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Strasbourg, 17 February 2004

**Restricted**<sup>1</sup>

PC-OC (2004) 03 rev

**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 47<sup>th</sup> meeting**  
**Strasbourg, 15 – 17 September 2003**

Secretariat Memorandum  
prepared by  
the Directorate General of Legal Affairs,

to be submitted for approval  
at the 48th meeting of the PC-OC, 1 – 3 March 2004

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1. The PC-OC held its 47<sup>th</sup> meeting from 15 – 17 September 2003, at the Council of Europe headquarters in Strasbourg. For family reasons, Mr Eugenio SELVAGGI (Italy) was obliged to return to Italy before the meeting began, and was therefore unable to chair the meeting. The Committee met under the chairmanship of one of the Vice-Chairs of the Committee, Ms Imbi MARKUS (Estonia).

2. The two Vice-Chairs were elected in September 2002 (45<sup>th</sup> meeting) at the same time as the Chair and in no order of precedence. The Bureau of the Committee is therefore formed as follows:

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<sup>1</sup> This document is classified only with respect to the list that appears in Appendix I which identifies participants and their contact details. The list does not appear in the internet version of this document: cf. [www.coe.int/tcj](http://www.coe.int/tcj) ('meetings')

Ms Imbi Markus (Estonia), Vice-Chair  
 Ms Astrid Offner (Switzerland), Vice-Chair  
 Mr Eugenio Selvaggi (Italy), Chairman

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. During its 47<sup>th</sup> meeting the Committee worked in particular on the basis of the following:
  - (a) Conventions
    - ETS 24 European Convention on Extradition
    - ETS 30 European Convention on Mutual Assistance in Criminal Matters
    - ETS 51 European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders
    - ETS 112 Convention on the Transfer of Sentenced Persons
  - (b) Working papers

<b>Agenda item no.</b>	<b>Doc Reference</b>	<b>Title</b>
<b>5</b>	PC-OC (2002) 05	<a href="#">Summary Report of the 44<sup>th</sup> meeting</a>
<b>5</b>	PC-OC (2002) 07	Notes for a Preliminary Draft Recommendation No. R (----) – of the Committee of Ministers to member States concerning the practical application of the European Convention on mutual assistance in criminal matters and the protocols thereto
<b>2</b>	PC-OC (2003) OJ 2	Draft Agenda
<b>3</b>	PC-OC (2003) 01	<a href="#">Summary Report of the 46<sup>th</sup> meeting</a>
<b>4</b>	PC-OC (2003) 02	Questionnaire – Interrelationship of ETS 112 and ETS 51
<b>7 c</b>	PC-OC (2003) 03	Israel, The Obligations of Third Party States in the Face of the Assertion of Universal Jurisdiction
<b>7 b</b>	PC-OC (2003) 04	The European Conventions on Mutual Assistance in Criminal Matters (1959) and Extradition (1957) and their validity and application in the light of bilateral agreements/Question raised by Lithuania
<b>8</b>	PC-OC (2003) 05	Questionnaire concerning contact information on the website
<b>11</b>	PC-OC /	The list of officials responsible

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<b>11</b>	PC-OC / INF 67	Explanatory Notes, Convention on the Transfer of Sentenced Persons, Additional Protocol to the Convention on the Transfer of Sentenced Persons [Eng. Only]
<b>7a, 7d</b>	CDPC (2002) 12	Draft opinion on mutual assistance to countries applying the death penalty
<b>6</b>	PC-PW (2003) 5	Report of the 1 <sup>st</sup> meeting
<b>6</b>	PC-TI (2003) 6	Report of the 1st meeting
<b>5</b>	PC-OC INF 54	Norway – regulations regarding remote hearings (Engl only)
<b>5, 10</b>		- Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT)
<b>7 c</b>		- Extract from “Extraterritorial criminal jurisdiction “CoE Publishing, Strasbourg 1990
<b>9</b>		Specific terms of reference of the Committee of Experts on the Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Appendix V to the CDPC plenary meeting report 2003)
<b>5</b>	ETS 182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
<b>5</b>		Explanatory Report

(c) Information documents

Information documents are made available under the reference PC-OC/INF. The reference of the relevant web page is [www.coe.int/tcj](http://www.coe.int/tcj) (from this page you may find the list of information documents by clicking on ‘Information’).

6. Adoption of the summary report of the 46<sup>th</sup> meeting

The Committee adopted the summary report of its 46<sup>th</sup> meeting, as it appears in document PC-OC (2003) 01.

7. Transfer of Sentenced Persons: feasibility/desirability of the transfer of non-custodial sentences

Discussion of the interrelationship between ETS 51 and ETS 112 followed on from the previous meeting, based on the note (PC-OC (2002) 10) prepared by Mr Örjan Landelius (Sweden). This note explores the possibility of applying the Supervision Convention as a way of supplementing the Transfer Convention, in particular in order to increase the likelihood for foreigners to qualify for conditional release, and to allow for the transfer of conditionally released persons, so that they may be supervised in their home country.

