to extradition between the Member States of the European Union, which a number of delegations considered relevant in this respect.
13. The PC-OC agreed on the need to modernise the European Convention on Extradition, by making lapse of time an optional ground for refusal. It instructed the Secretariat to prepare a draft text for amending Article 10 of the Convention on the basis of Article 8 of the Convention relating to extradition between the Member States of the European Union, as well as the options proposed by Mr Zimin for allowing each State to declare at the time of ratification the way in which it is intending to determine lapse of time in extradition cases. It instructed the PC-OC Mod to examine this text, amend it as necessary and submit it to the plenary for consideration.

### **3.4. WAYS AND MEANS OF COMMUNICATION**

14. The PC-OC had an exchange of views concerning the modernisation of the European Convention on Extradition as regards the ways and means of communication between States Parties. It took a proposal by Mr Vladimir Zimin (Russian Federation) on this issue as a basis for its discussions.
15. The PC-OC noted that three issues were being addressed in this proposal, namely the competent authorities for sending and receiving requests and documents, the necessary documentation accompanying extradition requests, and channels of communication.
16. As regards competent authorities, the PC-OC took note of the fact that Article 5 of the 2<sup>nd</sup> Additional Protocol to the European Convention on Extradition allows for requests to be submitted directly between Ministries of Justice, whereas in some countries the Prosecutor General's Office is competent in extradition matters. Some delegations voiced concern about the term “central authority” used in Mr Zimin's proposal, considering that it might not cover all different systems, whereas one delegation suggested that the possibility should be given to States to specify the competent authority by way of a declaration.
17. With regard to documents, Mr Zimin explained that its proposal intended to allow the substitution of original documents by information, provided that the authenticity of this information is certified by a competent authority. While some delegations questioned the feasibility of such an approach, others pointed to the fact that in certain cases the translation and sending of very long judgments or long arrest warrants was a very laborious process and expressed support for the possibility of sending the relevant extracts from such texts.
18. As regards channels of communication, the PC-OC was in favour of simplifying and modernising this aspect of the Convention. One delegation considered that the relevant provisions of the draft 3<sup>rd</sup> Additional Protocol could serve as a basis. Several delegations expressed support for the idea of abolishing the use of the diplomatic channel in extradition cases and establishing direct contacts between the competent authorities.

19. The PC-OC invited delegations to reflect on Mr Zimin's threefold proposal and to send concrete suggestions to the Secretariat by 31 January 2008. It instructed the PC-OC Mod to examine this item and make proposals to the PC-OC plenary.

### **3.5. COMPENSATION OF PERSONS**

20. The PC-OC took note of the replies a questionnaire on the compensation of persons in the framework of extradition procedures (PC-OC (2007) 10 rev2), as well as of a summary of replies prepared by the Secretariat (PC-OC (2008) 21).
21. The PC-OC noted that the replies to the questionnaire showed a great divergence of law and practice between member States concerning compensation issues, as well as differences in opinion as to possible future activities which could be undertaken by the Council of Europe in this field. The PC-OC notably took account of the need identified by some respondents of having clear guidelines for the allocation of responsibility for compensation in extradition cases between requesting and requested States. The PC-OC considered that member States should at the very least provide compensation for detention suffered as a consequence of an extradition request, where such compensation would have been provided in analogous, purely internal cases.
22. The PC-OC considered that other issues concerning the modernisation of the European Convention on Extradition should remain the priority of the Committee for the time being. The PC-OC nevertheless agreed on the importance of compensation of persons in extradition cases, in particular as it affects Human Rights, and on the fact that this complex issue deserved further consideration by the PC-OC at a later stage. It considered that, if future work is to be undertaken in this area, it could range from practical guidance to the elaboration of non-binding standards. The PC-OC considered it premature to envisage a binding instrument regarding this issue, given the differences between member States.
23. The PC-OC decided to report the results of its stock-taking exercise, its interim findings, as well as the above-mentioned options it considered to the CDPC, and to invite the latter to provide further instructions on this matter. It decided to postpone its consideration of this item until further guidance from the CDPC.

### **4. FOLLOW-UP OF THE 28<sup>TH</sup> CONFERENCE OF THE EUROPEAN MINISTERS OF JUSTICE (25-26 OCTOBER 2007, LANZAROTE) : THE RELATIONSHIP BETWEEN ASYLUM PROCEDURES AND EXTRADITION PROCEDURES**

24. The PC-OC pursued its examination of Resolution No. 1 on access to justice for migrants and asylum seekers adopted by the Ministers of Justice, in particular its paragraph 16c, on the basis of which the Committee of Ministers entrusted the CDPC with the task of examining "the relationship between asylum procedures and extradition procedures". In accordance with the decision of the CDPC to Bureau to instruct the PC-OC to take stock of the situation in different member States concerning this issue and to reflect on possible responses to common challenges, the PC-OC had addressed a questionnaire (PC-OC (2008) 13 Rev Bil) to all delegations.
25. Having taken note of the 20 replies it had received to this questionnaire, the PC-OC considered that more replies would be necessary for it to have a representative overview concerning the situation in different member States. It requested all delegations, who had not already done so, to reply to this questionnaire by 31 January 2009.
26. The PC-OC instructed the Secretariat to invite the Office of the United Nations High Commissioner for Refugees (UNHCR) to submit comments to the PC-OC before the next PC-OC Mod Meeting and to present these comments to the PC-OC at the next plenary meeting of the PC-OC. It instructed the PC-OC Mod to examine the relationship between asylum and extradition procedures in the light of these elements and to make concrete proposals to the PC-OC plenary on the necessity of possible future action in this field.

### **5. FUTURE COUNCIL OF EUROPE MINISTERIAL CONFERENCES**

27. The PC-OC took note of the oral information provided by the Secretariat on the state of play concerning the preparation of the 29<sup>th</sup> Council of Europe Conference of Ministers of Justice, to be held in Tromsø, Norway on 18-19 June 2009, and notably the fact that "domestic violence" would be the topic of the conference.

28. The PC-OC also took note of a proposal made by Romania during the 57<sup>th</sup> meeting of the CDPC (2-6 June 2008) to host a Council of Europe Conference of Ministries of Justice and of the Interior in Bucharest in 2010, on issues relating to international co-operation in criminal matters.

## **6. PRACTICAL PROBLEMS AND CONCRETE CASES CONCERNING THE IMPLEMENTATION OF CONVENTIONS**

29. The PC-OC could not discuss practical problems and concrete cases, owing to the lack of time. It noted, however, that the Belgian, Cypriot, Russian and Slovak delegations intended to bring practical difficulties to its attention at its next plenary meeting.

## **7. CO-OPERATION BETWEEN THE COUNCIL OF EUROPE AND THE EU IN THE CRIMINAL LAW FIELD**

30. The PC-OC took note of the information provided by the Secretariat on general aspects of the co-operation between the Council of Europe and EU bodies, and notably the fact that the Memorandum of Understanding between the Council of Europe and the EU provides a large framework for co-operation both with the Commission and the Council of the European Union. The Secretariat drew the PC-OC's attention to the fact that, whereas the EU is systematically represented in Council of Europe bodies, the representation of the Council of Europe in the meetings of the European Union takes place on an *ad hoc* basis, despite the legal basis provided in the Memorandum of Understanding.

31. The PC-OC also took note of the Information provided by Ms Anna Lipska, representative of the General Secretariat of the Council of the European Union, on new instruments in the criminal law field which were expected to be adopted by the JHA Council at the end of November 2008 or which had reached an advanced stage in negotiations, and notably texts relating to the exchange of information from criminal records, trials in absentia, and enforcement of judgements. Ms Lipska also provided information on the progress achieved concerning the Framework Decisions on Supervision Orders and on the Transfer of Sentenced Persons, the European Evidence Warrant, as well as the negotiations on reinforcing the role of Eurojust. The PC-OC acknowledged the important volume of normative work at the EU level and stressed the importance for these instruments to be accompanied by adequate guidance for the practitioners, given the difficulties which can be expected in implementing them.

32. The PC-OC was also informed of recent initiatives taken by the Secretariat to explore possibilities for increasing co-operation with the European Commission and the European Judicial Network (EJN), in particular with a view to developing the practical measures recently implemented by the PC-OC. It welcomed this information and underlined the need for better co-operation and regular contacts between the PC-OC and the EJN.

33. The Czech delegation informed the PC-OC about the dates of important meetings in the criminal law field which were planned during the Czech presidency of the EU. The PC-OC thanked the Czech delegation for having communicated these dates, and stressed the need for the co-ordination of these meetings in order to avoid overlaps with meetings of the Council of Europe.

