

Strasbourg, 12 March 2001  
[PC-OC\Docs 2001\08E – Report 42]

**PC-OC (2001) 08**

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

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

**SUMMARY REPORT**  
**of the 42<sup>nd</sup> meeting**  
**Strasbourg, 5 – 7 March 2001**

Secretariat Memorandum  
prepared by the  
Directorate General of Legal Affairs

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1. The PC-OC held its 42<sup>nd</sup> meeting from 5 to 7 March 2001 at the Council of Europe headquarters in Strasbourg. The Committee met under the chairmanship of Mr M. Knaapen (Netherlands).
2. The Bureau of the Committee is formed as follows:
  - Mr M. Knaapen (the Netherlands), Chairman, elected in March 2000;
  - Mr M. Hatapka (Slovak Republic), 1<sup>st</sup> Vice-Chairman, elected for a 2<sup>nd</sup> term in September 2000;
  - Mr E. Selvaggi (Italy), 2<sup>nd</sup> Vice-Chairman, elected in March 2000.
3. The list of participants forms Appendix I to this report.
4. The Agenda of the meeting, as adopted by the Committee, forms Appendix II to this report.
5. The Committee worked on the basis in particular of the following:

**(a) Conventions**

ETS 30 European Convention on Mutual Assistance in Criminal Matters

**(b) Working papers**

PC-OC (2000) 27 Summary Report of the 41th meeting

PC-OC (2000) 26 Preliminary Draft Explanatory Report to the Draft 2<sup>nd</sup> Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

PC-OC (2000) 29 Draft Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

PC-OC (2000) 30 Brief record of the meeting of the Bureau of the PC-OC, Strasbourg, 24 November 2000

PC-OC (2000) 31 Draft Explanatory Report to the Draft 2<sup>nd</sup> Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

PC-OC (2000) 28 Israel's Experience With Taking Evidence Abroad by Means of Video-conferencing

PC-OC (2000) 22 The Convention on the Transfer of sentenced Persons –Undue Delays Report presented by Mr. Johan Berg Adviser, Norway

PC-OC (2001) 02 Draft Second Additional protocol to the European Convention on Mutual Assistance in Criminal matters

PC-OC (2001) 04 bil Practical difficulties arising out of the application of the Conventions- Convention on the Transfer of Sentenced Persons, Paper submitted by Mr E. Selvaggi (Italy)

PC-OC (2001) 05 Practical difficulties arising out of the application of the Conventions European Convention on Extradition (early release), Paper submitted by Mr E. Selvaggi (Italy)

PC-OC (2001) OJ 1 Rev Draft agenda

PC-OC (2000) 4 Rev 3 bil Forms for requests for co-operation

PC-OC / INF5 Rev. Guide to Procedures on the Transfer of Sentenced Persons

CJ-PD-GC (2001) Terms of reference of the joint working party on the implications of data protection for police and judicial co-operation in criminal matters  
Misc 1 rev 2

**(c) Information documents**

The list of information documents available is published under the reference PC-OC / INF.

**Adoption of the Agenda**

6. The Committee adopted the Agenda, as it appears in Appendix II to this report.

**Adoption of the report of the 41st meeting**

7. The Committee adopted the report of its 41<sup>st</sup> meeting, as it appears in document PC-OC (2000) 27.

**Draft 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

8. The Committee was invited to examine the draft 2<sup>nd</sup> additional Protocol, on the basis of the following documents, with a view to its final approval:

|  |                 |
|--|-----------------|
| Draft as it came out of the 41 <sup>st</sup> meeting | PC-OC (2000) 26 |
| Draft as it came out of the Bureau meeting           | PC-OC (2000) 29 |
| Brief record of the Bureau meeting                   | PC-OC (2000) 30 |
| Draft Explanatory Report                             | PC-OC (2000) 31 |
| Latest version of the draft, incorporating comments  | PC-OC (2001) 02 |
| Further comments from Luxembourg                     |                 |
| Further comments from the Netherlands                |                 |

9. The Committee approved the draft 2<sup>nd</sup> Additional Protocol and decided to submit it to the CDPC for consideration. The Committee could not reach an agreement on the issue of data protection. Some experts expressed reservations on a limited number of provisions. The detail will appear in the final activity report (cf. below).

10. The draft Protocol [PC-OC (2001) 06] plus the draft Explanatory Report [PC-OC (2001) 07], both updated by the Secretariat as a result of the deliberations at this meeting, will be circulated to the experts by 31 March. Complaints on the accuracy of the texts, if any, are welcome by **21 April**. If necessary the Bureau will then meet to examine the issues raised. The final texts will be circulated by the Secretariat to the CDPC and the PC-OC by 8 May.