It should be noted that ETS 51 has, to date, been ratified by 17 States and, in general, does not appear to be widely used.

A questionnaire on this subject had been sent out (produced in doc PC-OC (2003) 2), to which 19 answers had been received by the date of the meeting. In particular, it was important, when preparing answers, to consult persons dealing with prison administration and bodies supervising the enforcement of sentences.

Several participants voiced doubts as to the usefulness of ETS 51. The main problems identified were the lack of ratifications, and the fact that, even where a State had ratified, it was, more often than not, unsatisfied with the applicability of the Convention.

The Secretariat would produce a document summarising the replies to the questionnaire. Further responses were therefore still welcome. On the basis of the results, the Committee would resume discussion of this item at its next meeting.

#### 8. Mutual Assistance in Criminal Matters: preparation of recommendations on the practical application of the European Convention and its Protocols

ETS 182 will enter into force with three ratifications and the relevant EU Convention of 2000 requires 8 ratifications. Several participants pointed to a number of challenges of a technical nature, which would have to be met in order to implement ETS 182.

Although a number of experts expressed a keen interest in developing a Recommendation on the Second Additional Protocol to the Mutual Legal Assistance Convention (ETS 182), as it had not yet entered into force, a majority of participants preferred to wait until some experience has been gathered first.

The Committee therefore decided to resume discussion of a Recommendation once a number of ratifications had been made and the necessary experience gathered. At that point the Committee would also look into the operation of the mother Convention (ETS 30) and of the first Additional Protocol (ETS 99).

#### 9. Mutual assistance in criminal matters as regards terrorism

The Committee of Ministers had tasked the PC-OC to explore ways to strengthen international law-enforcement co-operation in the fight against terrorism and to report on its findings by the end of 2004 (see PC-OC (2003) 1, para.13).

Mrs Gertraude KABELKA (Austria) informed the Committee of the background to this task and of the main achievements of the Multidisciplinary Group for Action against Terrorism (GMT) and of the follow-up to the GMT. She presented to the Committee the most relevant novelties of the new Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190).<sup>2</sup> The Convention will

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<sup>2</sup> This treaty was opened for signature on 15 May 2003. It will enter into force once it is ratified by all States Parties to the European Convention on the Suppression of Terrorism (ETS 090).

be open to Observer States in addition to members of the Council of Europe. The scope of the political offence ground for refusal to extradite has been reduced. On the other hand, the grounds for refusal have been expanded to include situations where the person is at risk of incurring a death sentence, or life imprisonment without parole or being subjected to torture.

The Committee also took note of the progress of two working groups on special investigative means (PC-TI) and on the protection of witnesses (PC-PW).

The PC-OC decided to resume discussion of this matter at its next meeting, inviting its members to make to contribute ideas on the issue, with a view to fulfilling the terms of reference entrusted to it by the end of 2004.

10. Practical difficulties arising out of the application of the Conventions: In accordance with the practice of the PC-OC, participants were invited to report on any difficulties arising out of the application of the Conventions. The Committee examined the following issues:

#### **A The relationship between Council of Europe Conventions and bilateral agreements**

The Committee discussed an issue raised by one expert (see doc. PC-OC (2003) 04) regarding the possible concurrent application of multilateral and bilateral cooperation conventions, e.g. as between countries in similar situations as those acceding to the European Union on 1 May 2004. To what extent do bilateral agreements apply?

The basic principle was re-iterated that bilateral agreements, which are envisaged in the extradition and mutual legal assistance conventions, apply to the extent that they do not complicate the application of the relevant convention. However, it was shown that it was not always clear what the “most favourable” instrument would be, as this might depend on the perspective of each cooperating State. Here it was emphasised that the “most favourable” test was to see not which provision would be most convenient to which party, but rather to see which treaty would afford the best, i.e. speediest, co-operation.

The Chair emphasized that it would be useful in practice for States between which bilateral agreements might apply in addition to Council of Europe conventions, to elaborate a protocol on what to make of the bilateral agreement, so as to remove doubts for practitioners.

#### **B Temporary transfer of a witness for the purpose of giving testimony or of confrontation (Article 11, ETS 30) – need for consent?**

The consent of a person to be temporarily transferred for the purpose of giving testimony or of confrontation only applies where the person is in custody.

#### **C Notion of “political offence”**

It was suggested by one State that it may be useful to elaborate, within the Council of Europe, a common definition of the notion of “political offence”. Several experts expressed the view that it would be difficult to agree on a *positive* definition of the notion. The notion being such that it would change in time, a positive definition might be so generic as to be unhelpful.

