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Strasbourg, 13 October 2004  
[PC-OC/Docs 2004/PC-OC (2004) 20 E Report]

**PC-OC (2004) 20**  
**Restricted**<sup>1</sup>

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

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

**Draft**  
**SUMMARY REPORT**  
**of the 49<sup>th</sup> meeting**  
**Strasbourg, 11-13 October 2004**

Secretariat Memorandum  
prepared by  
the Directorate General of Legal Affairs,

to be submitted for approval  
at the 50<sup>th</sup> meeting of the PC-OC, 27-29 June 2005

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*Note: this Secretariat memorandum is to be considered as an informal document, relating to the activities of and the discussions within the PC-OC. It aims at reporting on the background of proposals and at monitoring the progress achieved on matters being dealt with. The content of the document does not necessarily reflect the official position of the participating States.*

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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) ('PC-OC meetings')

## Preliminary remarks

1. The PC-OC held its 49<sup>th</sup> meeting from 11 to 13 October 2004, at the Council of Europe headquarters in Strasbourg, under the Chairmanship of Mr Eugenio SELVAGGI (Italy), who was elected for a second term as Chair of the Committee
2. The two Vice-Chairs of the Committee have also been re-elected for a second term. The Bureau of the Committee is composed as follows :
  - Mr Eugenio SELVAGGI (Italy), Chairman, for two years
  - Ms Astrid OFFNER (Switzerland), 1<sup>st</sup> Vice-Chair, for two years
  - Ms Imbi MARKUS (Estonia), 2d Vice-Chair, for one year.
3. The list of participants is found in the Appendix I to this report.
4. During its 49<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 182	Second Additional Protocol to the 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
ETS 167	Additional Protocol to the Convention on the Transfer of Sentenced Persons
ETS 116	European Convention on the Compensation of the Victims of Violent Crimes
ETS 90	European Convention on the Suppression of Terrorism
ETS 190	Protocol amending the European Convention on the Suppression of Terrorism
ETS 185	Convention on cybercrime
ETS 189	Additional protocol to the Convention on cybercrime

### (b) Working papers

PC-OC (2004)19	Draft agenda
PC-OC (2004)15	Draft meeting report of the previous meeting
PC-OC (2004) 04 REV2 ( <i>revision under way</i> )	Provisional arrest and detention pending extradition – time limits applicable in each country
PC-OC (2004) 15 at para. 11	Mutual Assistance in Criminal Matters: the practical application of the European Convention and its Protocols.
PC-OC (2004) 16	Requests for the collection of DNA samples and their use - document submitted by Mr. Schnigula (GERMANY).
Rec. R(82)1	Mutual assistance in criminal matters as regards terrorism
PC-OC (2004) 18	Transfer of sentenced persons: what of the transfer of mentally disturbed offenders? - document submitted by Mr. Hedvall (SWEDEN).
ETS 167 Additional Protocol	Evaluation and discussion of ETS 167 Additional Protocol to the Convention on the Transfer of Sentenced Persons: practical implementation and the implications for Human Rights protection; relationship with the Schengen Convention.

PC-OC (2004) 15) para 21	Information on the PC-OC Working Party (cf. para 21 of PC-OC (2004) 15), whose terms of reference expire on 31 December 2004.
New Start Report PC-S-NS (2002)07 PC-OC/WP terms of reference PC-OC/WP (2004) 02	Progress in the PC-OC Working Party on the follow-up to the 'Visibility' and 'Consistency' chapters of the New Start Report - report by Prof Otto Lagodny on double criminality and exchange of views
PC-OC (2004) 17	Report on progress in the PC-RM; Report from Mr. Regis (UNITED KINGDOM), PC-OC representative in the Committee of Experts on the Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
	Report on progress in the CODEXTER; Information from Mr. Hedvall (SWEDEN), the PC-OC representative in the CODEXTER
New Start Report PC-S-NS (2002)07 PC-TJ terms of reference	Report on the first meeting of the PC-TJ; held 20-22 September 2004.
PC-OC (2004) 15, para 14	The compensation of the victims of violent crimes; Information from the Secretariat concerning possible future work in this field. (cf. also PC-OC (2004) 15, para 14)
Conference website Conclusions of the Conference Convention on Cybercrime and Explanatory Report	Cybercrime Conference; Information from the Secretariat on the holding of a conference on the Challenge of Cybercrime, 15-17 September 2004. Presentation on the system of co-operation foreseen in the Convention on Cybercrime (ETS 185), which came into force on 1 July 2004.
PC-OC / Inf 69	other States Report on Romania's recent progress in the field of judicial co-operation in criminal matters
PC-OC / Inf 6	List of the responsible officials

### (c) Information documents

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

## 1. OPENING OF THE MEETING

### *Introduction*

The Chairman opened the meeting.

He passed the floor to Ms Killerby, **Head of the Department of Crime Problems** of the Council of Europe DG-I Secretariat. She said a few words on the importance of the PC-OC work in relation with the current priorities of the Organisation, including the fight against terrorism. Ms Killerby also referred to the current discussions in the Committee of Ministers' Deputies regarding the 2005

programme of activities, in view of the discussion that this Committee will have as to its next meetings (see points 14 & 17).