## **8. COMPOSITION OF THE PC-OC MOD**

34. The PC-OC renewed the composition of the restricted Group of Experts (PC-OC Mod) as follows:

- Ms Barbara Göth-Flemmich (Austria)
- Mr Erik Verbert (Belgium)
- Ms Nicole Petrikovitsova (Czech Republic)
- Ms Carla Deveille-Fontinha (France)
- Mr Eugenio Selvaggi (Italy)
- Mr Vladimir Zimin (Russian Federation)
- Mr Branislav Boháčik (Slovakia)
- Ms Cecilia Riddselius (Sweden)
- Mr Erwin Jenni (Switzerland)

35. The PC-OC noted that Ms Katrin Brahms (Germany) withdrew her candidature for election to the PC-OC Mod in order to avoid a lengthy vote.

**9. ELECTION OF THE CHAIR AND THE VICE-CHAIR**

36. The PC-OC elected Mr Erik Verbert (Belgium) as Chair and Ms Barbara Göth-Flemmich (Austria) as Vice-Chair for one year.

**10. ANY OTHER BUSINESS**

37. The PC-OC instructed the PC-OC Mod to examine the replies to the questionnaire on mutual legal assistance in computer-related cases (PC-OC (2007) 15), together with a summary of replies to be prepared by the Secretariat, at its next meeting and to report the results to the Cybercrime Convention Committee (T-CY).

**11. DATES OF THE NEXT MEETINGS**

38. The PC-OC decided to hold its next meetings on the following dates:

- 7<sup>th</sup> enlarged meeting of the restricted Group of Experts: 25-27 February 2009;
- 56<sup>th</sup> meeting of the PC-OC: 12-14 May 2009.

**APPENDIX I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****MEMBER STATES / ETATS MEMBRES****ALBANIA / ALBANIE**

Mr Erton KARAGJOZI, Chief Judicial Cooperation Unit, International Judicial Cooperation Department, Ministry of Justice, TIRANA

**ANDORRA / ANDORRE**

M. André PIGOT, Magistrat Honoraire, Ancien Membre du Conseil Supérieur de la Justice, ANDORRA-LA-VELLA *Apologised / Excusé*

**ARMENIA / ARMENIE**

Mr Hovhannes POGHOSYAN, Head of International Co-operation Department, Police of the Republic of Armenia, YEREVAN

**AUSTRIA / AUTRICHE**

Ms Barbara GOETH-FLEMMICH, Director, Head of Division for International Penal Law, Ministry of Justice, VIENNA

**CHAIR / PRESIDENTE****AZERBAIJAN / AZERBAÏDJAN**

Mr Hamlet A. BABAYEV, Deputy Head, Institutional and analysis Division of NCB of ICPO-INTERPOL, Ministry of Internal Affairs, BAKU

**BELGIUM / BELGIQUE**

Mr Erik VERBERT, Deputy Legal Adviser, Central Authority, DG Legislation, Ministry Federal Public Service Justice, BRUSSELS

**BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

Mr Damir VEJO, Chef du Service pour le crime organisé et la corruption, Ministère de la Sécurité, SARAJEVO

**BULGARIA / BULGARIE**

Mr Borislav PETKOV, Head of International Cooperation and Legal Assistance in Criminal Matters Department, Ministry of Justice, SOFIA

**CROATIA / CROATIE**

Ms Vesna MERLIĆ, Head of Unit, Department for Bilateral Co-Operation, Ministry of Justice, ZAGREB  
 Ms Melanija GRGIĆ, Head of the Sector, Directorate for International Legal, Co-Operation and Human Rights, Ministry of Justice, ZAGREB *Apologised / Excusée*  
 Ms Maja RAKIĆ, Expert Adviser, Department for International Legal Assistance, Co-Operation and human rights, Ministry of Justice, ZAGREB *Apologised / Excusée*

**CYPRUS / CHYPRE**

Mrs Elli KANARI-MORPHAKI, Senior Administrative Officer, Head of International Legal Cooperation, Ministry of Justice and Public Order, NICOSIA

**CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Ms Nicole PETRIKOVITSOVÁ, Head of Unit, International Department for Criminal Matters, Ministry of Justice, PRAGUE

**DENMARK / DANEMARK**

Ms Louise HALLESKOV STORGAARD, Head of Section, Criminal Office, Ministry of Justice, COPENHAGEN K

**ESTONIA / ESTONIE**

Ms Imbi MARKUS, Head of International Judicial Cooperation Unit, Ministry of Justice, TALLINN

**FINLAND / FINLANDE**

Ms Ann-Sofie HÖGSTRÖM, Legal Adviser, International Affairs, Ministry of Justice, HELSINKI  
 Ms Sirpa VÄÄTÄINEN, District Prosecutor, Helsinki District Prosecutor's Office, POB 318, HELSINKI  
 Ms Tuuli EEROLAINEN, Liaison Magistrate, Embassy of Finland in Estonia, Kohtu 4, TALLINN, Estonia

**FRANCE**

Mme Carla DEVEILLE-FONTINHA, Magistrat, Mission des négociations pénales, Direction des Affaires Criminelles et des Grâces, Ministère de la Justice, PARIS

**GEORGIA / GEORGIE**

Mr Givi BAGHDAVADZE, Acting Head of Unit, International Relations Division, Office of the Prosecutor General, TBILISSI

**GERMANY / ALLEMAGNE**

Ms Katrin BRAHMS, Desk Officer, Federal Ministry of Justice, Mohrenstrasse 37, BERLIN

**GREECE / GRECE**

Ms Maria GAVOUNELI, Legal Advisor, Ministry of Justice, ATHENS *Apologised / Excusée*

Ms Anna ZAIRI, Prosecutor, Court of Appeal of Athens, ATHENS

**HUNGARY / HONGRIE**

Mme Klara NEMETH-BOKOR, Directeur de Département, Ministère de la Justice et de la Police, BUDAPEST *Apologised / Excusée*

Mme Szilvia KIRÁLY, Conseillère, Département international pénal, Ministère de la Justice et de la Police, BUDAPEST

**ICELAND / ISLANDE**

Ms Valgedur Maria SIGURDARDÓTTIR, Legal Expert, Department of Police and Judicial Affairs, Ministry of Justice, REYKJAVIK

**IRELAND / IRLANDE**

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

**ITALY / ITALIE**

M. Eugenio SELVAGGI, Procureur Général, Parquet Général de la Cassation, Procura Generale, Palazzo di Giustizia, ROMA

Ms Anna PAGOTTO, Appellate Judge, Ufficio 2, Directorate General of Criminal Affairs, Ministry of Justice, ROMA

**LATVIA / LETTONIE**

Mr Maris STRADS, Prosecutor, International Co-operation Division, Office of the Prosecutor General, RIGA

**LIECHTENSTEIN**

Mr Harald OBERDORFER, Regierung des Fürstentums Liechtenstein, Ressort Justiz, VADUZ *Apologised / Excusé*

Mr Gert ZIMMERMANN, Legal Officer, Ressort Justiz, Regierung des Fürstentums Liechtenstein, Regierungsgebäude, VADUZ *Apologised / Excusé*

**LITHUANIA / LITUANIE**

Ms Indre KAIRELYTE, Senior official, International Law Department, Ministry of Justice, VILNIUS

**LUXEMBOURG**

Mme Annick HARTUNG, Attachée de Gouvernement, Direction des Affaires Pénales, Ministère de la Justice, LUXEMBOURG



**MALTA / MALTE**

*Apologised / Excusé*

**MOLDOVA**

*Apologised / Excusé*

**MONACO**

Mme Antonella SAMPO, Administrateur, Direction des Services Judiciaires, Palais de Justice,  
MONACO *Apologised / Excusée*

**MONTENEGRO**

*Apologised / Excusé*

**NETHERLANDS / PAYS-BAS**

Ms Wietske DIJKSTRA, Senior Legal Policy Officer, Department of International Legal Assistance in Criminal  
Matters, Ministry of Justice, THE HAGUE  
*Apologised / Excusée*

**NORWAY / NORVEGE**

Ms Kari MELING, Assistant Director General, The Ministry of Justice and the Police, OSLO  
Ms Vibeke GJØSLIEN, Adviser, Ministry of Justice and the Police, OSLO

**POLAND / POLOGNE**

Mr Tomasz CHALANSKI, Prosecutor, Department of International Cooperation and European Law, Ministry  
of Justice, WARSAW

Mr Miłosz AUGUSTYNIAK, Senior Specialist, Department of International Cooperation and European Law,  
Ministry of Justice, WARSAW

**PORTUGAL**

Mme Joana GOMES FERREIRA, Procureur, Coordenadora dos Serviços de Cooperação Judiciária  
Internacional em matéria penal, Procuradoria Geral da República, LISBOA

**ROMANIA / ROUMANIE**

Mr Florin Răzvan RADU, Director, Directorate for International Law and Treaties, Ministry of Justice,  
BUCAREST *Apologised / Excusé*

Ms. Mariana ZAINEA, Head of Division, Directorate for International Law and Treaties,  
Ministry of Justice, BUCAREST

**RUSSIA / RUSSIE**

Mr Vladimir P. ZIMIN, First Deputy Chief, General Department for International Legal Co-operation, Office of  
the Prosecutor General, MOSCOW