**D Reimbursement of costs of interpretation required to facilitate the presence of a prosecutor of the requesting State in the Requested State (Article 20, ETS 30). Should the requested State have a right to reimbursement?**

Different views were expressed on this point. Some requested States consider this to be part of normal cooperation expenses which would not give rise to a right for reimbursement, whereas others consider the onus to be on the Requesting State, as they would put the appointment of an interpreter in such a situation on the same footing as the appointment of an expert. Others still considered that it would depend on whether such a cost were really necessary, or on whether the expense incurred were unusually high in the light of the assistance provided.

**E Terrorist financing and double criminality**

A State raised the problem it had encountered in requesting mutual legal assistance in proceedings concerning terrorist financing, where it had received a negative reply due to the lack of double criminality.

Here it was suggested that the problem might not be so much the lack of criminalisation of certain acts in the Requested State, but rather that sometimes the statement of facts given in a request may be unclear and could therefore fail the double criminality test.

**F Request for extradition followed by an associated request to freeze assets (not by a request for mutual legal assistance, but under Article 20 ETS 24)**

Although some States allow for search, seizure and transfer of property in their national law on the basis of an extradition request, this is not always the case. Where an arrest for extradition should be followed by a search and seizure, the latter should be carried out pursuant to a request for mutual legal assistance. In order to avoid such problems, requests for extradition should be accompanied by a request for mutual legal assistance.

**G Universal jurisdiction and international cooperation in criminal matters**

Issue: Universal jurisdiction and its impact on judicial cooperation as a whole. The Committee discussed this issue on the basis of the document PC-OC (2003) 03, and continuing from the discussion held at the 46<sup>th</sup> meeting (see PC-OC (2003) 01, at para.14, part D).

The Council of Europe’s third Consultation meeting on the International Criminal Court was to be held on 17 September 2003 and would be devoted essentially to the same subject. Participants in the 47<sup>th</sup> meeting of the PC-OC had the opportunity to

attend the consultation meeting once their meeting had finished. The conclusions and working documents of the consultation meeting may be found on the Council of Europe's website on transnational criminal justice ([www.coe.int/tcj](http://www.coe.int/tcj), under the title 'International Criminal Court').

#### 11. Dissemination of information of interest to practitioners of international co-operation in criminal matters: website

The Committee was informed of developments on the Council of Europe's website on transnational criminal justice. The shortcut for this website is <http://www.coe.int/tcj>. Follow the link to the 'PC-OC Meetings' page to find the documents regarding the PC-OC meetings. PC-OC INF documents, containing information documents on international co-operation in criminal matters, can be found by following the link to the 'Information' page.

#### 12. Availability of central authority contact details on the website

Following from discussions held at the 46<sup>th</sup> meeting (see PC-OC (2003) 01, at para. 15) members considered the appropriate manner in which to make more readily available the identity and contact information for persons responsible for judicial cooperation, the conventions for which they are competent, the language used, the body or the central authority. The yellow list of officials and their contact details (PC-OC INF 6) has proved very useful, but should be updated more regularly and should be more widely available. Furthermore, it is not exhaustive, as it does not cover all of the conventions.

The Committee considered whether, and what type of, contact information should be available on the website. A questionnaire (PC-OC (2003) 05) was circulated for this purpose, the results of which would be available at the next meeting. The Secretariat would also reconsider the setting up of a restricted access website, in particular taking into consideration the limited human resources available for the maintenance of the site.

As a complementary measure, it was also suggested that the 'Guides to procedure', which are available on the Information pages of the website, should also be updated.

#### 13. Time limits applicable to provisional arrest and detention pending extradition

The expert from Hungary, Mrs NEMETH-BOKOR, proposed that it would be useful to make available on the information pages of the website a table containing information on the time limits for detention pending extradition applicable in the different contracting parties to the Extradition Convention. The Committee instructed the Secretariat to distribute a questionnaire on the subject, the results of which should be made available at the next meeting.

14. Information about work being carried out in the Council of Europe with interest to the PC-OC

Mr Silvio CAMILLERI (Malta) informed the Committee of the work undertaken by the PC-R-EV, the Committee which monitors the implementation of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141).

In the course of the work of the PC-R-EV, it had become apparent that the Convention could be updated in order to reinforce efforts in the fight against money laundering. For this purpose, the Committee of Experts on the Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (PC-RM) has now been set up and should finish its work by 31 December 2004. PC-OC representation on this PC-RM was foreseen in order to ensure consistency as regards international cooperation mechanisms. Members willing to participate in the work of the PC-RM were therefore invited to contact the Secretariat.

15. Information on co-operation in criminal matters between members of the European Union

Bearing in mind its role in co-ordinating developments in co-operation in criminal matters involving member States of the Council of Europe, the Committee collected information from participants on the latest such developments.