#### Accession of Monaco

The Committee welcomed **Monaco** as the 46<sup>th</sup> Council of Europe Member State, following its accession on 5 October 2004. Monaco was invited to this meeting but could not send an expert on such short notice. Monaco's Permanent Representation informed unofficially the Secretariat of its interest in participating at future PC-OC meetings.

#### Change of Secretariat

The committee was informed that, as of the 49<sup>th</sup> meeting, Ms Caterina Bolognese, Secretary to the Committee, will be replaced by Mr Humbert de Biolley. The Committee, through its Chairman, expressed its gratitude for the excellent work carried out by Ms Bolognese.

## 2. ADOPTION OF THE AGENDA

The Committee adopted the agenda, as it appears in Appendix II to this document.

## 3. REPORT OF THE OUTGOING BUREAU

#### Report by the Chair

The Committee's Chairman referred to the reports of the 45<sup>th</sup>, 46<sup>th</sup> and 47<sup>th</sup> meetings which show the importance of the work carried out by the PC-OC under the outgoing Bureau.

#### Highlights:

The Chairman mentioned in particular the following most relevant topics, out of the many interesting and valuable points discussed by the PC-OC:

- the specificity of the PC-OC, and its benefit, consist in creating a forum to discuss and identify solutions to concrete problems related to the interpretation and application of the European conventions on judicial co-operation in the criminal field.

#### Examples of questions discussed at the Committee's meetings:

- the application of ETS 51, European convention on the supervision of conditionally sentenced or conditionally released offenders, and the extent to which the execution of alternative measures to imprisonment can be envisaged;
  - the application of ETS 30 and 182, Convention on mutual assistance in criminal matters and its second additional protocol, and the question of the revocability of consent in the context of temporary transfers for the purpose of giving testimony;
  - the application of ETS 86, Convention on extradition, and the legal issues arising under Universal jurisdiction and Extraterritorial jurisdiction as well as the impact of Universal jurisdiction on judicial co-operation.
- Mutual Legal Assistance and extradition: the novelty of the European Arrest Warrant and its impact on the co-operation with non-European Union member states;
  - The fight against terrorism: questions of the tools existing under the Conventions on judicial co-operation, on their use and limits in the case of fighting terrorism and on new solutions and practices to be envisaged;

- The Convention on the transfer of sentenced persons and its protocol: discussion on practical matters deriving from their implementation, considering the particular dimension of these instruments in which the individual is at the centre of the procedure;
- the adoption of the “new start” report and the follow-up of it by a PC-OC Working Party entrusted to deal with the chapters “consistency” and “visibility” of the report.

*Presentation of the “explanatory notes”*

A compendium of the results of the PC-OC main discussions has been elaborated. It is based on the discussions that the PC-OC has entertained about difficulties that have arisen or may arise in respect of the practical application of treaties or CoE Recommendations. Such compendiums or “explanatory notes” have been elaborated on two matters: transfer of sentenced persons and extradition.

Their aim is to guide practitioners in solving problems arising from the application of these Conventions.

*Action point*

Update the compendium and incorporate the results of the recent PC-OC meetings.

Responsible for action: the Secretariat

**4. ADOPTION OF THE SUMMARY REPORT OF THE 48<sup>TH</sup> MEETING**

The Committee adopted the summary report of its 48<sup>th</sup> meeting, as it appears in document PC-OC (2004) 15 REV.

**5. ARREST PENDING EXTRADITION – TIME LIMITS APPLICABLE IN EACH COUNTRY**

*Introduction*

*Reference:* document PC-OC (2004) 04 Rev3.

This document contains the table of replies to the questionnaire related to the time limits on provisional arrest and detention pending extradition applicable in each country.

*General discussion*

The Committee examined the table summarising the replies.

The Committee recognised that national legislations and attitudes vary widely on this matter. In some States, there is no fixed time limit and in some others, the delays are very clearly defined.

The Committee further observes that the European Convention on Human Rights (ECHR) does not fix a precise time limit for detention pending extradition. However, the general principles of necessity and proportionality should be observed by the States in defining the applicable time limit for detention pending extradition.

*Conclusions*

- importance of the attitude of the respective States towards co-operation in criminal matters, as a key factor for its efficiency;
- the Committee encourages the States parties to the Conventions on extradition to react as quickly and as efficiently as possible to requests which a requested State might address, while keeping a person under arrest pending extradition, to a requesting State.

- Suggestion: the time limit of arrest or detention could be efficiently reduced if the requesting State sends its request already translated in the language of the requested State (even though this is not a formal requirement of the Convention).

Action points

- Put document PC-OC(2004)4 REV3 on the public web site.

Responsible for action: the Secretariat

- Add a clear warning that the document is an unofficial compendium of legislation and not an authoritative source. Practitioners will be encouraged to consult the applicable and up to date legislation of the States concerned.

Responsible for action: the Secretariat

- Participants are encouraged to forward to the Secretariat any change to their legislation, in order to keep the document accurately updated.

Responsible for action: participants from PC-OC member & observer States

## 6. Mutual Assistance in Criminal Matters: the practical application of the European Convention and its Protocols

Introduction

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182) entered into force on 1 February 2004. It has to date 8 ratifications and 21 signatures.