Ms Tatiana M. SUTYAGINA, Senior Prosecutor, Main Department International Legal Co-operation  
Office of the Prosecutor General, MOSCOW

**SAN MARINO / SAINT-MARIN**

*Apologised / Excusé*

**SERBIA / SERBIE**

Ms Jasmina SAHINOVIC, Chief Inspector Criminal Police Department, Unit for International Police  
Cooperation, Ministry of the Interior, BELGRADE

**SLOVAKIA / SLOVAQUIE**

Mr Branislav BOHÁČIK, Director, Division for Judicial Co-operation in Criminal Matters,  
Ministry of Justice, BRATISLAVA

**SLOVENIA / SLOVENIE**

Ms Anja ŠTROVS, Senior Adviser, Ministry of Justice, LJUBLJANA

**SPAIN / ESPAGNE**

Mme Rocio DIAZ, Conseillère Technique, Sous-direction générale de coopération juridique internationale, Ministère de la Justice, c/ San Bernando, MADRID

**SWEDEN / SUEDE**

Mr Per HEDVALL, Director, Division for Criminal Cases and International Judicial Co-operation, Ministry of Justice, STOCKHOLM *Apologised / Excusé*  
 Ms Cecilia RIDDSELIUS, Deputy Officer, Division for Criminal Cases and International Judicial Co-operation, Ministry of Justice, STOCKHOLM

**SWITZERLAND / SUISSE**

Mme Astrid OFFNER, Cheffe suppléante des Traités internationaux, Ministère de la Justice et Police, Office Fédéral de la Justice, BERN

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

*Apologised / Excusé*

**TURKEY / TURQUIE**

Mr Bilal ÇALIŞKAN, Deputy General Director, International Law and Foreign Affairs, Ministry of Justice, ANKARA

**UKRAINE**

Mr Herman HALUSCHENKO, Head of International Law Department, Secretariat of the President of Ukraine, Office of the President, KYIV

**UNITED KINGDOM / ROYAUME-UNI**

Ms Fenella TAYLER, Acting Head of Co-Operation Unit, Home Office, LONDON

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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS /  
CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS  
(CCPE)**

*Apologised / Excusé*

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE /  
COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE  
(CEPEJ)**

*Apologised / Excusé*

**STEERING COMMITTEE FOR HUMAN RIGHTS /  
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME  
(CDDH)**

*Apologised / Excusé*

**EUROPEAN COMMUNITY / COMMUNAUTE EUROPEENNE****COMMISSION**

M. Peter CSONKA, Chef d'Unité, Commission Européenne, Direction Général Justice, Liberté et Sécurité, Unité D3 Justice pénale, BRUXELLES *Apologised / Excusé*  
 Mr Peter-Carel KORTENHORST, Expert national détaché (END), European Commission, Direction Général Justice, Liberté et Sécurité, Unité D3 Justice pénale, BRUXELLES *Apologised / Excusé*

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

Mr Hans NILSSON, Head of the Division of Judicial Cooperation, Cooperation in Criminal Matters, General Secretariat of the Council of the European Union, BRUSSELS *Apologised / Excusé*  
 Ms Anna Halina LIPSKA, Administrator, General Secretariat, Council of the European Union, BRUSSELS

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**OBSERVERS WITH THE COUNCIL OF EUROPE /  
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, Chief, International Prisoner Transfer Unit, Office of Enforcement Operations, Criminal Division, Department of Justice, WASHINGTON

Mr Richard PRESTON, Deputy Chief, International Prisoner Transfer Unit, U.S. Department of Justice, Criminal Division, WASHINGTON

**CANADA**

*Apologised / Excusé*

**JAPAN / JAPON**

Mr Akira TAKANO, Consul (Attorney), Consulate-General of Japan, "Tour Europe", STRASBOURG

*Apologised / Excusé*

**MEXICO / MEXIQUE**

*Apologised / Excusé*

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**OBSERVERS WITH THE COMMITTEE /  
OBSERVATEURS AUPRES DU COMITE**  
States Observers / États Observateurs

**ISRAEL**

Mr Gal LEVERTOV, Director, Department of International Affairs, Ministry of Justice, JERUSALEM

*Apologised / Excusé*

Mr Yitzhak BLUM, Deputy Director, Department of International Affairs, Ministry of Justice, JERUSALEM

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**INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS /  
ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES**

**UNITED NATIONS OFFICE FOR DRUGS AND CRIME (UNODC) / OFFICE DES NATIONS UNIES  
CONTRE LA DROGUE ET LE CRIME (UNODC)**

*Apologised / Excusé*

**UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE (UNICRI) /  
INSTITUT INTERREGIONAL DE RECHERCHE DES NATIONS UNIES SUR LA CRIMINALITE ET LA  
JUSTICE (UNICRI)**

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**OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR) / HAUT  
COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME (HCDH)**

*Apologised / Excusé*

**INTERNATIONAL CRIMINAL COURT (ICC) / TRIBUNAL PENAL INTERNATIONAL (TPI)**

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**INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) / TRIBUNAL PENAL  
INTERNATIONAL POUR L'EX-YOUGOSLAVIE (TPIY)**

*Apologised / Excusé*

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**SECRETARIAT****Directorate General of Human Rights and Legal Affairs  
Direction Générale des droits de l'Homme et des affaires juridiques  
(DG-HL)**

Mr Jan KLEIJSEN	Director of Standard-Setting Directeur des activités normatives
Mr Jörg POLAKIEWICZ	Head of the Law Reform Department Chef du Service des réformes législatives
Mr Carlo CHIAROMONTE	Head of the Criminal Law Division / Secretary to the CDPC Chef de la Division du droit pénal / Secrétaire du CDPC
Mr Hasan BERMEK	<b>Secretary to the Committee</b> <b>Secrétaire du Comité</b>
Ms Marose BALA-LEUNG	Assistant / Assistante
Ms Emilie MONSAILLIER Ms Lenny REESINK	Trainee / Stagiaire Trainee / Stagiaire

**Interpreters / Interprètes**

Mr Niolas GUITTONNEAU  
Ms Isabelle MARCHINI  
Mr Philippe QUAINÉ

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**APPENDIX II****Agenda****Draft Agenda**

1. **Opening of the meeting**
2. **Adoption of the draft agenda**  
Working documents  
 Draft agenda [PC-OC \(2008\) OJ 2](#)  
 Draft annotated agenda [PC-OC \(2008\) 23](#)
3. **Preparation of normative texts concerning the European Convention on Extradition**  
Working documents  
 Report of the 56<sup>th</sup> CDPC Plenary meeting [CDPC \(2007\) 24](#)  
 List of decisions of the 57<sup>th</sup> CDPC Plenary meeting [CDPC \(2008\) 17](#)  
 Summary Report of the 54<sup>th</sup> meeting of the PC-OC [PC-OC \(2008\) 16](#)  
 List of decisions of the 6<sup>th</sup> PC-OC Mod meeting [PC-OC Mod \(2008\) 06](#)
  - 3.1. **Simplified extradition**  
 Revised Draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition [PC-OC \(2008\) 05 rev 3](#)  
 Revised Draft Explanatory Report to the 3<sup>rd</sup> Additional Protocol [PC-OC \(2008\) 20 rev](#)  
 Drafting Proposals concerning the revised Draft 3<sup>rd</sup> Additional Protocol [PC-OC \(2008\) 24](#)
  - 3.2. **Rule of speciality**  
Working documents  
 Questionnaire on the rule of speciality [PC-OC \(2008\) 01 Rev](#)  
 Replies to the questionnaire on the rule of speciality [PC-OC \(2008\) 04 Rev 2](#)  
 Summary of replies [PC-OC \(2008\) 12](#)  
 Proposals by Mr Hedvall (Sweden) and Mr Boháčik (Slovakia) [PC-OC \(2008\) 26](#)
  - 3.3. **Lapse of time**
  - 3.4. **Channels and means of communication**  
Working documents  
 Background information on lapse of time prepared by the Secretariat [PC-OC \(2008\) 06](#)  
 Proposals by Mr Vladimir ZIMIN (Russian Federation) [PC-OC \(2008\) 19](#)  
 Discussion paper on lapse of time [PC-OC \(2008\) 25](#)
  - 3.5. **Compensation of persons**  
Working documents  
 Questionnaire on compensation issues [PC-OC \(2007\) 10 Rev](#)  
 Replies to the questionnaire on compensation issues [PC-OC \(2008\) 03 Rev 3](#)  
 Summary of replies [PC-OC \(2008\) 21](#)
4. **Follow-up of the 28<sup>th</sup> Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote) – the relationship between asylum procedures and extradition procedures**  
Working documents  
 Resolution No. 1 on access to justice for migrants and asylum seekers [Resolution No. 1](#)  
 Summary Report of the CDPC Bureau meeting 16-18 January 2008 [CDPC-BU \(2008\) 07](#)  
 Questionnaire on the relationship between asylum procedures and extradition procedures [PC-OC \(2008\) 13 Rev. Bil](#)  
 Replies to the Questionnaire on the relationship between asylum procedures and extradition procedures [PC-OC \(2008\) 18 Rev.](#) (document in English and French)