16. In view of the entry into force of the European Arrest Warrant on 1 January 2004, preparations were under way to facilitate its implementation. Participants from many of the states concerned (the 15 EU member States and the 10 States acceding to the EU on 1 May 2004) exchanged information on the present status of preparations at the national level.

Participants from the European Commission and from the Council of the European Union presented an overview of the content and developments regarding the implementation of the European Arrest Warrant.

Some concerns were expressed as to compliance with requirements by member States by the deadline, and as to the compatibility of the European Arrest Warrant with the Schengen information system. The Committee was informed that a new information system would be launched in 2006, which will contain all the information categories necessary for the European Arrest Warrant.

The Committee addressed the issue of the definition of “competent judicial authority”, which differs from the notion of “central authority”, a key feature of extradition procedures. The representative from the EU Council stated that the Council was presently looking into this issue of implementation.

Contracting parties to the European Convention on Extradition (ETS 24) and future participants in the European Arrest Warrant were reminded of the requirement to notify the Secretary-General of the Council of Europe of the change in regime as per Article



28.3 (ETS 24). It was noted that one possibility of doing this is upon ratification of the Protocol Amending the European Convention on the Suppression of Terrorism (ETS 190).

17. The participant from the Council of the European Union also reported to the Committee on progress on the *ne bis in idem* draft Framework Decision, which is to extend the principle beyond the 1990 provisions of the Schengen Agreement. Norway and Iceland have been associated to this initiative, as it concerns the development of the Schengen *acquis*.

18. Other relevant texts adopted within the European Union since the 46<sup>th</sup> meeting included the Model Agreement on Joint Investigation Teams (8 May 2003), the Framework Decision on the Freezing of Property or Evidence (22 July 2003) and the EU and US agreement on extradition and mutual legal assistance (6 June 2003, though ratification procedures still needed to be completed).

Furthermore, proposals under examination concerned (1) the confiscation of assets, which would allow member States to confiscate more than proceeds of crime; (2) the mutual recognition of financial penalties. Here the members would need to agree on a common certificate; (3) the mutual recognition of confiscation orders (this would be linked to the Framework Decision on the freezing of property, and the draft Framework Decision on confiscation (priority of the Italian Presidency).

#### 19. Information on co-operation in criminal matters between other States

The participant from the Russian Federation, Mr Vladimir ZIMIN, informed the Committee of amendments to the Code of Criminal Procedure adopted in July 2003, in particular Article 469 on the transfer of prisoners. The Ministry of Justice (no longer the General Prosecutor's Office) is now the Federal State body responsible for the matter of the transfer of prisoners, and is experiencing a transitional period of adaptation to this new function. The penitentiary department has been transferred to the GUIN, which is under the authority of the Ministry of Justice.

#### 20. Model forms for co-operation regarding the transfer of sentenced persons

The participant from the United States, Ms Paula WOLFF, presented the content and motivation for her delegation's proposed model forms for cooperation (PC-OC (2003) 06). In particular, she noted the problem that requests for transfer were received in a variety of forms, and were therefore not always immediately recognisable as prisoner transfer requests.

The Committee decided to consider the model forms for cooperation at its next meeting.

#### 21. Future work

It was suggested that in future the PC-OC could examine the question whether the advent of the European Arrest Warrant would require a review of the Extradition Convention (ETS 24) and its Protocols.

22. The participant from the Russian Federation, Mr Vladimir ZIMIN, proposed to prepare a draft text on the notion of “political offence” (see discussion under item 10 C above)

23. The participant from the United States noted the lack of statistics in the area of prisoner transfer, e.g. the number of applications received and the number of refusals. It was suggested that the PC-OC might collect and compile such data.

24. Dates of the next meeting

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

48<sup>th</sup> meeting: **1 – 3 March 2004**

49<sup>th</sup> meeting: **11 – 13 October 2004**

**APPENDIX I / ANNEXE I**

**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**

**Restricted / Diffusion restreinte**

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

1. Opening of the meeting
2. Adoption of the Agenda
3. Adoption of the meeting report of the previous meeting
4. Transfer of sentenced persons: feasibility/desirability of the transfer of non-custodial sentences
5. Mutual Assistance in Criminal Matters: preparation of recommendations on the practical application of the European Convention and its Protocols
6. Mutual assistance in criminal matters as regards terrorism
7. Practical difficulties arising out of the application of the Conventions:
  - Practical difficulties encountered which stem from reservations
  - The relationship between Council of Europe Conventions and bilateral agreements
  - Universal jurisdiction and cooperation in criminal matters
  - Other difficulties
8. Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site
9. Information about work being carried out in the Council of Europe with interest to the PC-OC
10. Information on co-operation in criminal matters between
  - the Members of the European Union;
  - other States
11. Miscellaneous
12. Dates of forthcoming meetings

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