General discussion

*- Recommendation*

Suggestion to elaborate a new recommendation on the application of the Protocol: the Committee considers that it is **premature** to identify the key matters to be incorporated in such a recommendation, due to the recent entry into force of the Protocol and to the limited number of ratifications to date. Matters related to joint investigation teams, raised by several members, will have to be kept in mind for that purpose.

*- Terrorism*

The Committee recognised the **particular relevance** of this Protocol to the fight against terrorism. Every State is encouraged to use to the largest possible extent and in an efficient manner, the mechanisms set forth in this Protocol. The same attitude is to be promoted concerning the use of the other Conventions on judicial co-operation, in particular as regards extradition and transfer of sentenced persons.

*- Status of accession*

Countries' representatives have expressed their position on the accession to the Protocol.<sup>2</sup>

Several countries have expressed their readiness to sign the Protocol (Israel) or to ratify it (Croatia, Czech Republic, Portugal, Romania, Slovakia).

European Union member States have underlined the close links between the Protocol and the Brussels MLA Convention of 29 May 2000. As a matter of priority, some of these States have ratified (Finland, Netherlands, Portugal, Spain) or will ratify (Germany, Italy, Sweden) the EU Convention prior to envisaging the accession to the CoE second Protocol.

The EU Representative informed the Committee on the status of the ratification of the EU MLA Convention of 2000 and the next steps to be expected in the near future.

Conclusions

- **2<sup>nd</sup> Protocol brings a fundamental change of approach:** from the traditional assistance measures towards real co-operation. It sets up the basis for a functioning transnational justice system. The national legislations prepared according to the Protocol will lead to the existence of more homogeneous systems, which should increase the efficiency of the co-operation.
- **primary importance of having the mechanisms proposed by the Conventions and Protocols enshrined in the national legislations.** It would indeed ensure their effective implementation and enlarge the possibility of their application to other States (the ones which are not parties to these Conventions).
- **Committee insisted on the key factor of the States' attitude towards the concrete implementation of these provisions, as a condition for an efficient judicial co-operation. "These texts will walk on our legs", concluded the chair, in order to emphasise the importance of the role of practitioners in bringing these texts to life.**

Action point

Before the next meeting, the Secretariat should be informed on the applicable national legislation adopted on the purpose to implement the 2<sup>nd</sup> Protocol and on all relevant questions or practical problems in the application of the 2<sup>nd</sup> Protocol.

Responsible for action: participants from PC-OC member & observer States

**6.a) Request for the collection of DNA samples and their use**

Introduction

*Reference:* document PC-OC (2004) 16, prepared and presented by Mr Shnigula (Germany).

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<sup>2</sup> **Albania** ratified the Protocol, amended the criminal procedure code and adopted a law on judicial cooperation in criminal matters. **Bulgaria** amended its code of criminal procedure in September 2004 to incorporate the mechanisms of the second Protocol (ratified). **Croatia** signed the Protocol, it is preparing a new law on mutual legal assistance and on extradition, in order to implement the provisions of the relevant conventions. The code of criminal procedure will be then amended. The **Czech Republic** also amended its code of criminal procedure (entry into force: 1 November 2004); it will ratify both conventions by May 2005. **Germany:** a law is under preparation, it will incorporate the mechanisms foreseen by both Conventions; particular attention will be given to joint investigative teams and to legal aspects related to the consent of witness. **Romania** adopted a law on the cooperation in criminal matters in June 2004, incorporating the main tools from the Protocol and adopted in September 2004 a law for its ratification. **Slovakia** will soon ratify the Protocol and will ratify the EU MLA Convention by early 2005 at latest. **United Kingdom** will ratify both the 2<sup>nd</sup> Protocol and the EU MLA Convention early 2005, simultaneously.

*Main issue:* under German law, if a person has been convicted of a serious crime, DNA samples of that person can be collected even if there are no criminal proceedings currently under way. This can serve to secure evidence for possible future criminal investigations and could be used for crimes committed in the past.

*Question:* if a person has residence in a foreign country, is it possible to request that State to collect a DNA sample from that person? If yes, under which mechanism should that request be issued (MLA convention or other)?

#### General discussion

Specific aspects raised by the participants:

- the MLA convention of 1959 does not foresee such co-operation when there is no criminal proceedings under way (is it necessary to update the 1959 convention on MLA?);
- the interests of justice, of the fight against crime and of the rights of victims have to be balanced with the interest of the protection of the individuals' rights and of the confidentiality of their personal data;
- if the collection of DNA is considered as a coercive measure by the requested State, that State might verify if such possibility exists in its internal legal framework and under which condition (would it need the individual's consent?).

It appeared from the discussion that two situations have to be separated:

1. **there is a criminal case under way:** the request can be made under the MLA Convention and the results could be used for that specific case, and possibly for future cases in which the person is suspected as being involved.

The requested State will answer, according to its national legislation and to the following guidelines:

- mutual legal assistance should be granted to the widest possible extent
- if the conventional mechanisms are not appropriate, alternative measures could be envisaged, such as a police to police co-operation and,
- the spontaneous exchange of information, as proposed under the 2<sup>nd</sup> Protocol and the EU Convention of 2000, should be promoted.