5. **Future Council of Europe Conferences of Ministers**
6. **Practical problems and concrete cases concerning the implementation of conventions**
7. **Co-operation between the Council of Europe and the EU in the criminal law field**
8. **Composition of the PC-OC Mod**
9. **Election of the Chair and the Vice-Chair of the Committee**  
Working documents  
Terms of Reference of the PC-OC  
Committee of Ministers Resolution on committees and subordinate [CM Res \(2005\) 47](#)  
bodies, their terms of reference and working methods
10. **Any other business**
11. **Dates of the next meeting**

### **APPENDIX III**

#### **List of decisions adopted at the 55th meeting of the PC-OC 4-7 November 2008**

The PC-OC decided to:

#### **1. Preparation of normative texts concerning the European Convention on Extradition**

##### ***a) Simplified extradition***

- adopt the draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition (PC-OC (2008) 05 Rev 4) with amendments and submit it to the CDPC;
- request a legal opinion from the Treaty Office concerning the regime of declarations and reservations foreseen in the draft 3<sup>rd</sup> Additional Protocol, and notably its Article 4, paragraph 5, Article 5 and Article 17, to be submitted to the CDPC together with the draft 3<sup>rd</sup> Additional Protocol;
- amend the draft Explanatory Report to the 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition (PC-OC (2008) 20 Rev) and agree on the substance of the draft Explanatory Report, with the exception of the paragraphs relating to Article 1 of the draft 3<sup>rd</sup> Additional Protocol;
- instruct the Secretariat to revise the draft Explanatory Report in the light of the discussions held during the meeting and send it to all delegations;
- request delegations wishing to make stylistic amendments to this text to send their proposals to the Secretariat by 31 January 2009;
- instruct the PC-OC Mod to finalise the draft Explanatory Report at its next meeting in the light of these proposals and to submit the amended Protocol to the approval of the PC-OC at its 56<sup>th</sup> plenary meeting;

##### ***b) Rule of speciality***

- on the basis of the replies to the questionnaire PC-OC (2008) 01 rev, the summary of replies prepared by the Secretariat (PC-OC (2008) 12), written contributions submitted by Mr Per Hedvall (Sweden), Mr Eugenio Selvaggi (Italy) and Mr Branislav Boháčik (Slovakia), discuss potential amendments to Article 14 of the European Convention on Extradition on the rule of speciality;
- thank Mr Hedvall, Mr Selvaggi and Mr Boháčik for their contributions;
- take note of the information provided by the Finnish delegation on a case pending before the European Court of Justice concerning the interpretation of the provisions on the rule of speciality of the EU Framework-Decision on the European Arrest Warrant;
- instruct the Secretariat to prepare a new proposal on the basis of these contributions and the discussions held during the meeting;
- instruct the PC-OC Mod to examine this proposal, amend it as necessary and submit it to the plenary for consideration;

##### ***c) Lapse of time***

- examine the issue of lapse of time on the basis of a background information document prepared by the Secretariat (PC-OC (2008) 06), Article 8 the Convention relating to extradition between the Member States of the European Union, as well as a concrete draft text proposed by Mr Vladimir Zimin (Russian Federation);
- thank Mr Zimin for his contribution;
- instruct the Secretariat to prepare a new draft text amending Article 10 of the European Convention on Extradition, in the light of Article 8 of the Convention relating to extradition between the Member States of the European Union, and the possibilities for reservation contained in Mr Zimin's proposal;
- instruct the PC-OC Mod to examine this draft text, amend it as necessary and submit it to the plenary for consideration;

**d) Ways and means of communication**

- examine this issue on the basis of a concrete draft text proposed by Mr Vladimir Zimin (Russian Federation);
- thank Mr Zimin for his contribution;
- invite delegations to reflect on this threefold proposal, which deals with competent authorities, communications and necessary documentation, and send to the Secretariat proposals to be taken into account by the PC-OC by 31 January 2009;
- instruct the PC-OC Mod to examine these proposals and make concrete suggestions to the PC-OC plenary for further work;

**e) Compensation of persons**

- examine this issue on the basis of replies to the questionnaire PC-OC (2007) 10 rev and the summary of replies prepared by the Secretariat (PC-OC (2008) 21), as well as the conclusions of the 6<sup>th</sup> enlarged meeting of the PC-OC Mod;
- while considering that other issues concerning the modernisation of the European Convention on Extradition should remain the priority of the PC-OC for the time being, agree that compensation of persons is a very important question, in particular as it affects Human Rights, which would deserve further consideration by the PC-OC at a later stage;
- report the results of its stock-taking exercise, as well as the proposals it has considered, to the CDPC;

**2. Follow-up of the 28<sup>th</sup> Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote): the relationship between asylum procedures and extradition procedures**

- having taken note of the replies by 20 States to the questionnaire PC-OC (2008) 13 Bil, and considering that more replies would be necessary to have a representative overview concerning the situation in different member States, request all delegations, who have not already done so, to reply to this questionnaire by 31 January 2009;
- instruct the Secretariat to invite the UNHCR to submit comments to the PC-OC before the next PC-OC Mod meeting and to present these comments at the next plenary meeting of the PC-OC;
- instruct the PC-OC Mod to examine the relationship between asylum procedures and extradition procedures in the light of these elements and make concrete proposals to the PC-OC plenary on the necessity of possible future action in this field;

**3. Future Council of Europe Ministerial Conferences**

- take note of oral information provided by the Secretariat on the preparations of the 29th Council of Europe Conference of Ministers of Justice, which will be held in Tromsø, Norway on 18-19 June 2009;
- take note of a proposal made by Romania during the 57th meeting of the CDPC (2-6 June 2008) to host a Council of Europe Conference of Ministries of Justice and of the Interior in Bucharest in 2010, on issues relating to international co-operation in criminal matters;
- welcome this proposal and hold a preliminary exchange of views as to possible themes for such a conference;

**4. Co-operation between the Council of Europe and the EU in the criminal law field**

- take note of the Information provided by Ms Anna Lipska, representative of the General Secretariat of the Council of the EU, on new instruments in the criminal law field having been adopted or being negotiated within the EU, and stress the importance for these instruments to be accompanied by adequate guidance for the practitioners;
- take note of the information provided by the Secretariat on general aspects of the co-operation between the Council of Europe and EU bodies, as well as on the recent initiatives taken by the Secretariat to explore possibilities for increasing co-operation with the European Commission and the European Judicial Network (EJN), in particular with a view to developing the practical measures recently implemented by the PC-OC;



- welcome this information and underline the need for better co-operation and regular contacts between the PC-OC and the EJN;
- thank the Czech delegation for having communicated to the PC-OC the dates of important EU meetings in the criminal law field which will take place during the Czech Presidency;

#### **5. Election of the Chair and the Vice-Chair**

- elect Mr Erik Verbert (Belgium) as Chair and Ms Barbara Göth-Flemmich (Austria) as Vice-Chair for one year;

#### **6. Composition of the PC-OC Mod**

- renew the composition of the restricted Group of Experts (PC-OC Mod) as follows:
  - o Ms Barbara Göth-Flemmich (Austria)
  - o Mr Erik Verbert (Belgium)
  - o Ms Nicole Petrikovitsova (Czech Republic)
  - o Ms Carla Deveille-Fontinha (France)
  - o Mr Eugenio Selvaggi (Italy)
  - o Mr Vladimir Zimin (Russian Federation)
  - o Mr Branislav Boháčik (Slovakia)
  - o Ms Cecilia Riddselius (Sweden)
  - o Mr Erwin Jenni (Switzerland)

#### **7. Any other business**

- instruct the PC-OC Mod to examine the replies to the questionnaire on mutual legal assistance in computer-related cases (PC-OC (2007) 15) at its next meeting and to report the results to the Cybercrime Convention Committee (T-CY);

#### **8. Dates of the next meetings**

- agree on the following dates for the next meetings of the PC-OC:
  - o 7<sup>th</sup> enlarged meeting of the restricted Group of Experts: 25-27 February 2009;
  - o 56<sup>th</sup> meeting of the PC-OC: 12-14 May 2009.

#### **Appendix IV**

**Draft 3<sup>rd</sup> Additional Protocol  
to the European Convention on Extradition  
as adopted at the 55<sup>th</sup> meeting of the PC-OC  
4-7 November 2008**

The member States of the Council of Europe, signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desirous of strengthening their individual and collective ability to respond to crime;

Having regard to the provisions of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention"), as well as the two Additional Protocols thereto, done at Strasbourg on 15 October 1975 and on 17 March 1978;

Considering it desirable to supplement the Convention in certain respects in order to simplify and accelerate the extradition procedure when the person sought consents to extradition,

Have agreed as follows

#### **Article 1 - Obligation to extradite under the simplified procedure**

Contracting Parties undertake to extradite to each other under the simplified procedure as provided for by this Protocol persons sought for the purpose of extradition, subject to the consent of such persons and the agreement of the requested Party.