11. The final texts will be included in document PC-OC (2001) 09, in the form of a final activity report of the Committee concerning the conclusion of the draft 2<sup>nd</sup> Additional Protocol.

**Transfer of Sentenced Persons (undue delays)**

12. At its 40<sup>th</sup> meeting and upon a suggestion coming from the expert from Norway, the Committee decided to examine as soon as possible the question of undue delays in transfer procedures under the Convention.

13. At its 41<sup>st</sup> meeting, the Committee examined document PC-OC (2000) 22, prepared by Mr Johan Berg (Norway) and held a brief discussion on some of the points raised in that document.

The Committee invited its members to

- (a) react in writing (short texts) to the suggestions made by Mr Berg in his document, and
- (b) identify other issues that might contribute to delays and suggest solutions thereto (preferably in the style of Mr Berg's document).

14. The experts from Bulgaria, Sweden and Switzerland kindly contributed with written comments.

15. Considering (a) that not many experts reacted to this point and (b) that its discussion requires more time than that which is available during this meeting, the item was adjourned until the next meeting. Experts were reminded that their comments to Mr Berg's paper are expected.

#### **Transfer of sentenced persons: difficulties with the USA in the application of the Convention**

16. This item was included in the agenda at the request of one expert.

17. Because of shortage of time, the Committee decided to take up this item at its next meeting.

#### **Forms for requests for co-operation**

18. At its 39<sup>th</sup> meeting, the Committee asked the Secretariat to prepare proposals for examination at the next meeting. The Secretariat prepared a proposal in document PC-OC (2000) 4.

19. At its 41<sup>st</sup> meeting, the Committee examined a revised version of that document, i.e. document PC-OC (2000) 4 REV. A number of different comments were made

20. The Committee decided to pursue with the preparation of a cover sheet and to that end instructed the Secretariat to prepare a newly revised draft in the light of the Committee's discussions and subsequent comments.

21. On that basis, the Secretariat prepared document PC-OC (2000) 4 REV 3.

22. Copies of the forms used in the EU will be made available.

23. Because of shortage of time, the Committee decided to take up this item at its next meeting.

#### **Practical difficulties arising out of the application of the Conventions**

24. As usual, the members of the Committee will be invited to report on difficulties arising out of the application of the Conventions.

25. Questions were raised in writing by Mr Grotz (cf. doc PC-OC (2001) 1), Mrs Kohn (cf. my circular letter <sup>1</sup> of 8 November 2000) and Mr Selvaggi (cf. docs (PC-OC (2001) 04 and PC-OC (2001) 05).

26. Because of shortage of time, the Committee decided to take up this item at its next meeting.

**Information on co-operation in criminal matters between**

- **the Members of the European Union**
- **other**

27. Because of shortage of time, the Committee decided to take up this item at its next meeting.

**Data protection**

28. The Council of Europe's Committee responsible for data protection has decided to set up a working party tasked with studying the particular problems that data protection raises in the fields of international co-operation in criminal matters and police matters. The PC-OC is invited to indicate the name of one expert (preferably from countries other than those already represented in the Working Party, namely Hungary, Italy, the Netherlands, Sweden and Switzerland).

29. The Committee entrusted its Bureau with this task.

**Future work**

30. Because of shortage of time, the Committee did not take up this item.

**Miscellaneous**

31. No points were raised under this item.

**Dates of next meetings**

32. The Committee agreed on the following dates for its next meetings:

24 – 26 September 2001

and

25 – 27 February 2002

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<sup>1</sup> Which reads as follows:  
Please inform briefly:

- whether your domestic legislation in any way makes provision for persons who are in a foreign country and appear (as witnesses, experts, or accused) on a summons before the judicial authorities of your country, to enjoy immunity in respect of civil litigation conducted against that person for acts or deeds anterior to his departure from the country where he was;
- whether you think that introducing such a provision in a treaty (bilateral or multilateral) might be an option, either now or in the future.

**The above questions can be seen in the perspective of an extension of the scope of safe conduct under Article 12, paragraphs 1 and/or 2, of the European Convention on Mutual Assistance in Criminal Matters.**

**APPENDIX I / ANNEXE I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**

\* \* \* \*

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**APPENDIX II / ANNEXE II****AGENDA**

- 1. Opening of the meeting**
- 2. Adoption of the Agenda**
- 3. Adoption of the report of the previous meeting**
- 4. Draft 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**
- 5. Transfer of Sentenced Persons (undue delays)**
- 6. Transfer of sentenced persons: difficulties with the USA in the application of the Convention**
- 7. Forms for requests for co-operation**
- 8. Practical difficulties arising out of the application of the Conventions**
- 9. Information on co-operation in criminal matters between**
  - the Members of the European Union**
  - other**
- 10. Data protection**
- 11. Future work**
- 12. Miscellaneous**
- 13. Dates of next meetings**