2. **no criminal proceedings are under way:** a reflection should be pursued on the possibilities and the limits of granting the collection of DNA samples on individuals and, to a larger extend, on the modalities of co-operation when there is no criminal case open.

#### Conclusions

- **the matter will be submitted to the CDPC which can decide on the appropriate follow-up to be given;**
- a report on the discussion will be presented to the next CODEXTER meeting, (18-20 November 2004) by the PC-OC representative.
- this item will remain on the agenda for the following PC-OC discussions.

#### Action point

The participants will communicate to the Secretariat the relevant applicable national legislation as well as, if possible, practical problems or questions or considerations related to their application.

Responsible for action: participants from PC-OC member & observer States



## 6.b) Mutual assistance in criminal matters as regards terrorism

### Presentation

The Committee discussed this question in the light of the Recommendation Rec (82) 1 concerning international co-operation in the prosecution and punishment of acts of terrorism.

### General discussion

#### *- Russian proposal*

Mr Vladimir ZIMIN (Russian Federation) proposed “to amend the European Convention on Mutual Assistance in Criminal Matters as well as the European Convention on Extradition in order to add the obligation of the Requested State not to consider the offence motivating the request, as a political offence or an offence connected with a political offence when this offence is provided for in an international convention to which both the Requesting State and the Requested State are Parties”.

The Committee suggested that Mr ZIMIN elaborates proposed amendments to these Conventions and send these to the Secretariat for distribution to the participants prior to the next meeting.

#### *- Report from CODEXTER*

The Committee heard the report of the PC-OC representative to the CODEXTER, Mr Per HEDVALL (Sweden) see below, under 12.b)

#### *- PC-OC position*

The Committee believes that many of the tools set forth in the existing European conventions related to judicial co-operation should be used as they constitute efficient means to fight terrorism. To that end, States should be encouraged to ratify these Conventions and to refrain making reservations or to lift any existing reservations which would impinge on their efficient implementation.

### Conclusion

The PC-OC will pursue in its next meetings its discussion to identify the best ways to implement judicial co-operation in the fight against terrorism.

To this end:

- it will focus in particular on
  - extradition (and the application of the “Dutch clause”?),
  - the speed and time limits for responses to requests for assistance,
  - the collection of DNA samples;
- it will envisage ways to transform police and law enforcement co-operation into effective judicial co-operation: how to use information exchanged between police forces as evidence which can be used in trials?
- it will also look for measures (legal and practical) to improve the existing mechanisms of judicial co-operation for the fight against terrorism (for a new Recommendation?).

The Committee reiterated its position that efficient judicial co-operation depends essentially on the States’ attitude towards specific requests of assistance.

### Action point

Item to be foreseen in the Committee’s future agendas.

Responsible for action: the Secretariat

### **6.c) The death penalty and mutual legal assistance**

#### Presentation

The Committee referred to previous discussions on the matter and recalled the importance of the distinction between requests for extradition and requests for mutual legal assistance when discussing this matter.

#### Conclusion

Unless new elements are presented to the Committee, this item will no longer be included in the agenda.

### **7. TRANSFER OF SENTENCED PERSONS: WHAT OF THE TRANSFER OF MENTALLY DISTURBED OFFENDERS?**

#### Presentation

*Reference:* document PC-OC(2004)18 prepared and presented by Mr Per HEDVALL (Sweden).

*Main question:* extended exchange of information, possibly through a questionnaire, and the elaboration of a new recommendation (or improve Convention ETS 112) for the specific requests of transfer of mentally disturbed offenders.

#### General discussion

Several representatives have confirmed that their State allows the Convention ETS 112 to apply to such requests, on the basis of its Art 9.4. They confirmed however that these cases raise many difficulties due to the very different systems defined by each State for the treatment of such offenders.

There was a positive attitude towards preparing a new questionnaire that might be helpful in exchanging information and be of guidance in the handling of these matters.

#### Conclusion

States have to keep in mind the non binding character of the Convention: it belongs to the States party to the Convention to make use of it or not.

#### Action point

Assess the results of the former questionnaire (PC-OC (2000)3) and suggest to the Bureau of the Committee, for its next meeting (22-23 November), a plan for a concrete programme and defined objectives for future work on this matter, including, if necessary, a complementary questionnaire.

Responsible for action: the Swedish member of the Committee

### **8. EVALUATION AND DISCUSSION OF (ETS 167) ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON THE TRANSFER OF SENTENCED PERSONS - PRACTICAL IMPLEMENTATION AND THE IMPLICATIONS FOR HUMAN RIGHTS PROTECTION; RELATIONSHIP WITH THE SCHENGEN CONVENTION.**

#### Presentation:

*Main question:* the application of ETS 167 and the national practices on conditional release.

#### General discussion

The discussion addressed the cases in which States might refuse to grant a request for transfer on the basis of the provisions and practices of the requesting State on conditional release.

The Committee also referred to the links between a part of the provisions of the Convention and its Protocol and the Schengen agreement.

The participants also underlined that requests for transfer have a direct impact on the condition and length of detention and therefore raise matters of human rights protection, which have to be dealt with carefully.