#### **Article 2 – Initiation of the procedure**

1. When the person sought is the subject of a request for provisional arrest in accordance with Article 16 of the Convention, the extradition referred to in Article 1 shall not be subject to the submission of a request for extradition and supporting documents in accordance with Article 12 of the Convention. The following information provided by the requesting Party shall be regarded as adequate by the requested Party for the purpose of applying Articles 3 to 5 of this Protocol and for taking its final decision on extradition under the simplified procedure:

- (a) the identity of the person sought, including her/his nationality or nationalities when available;
- (b) the authority requesting the arrest;
- (c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;
- (d) the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment, including whether any part of the judgment has already been enforced;
- (e) information concerning lapse of time and its interruption;
- (f) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- (g) in so far as possible, the consequences of the offence;
- (h) In cases where extradition is requested for the enforcement of a final judgment, whether the judgment was rendered *in absentia*.

2. Notwithstanding paragraph 1, supplementary information may be requested if the information provided for in the said paragraph is insufficient to allow the requested Party to decide on extradition.

3. In case the requested State has received a request for extradition in accordance with Article 12 of the Convention, this Protocol shall apply *mutatis mutandis*.

### **Article 3 - Obligation to inform the person**

Where a person sought for the purpose of extradition is arrested on the territory of another Party, the competent authority of the requested Party shall inform that person, in accordance with its law and without undue delay, of the request relating to her/him and of the possibility of applying the simplified extradition procedure in accordance with this Protocol.

### **Article 4 - Consent to extradition**

1. The consent of the person sought and, if appropriate, her/his express renunciation of entitlement to the rule of speciality, shall be given before the competent judicial authority of the requested Party in accordance with the law of that Party.

2. Each Party shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the legal consequences. To that end, the person sought shall have the right to legal counsel. If necessary, the requested Party shall ensure that the person sought has the assistance of an interpreter.

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded in accordance with the law of the requested Party.

4. Subject to paragraph 5, consent and, where appropriate, renunciation, as referred to in paragraph 1, shall not be revoked.

5. Any Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that consent and, where appropriate, renunciation of entitlement to the rule of speciality, may be revoked. The consent may be revoked until the requested Party takes its final decision on extradition under the simplified procedure. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16, paragraph 4 of the Convention. Renunciation of entitlement to the rule of speciality may be revoked until the surrender of the person concerned. Any revocation of the consent to extradition or the renunciation of entitlement to the rule of speciality shall be recorded in accordance with the law of the requested Party and notified to the requesting Party immediately.

### **Article 5 - Renunciation of entitlement to the rule of speciality**

Each Party may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the Convention do not apply where the person, in accordance with Article 4 of this Protocol:

(a) consents to extradition; or

(b) consents to extradition and expressly renounces her/his entitlement to the rule of speciality.

### **Article 6 – Notifications in case of provisional arrest**

1. So that the requesting Party may submit, where applicable, a request for extradition in accordance with Article 12 of the Convention, the requested Party shall notify it, as soon as possible and no later than 10 days after the date of provisional arrest, whether or not the person has given her/his consent.

2. In exceptional cases where the requested Party decides not to apply the simplified procedure in spite of the consent of the person sought, it shall notify this to the requesting Party sufficiently in advance so as to allow the latter to submit a request for extradition before the period of 40 days established under Article 16 of the Convention expires.

**Article 7 – Notification of the decision**

Where the person sought has given her/his consent to extradition, the requested Party shall notify the requesting Party of its decision with regard to the extradition under the simplified procedure within 20 days of the date on which the person consented.

**Article 8 – Means of communication**

For the purpose of this Protocol, communications may be forwarded through electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity, as well as through the International Criminal Police Organisation (Interpol). In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents.

**Article 9 - Surrender**

Surrender shall take place as soon as possible, and preferably, within 10 days from the date of notification of the extradition decision.

**Article 10 - Consent given after expiry of the deadline laid down in Article 6**

Where a person sought has given her/his consent after expiry of the deadline of 10 days laid down in Article 6, paragraph 1, the requested Party shall implement the simplified procedure as provided for in this Protocol if a request for extradition within the meaning of Article 12 of the Convention has not yet been received by it.

**Article 11 - Transit**

In the event of transit under the conditions laid down in Article 21 of the Convention, where a person is to be extradited under a simplified procedure to the requesting Party, the following provisions shall apply:

- (a) The request for transit shall contain the information required in Article 2, paragraph 1;
- (b) The Party requested to grant transit may request supplementary information if the information provided for in sub-paragraph (a) is insufficient for the said Party to decide on transit.

**Article 12 - Relationship with the Convention and other international instruments**

1. The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. The provisions of the Convention shall apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of this Protocol.

2. The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3 of the Convention concerning the relations between the Convention and bilateral or multilateral agreements.

**Article 13 – Friendly settlement**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

**Article 14 - Signature and entry into force**

1. This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

#### **Article 15 - Accession**

1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.

2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.

3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

#### **Article 16 – Territorial application**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date or receipt of such notification by the Secretary General.

#### **Article 17 - Reservations**

1. Reservations made by a Party to any provision of the Convention or the two Additional Protocols thereto shall also be applicable to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or the two Additional Protocols thereto.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to accept wholly or in part Article 2, paragraph 1. No other reservation may be made.

3. Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

4. Any Party which has made a reservation in respect of any provision of this Protocol may not claim the application of that provision by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

**Article 18 - Denunciation**

1. Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.
3. Denunciation of the Convention entails automatically denunciation of this Protocol.

**Article 19 - Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 14 and 15;
- d any declaration made in accordance with Article 16;
- e any reservation made in accordance with Article 17 and any withdrawal of such a reservation;
- f any notification received in pursuance of the provisions of Article 18 and the date on which denunciation takes effect;
- g any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this ...th day of ..., in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.

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## Appendix V

### **Draft Explanatory Report to the 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition**

#### **as amended at the 55<sup>th</sup> meeting of the PC-OC 4-7 November 2008**

I. The Third Additional Protocol to the European Convention on Extradition, drawn up within the Council of Europe by the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC), under the authority of the European Committee on Crime Problems (CDPC), has been opened for signature by the member States of the Council of Europe, in ....., on ....., on the occasion of the ....

II. The text of this explanatory report, prepared on the basis of that Committee's discussions and submitted to the Committee of Ministers of the Council of Europe, does not constitute an instrument providing an authoritative interpretation of the text of the Protocol although it may facilitate the understanding of its provisions.

### **Introduction**

Under the authority of the European Committee on Crime Problems (CDPC), the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC) is entrusted *inter alia* with examining the functioning and implementation of Council of Europe conventions and agreements in the field of crime problems, with a view to adapting them and improving their practical application where necessary.

The need for the modernisation of the legal instruments of the Council of Europe in the criminal field, including the European Convention on Extradition (hereinafter referred to as "the Convention"), in order to enhance international co-operation, has been highlighted on several occasions. In particular, the "New Start" report<sup>1</sup> approved by the CDPC in June 2002 pointed to the necessity of realising a European area of shared justice. The Warsaw declaration and the Plan of Action adopted by the third Summit of Council of Europe Heads of State and Government of the member states of the Council of Europe (Warsaw, 16 -17 May 2005) underlined the commitment, at the highest political level, to making full use of the Council of Europe's standard-setting potential and to promoting implementation and further development of the Organisation's legal instruments and mechanisms of legal cooperation.

At the High-Level Conference of the Ministries of Justice and of the Interior entitled "Improving European Cooperation in the Criminal Justice Field" held in Moscow (Russian Federation) on 9-10 November 2006, the Council of Europe was encouraged to continue its efforts to improve the operation of the main conventions regulating international co-operation in criminal matters, in particular those regarding extradition, in order to identify the difficulties encountered and to consider the need for any new instruments.<sup>2</sup>

At its 52<sup>nd</sup> meeting (October 2006) the PC-OC put forward a number of proposals relating to the modernisation of the European Convention on Extradition, as amended by the two additional protocols thereto of 1975 and 1978. The Convention, which dates from 1957, is indeed one of the oldest European conventions in the criminal law field and has a direct impact on individuals' rights and freedoms, to which the CDPC asked the PC-OC to pay particular attention.

In this context, the PC-OC suggested, *inter alia*, that the 1957 Convention be revised first of all in order to include mechanisms of simplified extradition when the person sought consents to her/his extradition, the rationale being that if such consent is expressed, there is no need to go through all the formalities of extradition procedures. As a result, delays of surrender would in many cases be reduced substantially. This would contribute to achieve the important objective of increasing the efficiency and speed of extradition mechanisms, while respecting individuals' rights.

<sup>1</sup> PC-S-NS (2002) 7, presented to the CDPC by the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS).