### Conclusion and action points

The Committee took note of the exchange of views and decided to:

- prepare a report, by the next PC-OC Bureau meeting, on the existing material on the various States' legal provisions and on the need to update it or not;

Responsible for action: the Secretariat

- follow the issue, notably on the basis of a report on the outcome of the various cases brought to the European Court of Human Rights in this area.

Responsible for action: the Estonian member of the Committee

## **9. PRACTICAL DIFFICULTIES ARISING OUT OF THE APPLICATION OF THE CONVENTIONS.**

### Introduction

*Reminder:* participants are requested to have their questions or suggestions on practical aspects of the implementation of the Conventions submitted in advance to the Secretariat, so that the discussion can be adequately prepared.

*Main question:* an observer State asked to what extent a reply to a request for transfer of a sentenced person (ETS 112 & 167) could depend on the condition, put by the requested State, to have the sentence served in part in its country, before it considers the request. Under this hypothesis, the requested State, in which the sentence was pronounced, would ask the sentenced person to serve a fixed term of imprisonment in its country (*i.e.* the requested State) before the requested State can consider to transfer the sentenced person to the requesting State.

### General discussion

Some participants argued that the obligation to serve part of the sentence in the requested State is an additional condition for the transfer, which is not foreseen under Art 3 of the Convention. They believed that as soon as there is a final sentence, the request for transfer should be considered.

Several considerations were exchanged on the issue, in the light of discussions held in previous PC-OC meetings.

### Conclusions

The Committee is of the opinion that:

- the Conventions foresee the transfer of the person and of the sentence to be served;
- the implementation of these treaties has to respect both the interest of justice (*i.e.* that the sentence is served) and the interest of the individual's rights (re-socialisation). The PC-OC confirms its opinion that, even if neither of the two interests can prevail over the other, Parties will remember that the main "*raison d'être*" of the Convention is to facilitate the reinsertion of the individual;

- the Convention and its Protocol rely on the consent of States to use them. If problems arise in their implementation, Parties can refer to Art 23 of ETS 112, which proposes that the CDPC assists in reaching a friendly agreement between parties
- For the supervision of the execution of a sentence, parties can also refer to the 1964 Convention (ETS 51).
- In addition, there might be enough grounds for an individual to launch a case before the European Court of Human Rights, which would find a solution for the specific case.

A discussion was also held as to the inclusion of the names and of some data on a person in the Interpol database, as soon as a person is the subject of a European Arrest Warrant.

#### **10. DISSEMINATION OF INFORMATION OF INTEREST TO PRACTITIONERS OF INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS : TRANSNATIONAL CRIMINAL JUSTICE WEB SITE**

The Secretariat provided oral information on the transnational criminal justice web site ([www.coe.int/tcj](http://www.coe.int/tcj)) and the access to the documents for the PC-OC and the PC-TJ as well as to the restricted web site for non public documents.

#### **11. INFORMATION ON THE PC-OC WORKING PARTY**

##### *Presentation*

Ms Imbi MARKUS, vice-Chair of the PC-OC and member of the PC-OC Working Party informed the Committee on the 4<sup>th</sup> meeting of that Group (28-29 June 2004).

##### *General discussion*

The Group resumed its discussions on the follow up to the chapters “visibility” and “consistency” of the New Start report.

The composition of the WP remains identical: the members of the PC-OC Bureau (Mr Selvaggi, Ms Offner, Ms Markus) and Ms Gomes Ferreira (Portugal), Ms Kabelka (Austria) and Ms Zalewska (Poland).

The Committee also held a discussion on the topic of “**double criminality**” on the basis of the document prepared by Prof. Lagodny. It referred notably to the European Arrest Warrant, which does not require the need for double criminality for a series of crimes, among the E-U member States.

As to non-EU member States, differences should be made between requests for extradition and requests for other forms of mutual assistance. Double criminality is in practice less and less considered as a condition to grant requests for mutual assistance. In the case of extradition, most participants are of the opinion that the condition of double criminality is a principle that can be discussed but cannot be removed in the immediate future.

Conclusion

The Group will have a last meeting on 22-23 November 2004 and will finalise its report before the end of its mandate (31 December 2004).

Action point

All comments on “double criminality” be sent to the Secretariat for next PC-OC Working Party meeting (22-23 November).

Responsible for action: participants from PC-OC member & observer States

## 12. INFORMATION ABOUT WORK BEING CARRIED OUT IN THE COUNCIL OF EUROPE WITH INTEREST TO THE PC-OC:

### a) Report on progress in the PC-RM

Presentation

*Reference:* document PC-OC (2004)17 prepared and presented by Mr Simon REGIS, PC-OC representative to the PC-RM.

General discussion

The Committee encouraged the competent CoE bodies, when elaborating new legal instruments, to make sure that the mechanisms of judicial co-operation enshrined in the existing Conventions are duly taken into consideration.

This would ensure the consistency of the existing system and would avoid risks of overlaps and contradictions.

The Secretariat confirmed that the PC-RM had this general remark in mind in carrying out its work. It also informed the Committee on the novelties deriving from the revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Conclusion

The Committee decided to bring this general remark to the next CDPC, which could then instruct sub-Committees that, in matters linked to the mutual legal assistance, new provisions should be envisaged only if deemed necessary and in consultation with the PC-OC.

Action points

- Report to PC-RM the content of this discussion.

Responsible for action: Mr Regis, PC-OC representative to the PC-RM

- Report to the CDPC the main conclusion of the discussion

Responsible for action: Mr Selvaggi, Chair of the Committee

### b) Report on progress in the CODEXTER

Presentation

Mr Per HEDVALL (Sweden), PC-OC representative to the CODEXTER, reported on the work carried out by that Committee, in particular on

- researches on the apology and incitement of terrorism;
- special investigative techniques;
- protection of witnesses and collaborators with justice;
- actions against the sources of financing of terrorists;
- international co-operation on repression.

Mr HEDVALL also informed the CODEXTER on the work of the PC-OC, in particular as it relates to the fight against terrorism.

### Conclusions

See the Committee's conclusions on its approach towards terrorism under 6.b).

#### **c) Report on the first meeting of the PC-TJ**

##### Presentation

Mr B. BOHACIK (Slovakia), vice President of the PC-TJ, reported on the initial meeting of that Committee. The PC-TJ will make concrete proposals on the follow-up to the chapter "Renewal" of the "New Start" report. An interim report will be prepared for the next CDPC meeting in March 2005.

##### Conclusion

The Committee appreciates the work of the PC-TJ, as being complementary to the work of the PC-OC Working Party. The CDPC will receive the results of both the PCTJ and PC-OC WP and will ensure the consistency and complementarity of their respective follow-up proposals to the New Start report.

#### **d) The compensation of victims of violent crimes**

##### Presentation

The Secretariat informed the Committee on the draft terms of reference of the "Group of specialists on assistance to victims and prevention of repeat victimisation" (PC-S-AV), which terms of reference could be soon approved by the Committee of Ministers.

PC-S-AV would work under the authority of the CDPC and would be called upon to elaborate a draft recommendation, updating Recommendation (87)21 on assistance to victims and the prevention of victimisation. This new draft Recommendation would set out, *inter alia*, appropriate standards and principles in this area, taking into account the existing instruments in the Council of Europe, the European Union and other international fora. These terms of reference are due to expire on 31 March 2005.

#### **e) Cybercrime conference**

##### Presentation

The Secretariat informed the Committee on the specificities of the cybercrime Convention and of its Protocol. In the field of international co-operation, the Convention (which entered into force on 1<sup>st</sup> July 2004) and its Protocol foresee mechanisms to ensure rapid co-operation and specific procedural powers, which appear necessary to fight this particular form of criminality.

The Conference, held in Strasbourg on 20-22 September 2004, was aimed primarily at promoting the ratification of the Convention by the Council of Europe member States and by other countries. The Conference involved the public and the private sectors active in the field.

f) **Other:**

- **work of the CATEH (ad hoc Committee on the trafficking of human beings)**

Presentation

This ad hoc Committee was set up in 2003 and should submit a draft Convention on the trafficking of Human Beings to the Committee of Ministers, in early 2005. The Convention will aim at

- assisting victims and preventing trafficking;
- defining specific criminal acts and criminal procedures related to this crime;
- strengthening judicial co-operation.

On this last item, the Convention refers to the general principles of co-operation and to the existing Conventions. It has specific provisions on the repatriation of victims and on the exchange of information regarding the re-location of victims and their family members.

- **14<sup>th</sup> general report on the Committee for the Prevention of Torture (CPT) activities**

Presentation

The Secretariat informed the Committee of some points of interest for the PC-OC. In particular, the report raises the issue of the use of evidence obtained from torture and ill treatment.

Conclusion

The Committee recalls that the respect of human rights is a clear condition of an effective judicial co-operation (see also under 6.c) mutual assistance and death penalty).

### 13. INFORMATION ON CO-OPERATION IN CRIMINAL MATTERS

- **Between the members of the European Union: information from the EU Council Secretariat and the European Commission on progress on the European Arrest Warrant and on other developments**

Presentation

The representatives of the EU Council provided information in the following fields:

- Framework decision on the European Arrest Warrant: implemented by 23 EU countries
- Framework decision on joint investigative means: implemented by 15 EU countries
- Draft framework decision on the European evidence warrant: still at its early stages
- Framework decision on mutual recognition of confiscation orders: enters the adoption stage
- Framework decision on mutual recognition of financial penalties: enters the adoption stage
- Draft framework decision on the transfer of sentenced persons: see the EC Green Paper
- Draft framework decision on retention of data (telecoms and internet providers): under way
- European criminal records: a first proposal could be adopted before the end of the year aiming at exchanging information for certain types of crime. In the longer term, the setting up of an electronic mechanism of exchanging information and a decision on the recognition of foreign criminal decisions in cases of recidivism are envisaged.

The representative of the European Commission elaborated further on the Green Paper (April 2004).

That document analyses the legislation of 15 member States and calls for more harmonisation on

- the recognition of foreign judicial decisions,
- their execution and
- the transfer of sentenced persons (which could apply also when the person has his residence in the executing State).

#### General discussion

Participants raised the impact that such EU decisions will have on the implementation of the Convention on the transfer of sentenced persons (ETS 112) and notably on the possibility, or not, for the executing State to convert the penalty.