<sup>2</sup> Paragraphs 2 and 3 have been introduced by the Secretariat, on the basis of the proposals of the Russian delegation and the discussions which took place during the 55<sup>th</sup> meeting of the PC-OC.

The PC-OC took account of the fact that procedures of simplified extradition already existed in practice and that it would be desirable to elaborate a treaty basis for such procedures, accessible to a large number of European States. It decided to draw inspiration from the simplified extradition mechanism provided for in the 1995 Convention on simplified extradition procedure between the Member States of the European Union.

The CDPC, at its 56th plenary session (June 2007), decided to mandate the PC-OC, *inter alia*, to draft the necessary legal instruments to give a treaty basis to simplified forms of extradition when the person sought consents<sup>3</sup>, along the lines proposed by the PC-OC. Having studied various options, the PC-OC agreed that a Third Additional Protocol to the Convention was the most appropriate solution in this respect.

The drafts of the Protocol and the Explanatory report thereto were examined and approved by the CDPC at its ...th plenary session (... 2009) and submitted to the Committee of Ministers.

At the ... meeting of their Deputies on ..., the Committee of Ministers adopted the text of the Third Additional Protocol and decided to open it for signature, in .....

### **General considerations**

The Protocol was drafted to address the concern that, while persons concerned consent to their surrender in a large number of extradition cases, the procedure under the Convention still remains long and can last up to several months.

One of the central issues for the Protocol was whether, in the event that a person is arrested on the basis of a request for provisional arrest, in application of Article 16, paragraph 2 of the Convention, and consents to her/his extradition, there was a need for a formal request of extradition and for all the supporting documents requested by Article 12 of the Convention.

The PC-OC observed that practice varied among States. In a majority of States where a simplified procedure of extradition is applied, it is considered that it is in the interest of the person sought to be quickly surrendered once her/his consent has been given. Some States concerned often find the information they need in the request for provisional arrest. In other States however, there is a need for the extradition request and for the documents provided for in Article 12 of the Convention. 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.

This is the reason for which the Protocol establishes as a principle extradition in accordance with the simplified procedure on the basis of **a request for provisional arrest**<sup>4</sup> (complemented, if necessary by additional information). Nevertheless, the Protocol provides the possibility for the Parties to make a reservation specifying that they still require an extradition request, including the documents mentioned in Article 12 of the Convention.

The consent of the person sought can be significant for the conduct of the extradition procedure in the requested Party, even if such consent has been expressed after the reception of a request of extradition and the supporting documents under Article 12 of the Convention. The scope of the Protocol therefore extends also to these situations.

In both cases, the consent expressed by the person sought is central for the simplified procedure of extradition and shall be voluntary, conscious and in full awareness of the legal consequences of this consent. The person concerned shall not be deprived from the procedural guarantees defined by the laws of each Party, notably the access to a defence lawyer and to an interpreter.

The Protocol also establishes a series of time limits which enshrine the concern for efficiency and speed in the criminal justice field and which should reduce to a minimum the delays in the proceedings in the requesting Parties awaiting surrender, when the persons concerned do not intend to oppose their surrender.

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<sup>3</sup> This is the wording chosen in the original mandate given by the CDPC.

<sup>4</sup> The Russian delegation proposes to replace "a request for provisional arrest" by "the information provided for in Article 2, paragraph 1".



It is nevertheless important to note that the consent does not deprive the requested Party of the possibility of invoking a ground for refusal set forth in the Convention. That State also has full discretion as to the application of the rule of speciality, as defined under Article 14 of the Convention, in simplified extradition cases and as to the relationship between the rule of speciality and the consent of the person.

The Protocol does not preclude its Parties from establishing in their national legislation and applying in practice even more simplified extradition procedures as long as such procedures are compatible with the purpose and the principles of the Protocol.<sup>5</sup>

### ***Commentaries on the Articles of the Protocol***

#### **Article 1 - Obligation to extradite under the simplified procedure**

This Article sets out the basic principle of the Convention, namely the obligation to extradite persons sought for the purpose of extradition, subject to the consent of such persons to their surrender under the simplified procedure, given in accordance with Articles 3 to 5, and the agreement of the requested Party. It is clear from the wording chosen that the consent of the person to her/his extradition does not entail an obligation for the requested Parties to extradite the person in all cases. Thus, in exceptional cases, where the final decision of the requested Party following the simplified procedure is negative (cf. Article 6, paragraph 2), the Parties have the possibility of using the ordinary extradition procedure set forth in the Convention, despite the consent of the person concerned<sup>6</sup>.

The Article does not distinguish between the two types of situation for the use of the simplified procedure depending on the supporting documents, namely simplified extradition on the basis of a request for provisional arrest only or on the basis of a request for extradition.

#### **Article 2 – Initiation of the procedure**

This Article defines the two variants for the use of the simplified procedure of extradition:

- Paragraphs 1 and 2 apply when the requested Party proceeds on the basis of a request for provisional arrest only, to be complemented, if necessary, with the information mentioned under these paragraphs;
- Paragraph 3 extends the scope of the Protocol to cases where there is already an extradition request submitted in accordance with Article 12 of the Convention.

#### **Paragraph 1**

This paragraph concerns the main **premise of**<sup>7</sup> the Protocol, namely the simplified procedure following provisional arrest. It indicates that the starting-point for the simplified extradition procedure is the request for provisional arrest as provided for in Article 16 of the Convention. In accordance with Article 16, paragraph 3 of the Convention, a “red notice” sent through the Interpol may also be considered a request for provisional arrest for the purposes of this Protocol.

This paragraph also indicates the consequence of using the simplified procedure on the submission of documents, i.e. in such cases the submission of a request for extradition and the supporting documents required by Article 12 of the Convention are no longer necessary. The decision of extradition may be made

<sup>5</sup> Wording proposed by the Czech delegation, modified during the 55<sup>th</sup> plenary meeting.

<sup>6</sup> One delegation expressed concern that the original wording of this paragraph was in contradiction with the obligation expressed in this Article of the Protocol. During its meeting in November 2008, the Bureau of the CDPC also recommended to the PC-OC to clarify the normative value and implications of the obligation to extradite under the simplified procedure.

The new wording is proposed by the Secretariat in the light of these concerns. It seeks to clarify that, although the requested Party has a positive obligation to initiate the simplified procedure where all the conditions specified in the Protocol are met, its final decision on extradition under the simplified procedure can be negative. In this case, the requesting Party may still submit a request for extradition under the ordinary procedure as set out in the Convention.

<sup>7</sup> The Russian delegation proposes to replace the words “premise of” with the words “requirement to apply”.

on the basis of the information, specified under sub-paragraphs (a) to (h), which is either contained in the request for provisional arrest or complements it. This paragraph should not be understood as deterring the requesting Party from submitting any other information which it considers useful for allowing the requested Party to take a decision on extradition under the simplified procedure.

Information has to be communicated both to the arrested person, providing the basis on which consent to extradition may be given, and to the competent authority of the requested Party, providing the authority with the necessary information to enable it to take its decision on using the simplified procedure of extradition. As a rule, this information should be regarded by the competent authority of the requested Party as being sufficient for taking a decision on surrendering the person concerned. It comprises all the details needed for a proper examination of the question of the requested Party's agreement to the surrender as regards the person concerned, the summary of facts of the offence, the legal description of the offence and reference to the relevant provisions or information about the sentence which has already been delivered. As regards sub-paragraph (h), where the judgment was rendered in absentia, the drafters considered that it **would**<sup>8</sup> be desirable for the requesting Party to send additional information on the possibility of a retrial or the relevant circumstances of the proceedings so as to allow the requested Party to ascertain, without asking for supplementary information, whether the safeguards of the European Convention on Human Rights (ECHR) have been observed.

The discussions concerning these provisions showed that the majority of drafters were in favour of following the simplified extradition procedure on the basis of the request for provisional arrest, abolishing the requirement for a formal extradition request and the documents specified under Article 12 of the Convention, and indeed considered this to be the principal added value of this Protocol. However, some States wish to proceed with an extradition request in all cases. The drafters agreed, therefore, that those States who cannot apply this paragraph should have the possibility of making a reservation to that effect and decided to include this paragraph among the list of provisions that can be subject to a reservation (see Article 17, paragraph 2).

Thus, at the moment of ratification, States have the possibility of making a reservation to this paragraph, specifying that they require a request for extradition, and possibly some or all of the documents mentioned under Article 12 of the Convention, in cases of extradition following the simplified procedure.

### **Paragraph 2**

This paragraph allows for the possibility of derogating from paragraph 1 and of requesting supplementary information if the information supplied is insufficient for the competent authority of the requested Party to give agreement to the extradition. However, this derogation concerns information as opposed to documents, and should not conflict with the abolition of the requirement to submit the documents specified by Article 12 of the Convention for the purposes of the simplified procedure of extradition.

### **Paragraph 3**

This paragraph extends the scope of the Protocol to cases where the person sought consents after an extradition request has been submitted by the requesting Party, regardless of whether the request was or was not preceded by a request for provisional arrest. The Parties shall apply all the provisions of the Protocol in these cases, except for those which are only relevant to the simplified extradition procedure on the basis of a request for provisional arrest (such as Articles 6 or 10).

### **Article 3 – Obligation to inform the person**

The main purpose of this Article is to ensure that the person sought is informed of the reasons for her/his arrest and the possibility of consenting to her/his extradition. For the purposes of this Article, the drafters agreed that the term “arrested” refers to any action taken by the requested Party in accordance with Article 16 of the Convention. Depending on the national legislation, subsequent measures may include detention, as well as other measures restricting the individual freedom of the person, such as bail, house arrest or bans to leave the country.

This Article requires the Parties to ensure that persons arrested for the purpose of extradition are informed of the request concerning them and of the possibility of their consenting to their extradition under the simplified procedure. The information is to be given by the 'competent authority'<sup>9</sup>, e.g. the authority empowered to take

<sup>8</sup> The Russian delegation proposes to replace the word “would” with “may”.

<sup>9</sup> The Russian delegation proposes to add “, designated by the requested Party,”

persons into custody. This does not necessarily imply the intervention of a judicial authority, and such information could for example be provided by the police at the moment of arrest. It should be given without undue delay after the person is taken into custody and in accordance with the law of the requested Party.

#### **Article 4 – Consent to extradition**

This Article deals with the way in which consent is given. It also applies to renunciation of entitlement to the rule of speciality where the law of the requested Party provides for such renunciation, as distinct from consent to extradition, in accordance with Article 5 of the Protocol.

The Protocol does not specify at which point the person's consent must be established. However, where the procedure is set in motion by the provisional arrest of the person sought in accordance with Article 2, paragraph 1, the requested Party should take into account Article 6, which provides for notification of consent within 10 days from the date of the provisional arrest. Naturally, this time limit does not apply where the requested Party made a reservation to Article 2, paragraph 1.

Consent (and, where appropriate, renunciation of entitlement to the rule of speciality) is established before the competent judicial authority of the requested Party. The competent judicial authority may be a judge, a court, a magistrate or a prosecutor, depending on the law of the requested Party.

The forms in which consent (and, where appropriate, renunciation of entitlement to the rule of speciality) is established are determined by the legislation of each Party. Paragraph 2, however, requires Parties to adopt the measures necessary to ensure that consent (and, where appropriate, renunciation of entitlement to the speciality rule) is established in such a way as to show that the person concerned has expressed it voluntarily and in full awareness of the consequences (free and enlightened consent). It provides that, for this purpose, the arrested person shall have the right to legal counsel, and where appropriate, an interpreter. It is important for Parties to take all necessary measures in order to ensure that this right is efficiently implemented in practice.<sup>10</sup>

This provision implies that the person must be fully informed of the legal consequences of her/his consent to extradition and, where appropriate, her/his renunciation of entitlement to the rule of speciality. As to the legal consequences of consent, the information given to the person should include the implications of renunciation of the guarantees of the ordinary procedure, as well as the possible irrevocability of the consent given, in accordance with paragraph 4.

In view of the provisions of Article 5, the person must also be aware of any effects of her/his consent to extradition on her/his entitlement to the rule of speciality, i.e. the possibility of being prosecuted on grounds other than those on which the simplified extradition procedure is based. As regards the effects of express renunciation of entitlement to the rule of speciality, the information given should concern the effects of such renunciation, the rule of speciality and the possible irrevocability of renunciation.

Paragraph 3 provides that consent to extradition (and, where appropriate, renunciation of entitlement to the rule of speciality) shall be *recorded*. This provision implies that the procedure for establishing consent (and, where appropriate, renunciation of entitlement to the speciality rule) must allow for subsequent verification of whether consent was given voluntarily and in full awareness of the legal consequences. However, the procedures and forms for such a record are left to the discretion of national legislators.

Paragraph 4 provides that consent to extradition (and, where appropriate, renunciation of entitlement to the rule of speciality) shall not be revoked. While the drafters chose to establish this as the rule, they were also aware that for some States the possibility of revoking either consent or renunciation to the entitlement to the rule of speciality is a very important principle. They decided therefore to include paragraph 5 of this Article, which provides the possibility for these States to allow for such revocation by way of a declaration made at the time of ratification.

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<sup>10</sup> This point has been raised during the meeting of the Bureau of the CDPC in November 2008.

The drafters were also aware, however, that an untimely revocation may cause legal and practical difficulties, in particular with regard to the rule of speciality. An example for this would be the revocation of renunciation of entitlement to the rule of speciality after the first hearing in the requesting Party following surrender.

In order to strike a balance between the possibility of revocation foreseen in paragraph 5 and the concern for the efficiency of the simplified extradition procedure, and taking into account the fact that Article 4 provides the safeguards to ensure that consent is given in full awareness of legal consequences, the drafters decided that it would be appropriate to limit the possibility of revocation in time. In doing so, the Protocol distinguishes between the revocation of consent and of renunciation. Both of these time limits are to be seen as the maximum acceptable for the simplified extradition procedure, and shorter time limits for revocation defined in national legislation would be compatible with the Protocol.

As regards consent to extradition, the Parties can provide for the possibility of revocation until they take their final decision on simplified extradition which they notify to the requesting Party under Article 7. In this case, in order to ensure that revocation of consent by the person concerned is not prejudicial to the smooth conduct of the extradition procedure, paragraph 5 provides that the period between the notification of consent and notification of its revocation shall not be taken into consideration in establishing the periods of provisional arrest of 18 and 40 days provided for in Article 16, paragraph 4 of the Convention. This means that where a person revokes her/his consent the requesting Party will have as many days for submitting its request for extradition as it had when it received notification of the person's consent to her/his extradition and it ceased preparing the documents required under Article 12 of the Convention.

As for revocation of renunciation of entitlement to the rule of speciality, the Protocol limits the possibility of such revocation until the actual surrender of the person to the requesting Party. The "surrender" should be understood as the moment at which the person is taken over by the authorities of the requesting Party.

While the Protocol requires revocation to be recorded and notified immediately to the requesting Party, it does not prescribe details of a procedure for revocation. Thus, the requested Party does not have the obligation to follow the same procedure for dealing with revocation as for establishing consent (see paragraphs 1 and 2).

#### **Article 5 - Renunciation of entitlement to the rule of speciality**

Article 5 deals with the question of the application of the rule of speciality, enshrined in Article 14 of the Convention, to the simplified extradition procedure. Article 14, paragraph 1 (a) of the Convention allows the requested Party to consent to the extension of extradition to offences other than those for which the person was extradited.

The member States of the Council of Europe have a wide range of different practices with regard to giving such consent in simplified extradition cases. This Article, while giving a legal basis for the non-application of Article 14 in the simplified extradition procedure, does not impose any obligations on the Parties in this respect. It provides that any Party may declare that the rule of speciality, as set out in Article 14 of the Convention, will not apply in the case of the simplified procedure. The main concern of the Protocol is thus one of ensuring that Parties are kept informed of this aspect of each other's national procedures.

To allow for the differences between legal systems, two declarations are possible: one to the effect that the rule of speciality will not apply when the person consents to her/his extradition, such consent automatically entailing renunciation of entitlement to the speciality rule; the other to the effect that the rule of speciality will not apply where the person who has consented to her/his extradition expressly and clearly renounces her/his entitlement to the rule of speciality.

Article 14 of the Convention continues to apply for those Parties who have not made a declaration under this Article.

## **Article 6 – Notifications in case of provisional arrest**

This Article deals with situations where the simplified extradition procedure was initiated on the basis of a request for provisional arrest in accordance with Article 2, paragraph 1 of the Protocol. This implies naturally that its provisions do not apply when the requested Party has made a reservation to Article 2, paragraph 1 in accordance with Article 17 of the Protocol.

### **Paragraph 1**

Immediate notification of consent is essential to ensure the smooth conduct of the simplified procedure where its starting-point is the provisional arrest of the person sought. The reason behind stricter time limits in these cases is the fact that Article 16, paragraph 4 of the Convention requires the requested Party to terminate provisional arrest if it does not receive the request for extradition and supporting documents within 40 days following the arrest.

The preparation of a request for extradition and other documents mentioned in Article 12 of the Convention, with the necessary translations, can be time-consuming and expensive. The drafters considered that early notification would enable the requesting Party to suspend preparation of the documents required and save these resources, thereby increasing the added value of the Convention.

### **Paragraph 2:**

In the case of refusal of extradition under the simplified procedure decided on by the competent authority of the requested Party in spite of the consent of the person sought, the requesting Party will have - through a combination of the two periods provided for in Articles 6, paragraph 1 and Article 7 - at least ten days before the expiry of the 40-day provisional arrest period laid down in Article 16 of the Convention in which to submit a request for extradition in accordance with Article 12 of the Convention.