The Committee considers that such EU decisions should give particular attention to the respect of individuals' human rights, notably with regards to its rehabilitation and resocialisation.

#### Conclusion

The Committee wishes success to the work carried out by the EU in this field.

It suggests that an exchange of views be organised between the competent EU bodies and Council of Europe representatives on various aspects of the implementation of the Convention on transfer of sentenced persons (ETS 112). Such exchange could provide additional elements to be considered by the EU in its work.

- **exchange of views with the Secretariat of the European Judicial Network**

#### Presentation

Mr Angel GALGO, Secretary of the European Judicial Network, presented the EJM to the Committee. This network, set up in 1998, proposes an operational structure composed of national points of contacts who answer requests related to mutual legal assistance among the EU member States. A web site will soon be operational, which will provide the necessary tools to guarantee a co-operation which is as quick and as efficient as possible.

#### Conclusion

The Committee appreciated having had this exchange of views with the EJM. The Committee is interested in pursuing its contacts with the EJM to pursue the contacts and exchanges with non-EU member States.

### **14. 50<sup>TH</sup> MEETING OF THE PC-OC**

#### Presentation

The Chair informed the Committee about a meeting held with the Head of the Crime Problems Department in the CoE Secretariat, Ms KILLERBY, who confirmed the great attention attached to the work of the PC-OC and to the possibility to mark its 50<sup>th</sup> meeting by a special event.

As to the dates of the event, considering the CDPC meeting in March 2005, the Conference of the Ministers of Justice in April and the 3<sup>rd</sup> Summit of Heads of States in May, it is proposed that the 50<sup>th</sup> meeting be held in late June 2005.



A conference could be proposed for the first day, dealing with a topic of particular interest of the PC-OC with regards to priority matters dealt with by the Council of Europe. High level participants could be invited to participate in the debates.

A compendium of legal questions and practical problems discussed in the PC-OC could also be prepared and presented at this occasion (see the “explanatory notes” referred to under 3.)

Action point

By the CD-PC Bureau meeting, identify dates for the 50<sup>th</sup> meeting, prepare some suggestions for the title of the Conference and provide with information on the status of preparation of the event.

Responsible for action: Secretariat

**15. ELECTION OF A NEW BUREAU**

See para 2, page 2.

**16. MISCELLANEOUS: UPDATE OF DOC PC-OC INF 6**

Presentation

*Reference:* PC-OC Inf 6, which lists the contact persons for the purpose of implementing the CoE Conventions on judicial co-operation in criminal matters.

General discussion:

The document has been updated by the participants. It is available on the (restricted) web site on transnational criminal justice and needs to be updated on a regular basis.

Conclusion

Participants could regularly send to the Secretariat any relevant corrections, in order to have a list of person of contacts as reliable as possible which ultimately contributes to the efficiency of the judicial co-operation. Any additional comments or suggestions are welcome.

The persons of contact in this document, who are also points of contact for the European Judicial Network are encouraged to identify themselves to the Secretariat so that this can be reflected in the document.

**17. DATES OF FORTHCOMING MEETINGS**

To be discussed at the PC-OC bureau meeting, in November 2004.

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

**Restricted / diffusion restreinte**

**APPENDIX II / ANNEXE II**

**ANNOTATED AGENDA**

1. **Opening of the meeting**  
The meeting will begin at 9h30.
2. **Adoption of the Agenda** **PC-OC (2004)  
OJ 2**  
Experts are invited to adopt the agenda of the meeting
3. **Report of the outgoing Bureau**  
The outgoing Bureau, all of whose members' terms ended on 1 October 2004, will give a brief account of PC-OC activities throughout the past two years.
4. **Adoption of the meeting report of the previous meeting** **PC-OC  
(2004) 15**  
Experts are invited to discuss and adopt the summary report of the 48th meeting of the PC-OC.
5. **Provisional arrest and detention pending extradition – time limits applicable in each country** **PC-OC  
(2004) 04  
REV2  
(revision under way)**  
For background, see para 8 of PC-OC (2004) 15. The table of replies to the questionnaire was revised according to instructions received by the Secretariat and produced in PC-OC (2004) 04 REV2. This document was distributed for comments corrections (to be received by the Secretariat by 30 September) and will be revised further and distributed at the 49th meeting. Experts are invited to examine it and approve it, both in terms of form and of content. They are also invited to decide whether, in this form, it should be a document available in the public domain, e.g. as a PC-OC INF document on the PC-OC's public website, or whether it should remain available only to PC-OC members on the restricted pages of the PC-OC's website. Committee members are reminded that outstanding replies, updates or corrections should be submitted to the Secretariat and will form part of a subsequent revision.
6. **Mutual Assistance in Criminal Matters: the practical application of the European Convention and its Protocols.**  
Committee members are reminded (cf. PC-OC (2004) 15 at para. 11) to transmit to the Secretariat information regarding amendments to implement the Second Additional Protocol (ETS 182), as this would be useful for PC-OC participants.
- 6.a **Requests for the collection of DNA samples and their use** **PC-OC  
(2004) 16**  
Experts are invited to examine and discuss the issue raised in the document submitted by Mr. Schnigula (GERMANY).