Considering that this might not always be sufficient for the preparation of the request and the supporting documents, the drafters decided to emphasise that such a refusal, despite the consent of the person sought, should be exceptional and should always leave a reasonable time for the requesting Party to revert to the ordinary extradition procedure as provided for in the Convention.

## **Article 7 – Notification of the decision**

This Article seeks to speed up procedures by introducing a time limit for the requested Party to notify its decision with regard to the extradition under the simplified procedure. It provides that the extradition decision taken by the competent authority of the requested Party must be notified within 20 days from the day on which the person consented<sup>11</sup>. This time limit applies regardless of whether the simplified extradition procedure was initiated on the basis of a request for provisional arrest or a request for extradition.

Of course, this is a maximum period and it is desirable that, where there appears to be no obstacle to extradition, just as in the case where there appears to be a major obstacle, any decision, positive or negative, should be notified as soon as possible after the person concerned has consented.

In some member States, a positive decision on extradition is not considered final until the time limit provided in domestic legislation for appealing against it has lapsed. As the simplified extradition procedure is based on the consent of the person concerned, any action by the person challenging a positive extradition decision, such as an appeal, is to be considered as a revocation of consent for the purposes of this Protocol and the provisions of Article 4, paragraph 5 apply, if the requested Party made a declaration under that paragraph<sup>12</sup>. The drafters considered that, where these States are the requested Parties, it would be appropriate for them to notify the initial decision which is subject to appeal within the deadline of 20 days, in order to avoid legal uncertainty for the requesting Party, in particular where the 40-day limit of Article 16 of the Convention is applicable. Thus, even if the initial positive extradition decision is appealed against, due to the fact that the period between the date of consent and of its revocation is not taken into account for the purposes of Article 16, the requesting Party would have enough time to use the ordinary procedure by submitting a request for extradition and the supporting documents in accordance with Article 12 of the Convention.

<sup>11</sup> One delegation indicated that it would have difficulties in notifying an extradition decision, even where it is not final, within the deadline of 20 days, which it considered too short. This delegation asked this difficulty to be reflected in the report of the meeting.

<sup>12</sup> Amendment based on a proposal of the Czech delegation.

### **Article 8 –Means of communication**

Article 8 does not replace Article 12, paragraph 1 of the Convention (as modified by the 2<sup>nd</sup> additional protocol to the Convention). It completes Article 12 of the Convention in that it provides for the use of modern means of communication as well as communication through the Interpol, in order to ensure efficient communication in the context of the simplified extradition procedure.

This Article provides a legal basis for speedy communication while ensuring a written record and its authenticity. The Parties may also request to obtain the original document or an authenticated copy, in particular by mail.

### **Article 9 – Surrender**

While the provisions of the Convention concerning surrender (Article 18) remain applicable in the simplified extradition procedure, this Article, in accordance with the spirit of the Protocol, highlights the importance of a speedy surrender when there is consent to extradition. The use of modern means of communication, in accordance with Article 8 of the Protocol, is an important element in the context of surrender.

While the drafters considered it unrealistic to set a mandatory deadline for surrender in simplified extradition cases, they nonetheless thought it necessary to send a strong signal to the Parties regarding the need to ensure surrender as quickly as possible. Accordingly, they agreed that surrender within 10 days of the receipt of notification of the extradition decision by the requesting Party would be a reasonable and practicable goal in the great majority of cases.

As the Protocol does not regulate the issue of postponed or conditional surrender, and in accordance with its Article 12, paragraph 1, the possibility of postponed or conditional surrender remains open in accordance with Article 19 of the Convention in cases where extradition was granted following the simplified procedure.

### **Article 10 – Consent given after expiry of the deadline laid down in Article 6**

This Article concerns the legal arrangements applicable where the person consents independently of the conditions laid down in Articles 2 to 9 and in particular after the 10-day period following provisional arrest specified in Article 6 has expired. It therefore does not concern the States who have made a reservation to Article 2, paragraph 1.

This Article applies to cases where the person consents after the expiry of the initial 10-day period but before the expiry of the 40-day period stipulated in Article 16 of the Convention and before the requesting Party has submitted a formal request for extradition. It provides that the requested Party shall implement the simplified procedure provided for in the Protocol. If no consent has been given when the initial 10-day period expires, the requesting Party will of course have to prepare the request for extradition without waiting for the person to consent at a later stage in order to ensure that that request can be made within the maximum period of 40 days.

### **Article 11 - Transit**

This Article follows on from the simplification operated by Article 2 of the Protocol. It simplifies the conditions applicable to transit as laid down by Article 21 of the Convention. It is important to underline that the new means of communication pursuant to Article 8 of the Protocol also apply in the case of transit.

By way of derogation from Article 21, paragraph 3 of the Convention, a request for transit may be made through electronic or any other means affording evidence in writing (such as fax or electronic mail), and the decision of the Party requested to grant transit may be made known by the same method. It does not have to be accompanied by the documents referred to in Article 12, paragraph 2 of the Convention. It is important to note that the information contained under Article 2, paragraph 1 may be considered sufficient in general for the purposes of granting transit.

Nevertheless, in exceptional cases where this information is not sufficient for the State of transit to reach a decision on granting transit, paragraph 2 allows for the possibility of requesting supplementary information from the Party requesting transit. However, this concerns information as opposed to documents and should not conflict with the abolition of the requirement to submit the documents specified by Article 12 of the Convention, where transit is requested in connection with simplified extradition procedures.

The drafters considered that Article 11 could also cover cases where only the requesting Party and the Party requested to grant transit are Parties to the Protocol. In this case, the Party requested to grant transit can ask for additional information in accordance with Article 11(b), for example in relation to safeguards foreseen in Article 4 of this Protocol.

### **Article 12 – Relationship with the Convention and other international instruments**

This Article clarifies the relationship between the Protocol on the one hand, and the Convention and other international agreements on the other hand.

Paragraph 1 ensures uniform interpretation of the Protocol and the Convention by providing that the words and expressions used in the Protocol shall be interpreted within the meaning of the Convention. The Convention should be understood as the European Convention on Extradition of 1957 (ETS No. 24), as amended between Parties concerned by the Additional Protocol (ETS No. 86) and Second Additional Protocol (ETS No. 98) thereto.

Paragraph 1 further clarifies the relationship between the provisions of the Convention and those of the Protocol, i.e. the provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol, in accordance with general principles and norms of international law..

Paragraph 2 clearly states that the Protocol does not alter the relation between the Convention and subsequent bilateral or multilateral agreements (Article 28, paragraph 2 of the Convention) or the possibility for Parties to regulate their mutual relations with regard to extradition exclusively in accordance with a system based on a uniform law (Article 23, paragraph 3 of the Convention).

This implies in particular that declarations made by EU Member States in relation with the European Union Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) would automatically apply to the Protocol and would make it unnecessary for the States concerned to make new declarations to that effect.

### **Article 13 – Friendly settlement<sup>13</sup>**

This Article makes the European Committee on Crime Problems the guardian over the interpretation and application of the Protocol and follows the precedents established in other European conventions in the criminal field. It also follows Recommendation (99) 20 of the Committee of Ministers, concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field. The reporting requirement which it lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Protocol, so that it may contribute to facilitating friendly settlements and proposing amendments to the Convention and its Protocols which might prove necessary.<sup>14</sup>

<sup>13</sup> The PC-OC considered that there was a discrepancy between the French and English versions of the Protocol with regard to this Article, which also concerns many existing conventions in the criminal field. It decided to align the French version on the wording used in the English version.

<sup>14</sup> While this is a standard paragraph found in the explanatory reports of other conventions in the criminal field (for example, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters), one delegation considered that it was not accurate to state that the CDPC was “the guardian over the interpretation and application of the Protocol” or that it had powers to propose amendments to the Convention and its Protocols. The PC-OC decided to submit this Explanatory report to the CDPC with the current wording, drawing the attention of the CDPC to this issue and inviting it to take a decision on this matter.

**Articles 14 to 19 – Final clauses**

Articles 14 to 19 are based both on the "Model final clauses for conventions and agreements concluded within the Council of Europe" which were approved by the Committee of Ministers at the 315th meeting of their Deputies in February 1980, and the final clauses of the Convention.

Since Article 16 concerning territorial application is mainly aimed at overseas territories, it was agreed that it would be clearly against the philosophy of the Protocol for any Party to exclude parts of its main territory from the application of this instrument, and that there would be no need to lay this down explicitly in the Protocol.<sup>15</sup>

It is underlined that under the provisions of Article 17, paragraph 1, ratification of this Protocol does not automatically entail any change in the reservations entered by States to provisions of the mother Convention which are amended by this Protocol. In accordance with Article 17, paragraph 2, only reservations made to Article 2, paragraph 1 are admitted under the Protocol.

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<sup>15</sup> During the meeting of the CDPC Bureau in November 2008, the question of the purpose of Article 16, which is a standard final clause, was raised. The new paragraph proposed by the Secretariat is based on paragraph 172 of the Explanatory Report to the Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine (ETS No. 164).