- 6.b **Mutual assistance in criminal matters as regards terrorism** **Rec. R (82) 1**  
 Experts are invited to take note of the *Recommendation R (82) 1 concerning international co-operation in the prosecution and punishment of acts of terrorism*.  
 See also para. 12 of PC-OC (2004) 15 for background.
- 6.c **The death penalty and mutual legal assistance**  
 Members may wish to continue discussions on this item held at the previous meeting (see PC-OC (2004) 15, at para 13)
7. **Transfer of sentenced persons: what of the transfer of mentally disturbed offenders?** **PC-OC (2004) 18**  
 Experts are invited to examine and discuss the issue raised in the document submitted by Mr. Hedvall (SWEDEN).
8. **Evaluation and discussion of ETS 167 Additional Protocol to the Convention on the Transfer of Sentenced Persons: practical implementation and the implications for Human Rights protection; relationship with the Schengen Convention.**  
 Participants are invited to hold an exchange of views on this topic in the light of recent developments in this field
9. **Practical difficulties arising out of the application of the Conventions**  
 Participants are invited to raise any practical difficulties which they would like to have discussed within the PC-OC, concerning any of the Conventions which fall within the Committee's mandate. Participants are encouraged to formulate their questions and communicate them to the Secretariat in writing prior to the meeting.
10. **Dissemination of information of interest to practitioners of international co-operation in criminal matters: transnational criminal justice web site**  
 Information on the website – content and features - will be provided by the Secretariat.
- 11 **Information on the PC-OC Working Party** (cf. para 21 of PC-OC (2004) 15), **whose terms of reference expire on 31 December 2004.**
- 11.a Progress in the PC-OC Working Party on the follow-up to the 'Visibility' and 'Consistency' chapters of the New Start Report; **New Start Report PC-S-NS (2002) 07**  
 Experts are invited to examine the report by Prof Otto Lagodny on double criminality and to hold an exchange of views on it.  
**PC-OC/WP terms of reference  
 PC-OC/WP (2004) 02**
- 11.b WP Composition in the light of the election of a new Bureau
12. **Information about work being carried out in the Council of Europe with interest to the PC-OC:**
- 12.a **Report on progress in the PC-RM;** **PC-OC (2004) 17**  
 Report from Mr. Regis (UNITED KINGDOM), PC-OC representative in the Committee of Experts on the Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- 12.b **Report on progress in the CODEXTER;**  
 Information from Mr. Hedvall (SWEDEN), the PC-OC representative in the CODEXTER

- 12.c **Report on the first meeting of the PC-TJ;**  
Information on the first meeting of the PC-TJ, held 20-22 September 2004.
- 12.d **The compensation of the victims of violent crimes;**  
Information from the Secretariat concerning possible future work in this field. (cf. also PC-OC (2004) 15, para 14)
- 12.e **Cybercrime Conference;**  
Information from the Secretariat on the holding of a conference on the Challenge of Cybercrime, 15-17 September 2004. Presentation on the system of cooperation foreseen in the Convention on Cybercrime (ETS 185), which came into force on 1 July 2004.  
**Conference website**  
**Conclusions of the Conference**  
**Convention on Cybercrime**  
**and Explanatory Report**
- 12.f **Other**
13. **Information on co-operation in criminal matters between**  
- **the Members of the European Union: information from the EU Council Secretariat on progress on the European Arrest Warrant** as well as on other points of interest to the PC-OC; **exchange of views with the Secretariat of the European Judicial Network.**  
- **other States**  
Report on Romania's recent progress in the field of judicial cooperation in criminal matters.
14. **Event to mark the 50<sup>th</sup> meeting of the PC-OC**  
Within certain budgetary limits, the PC-OC should be able to hold, as part of its regular meeting, an event to mark the 50<sup>th</sup> meeting of the PC-OC (cf. PC-OC (2004) 15, para 28). Members will receive information from the Secretariat and the outgoing Bureau concerning this item.
15. **Election of a new Bureau**  
The outgoing Bureau having completed its term on 1 October, the Committee is called to elect a new Bureau at the outset of the meeting, immediately after the opening. The Bureau consists of a Chair, a first Vice-Chair and a second Vice-Chair and in principle their terms shall be of 2 years. However, in order to ensure a partial renewal of the Bureau and thus a certain continuity of work, the term of office of the second Vice-Chair shall be of 1 year's duration (Appendix 2 to Resolution (76) 3 – Rules of Procedure for Council of Europe committees – Article 18 c). Nominations for any of these positions should be lodged with the Secretariat.
16. **Miscellaneous**  
Participants are reminded to inform the Secretariat of any necessary updates to the PC-OC INF 6 list of contact persons (on the PC-OC's restricted webpage), as well as to other documents on the 'Information' page of the website, which contain country contributions (e.g. the cooperation manuals). Newcomers to the PC-OC are invited to consult

**New Start  
Report  
PC-S-NS  
(2002) 07  
PC-TJ terms  
of reference**

**PC-OC / Inf 69**

[www.coe.int/tcj](http://www.coe.int/tcj)

the 'Information' page, as it contains a variety of information documents produced by the PC-OC.

17. **Dates of forthcoming meetings**  
Proposed dates for the next meeting of the PC-OC will be communicated at the meeting.