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PC-OC (2004) 15 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 48th meeting
Strasbourg, 1 – 3 March 2004

Secretariat Memorandum
prepared by
the Directorate General of Legal Affairs,

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¹ 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 ('PC-OC meetings')

1. The PC-OC held its 48th meeting from 1 – 3 March 2004, at the Council of Europe headquarters in Strasbourg. Ms Astrid OFFNER (Switzerland), who is a Vice-Chair of the Committee, presided instead of the Chair, Mr Eugenio SELVAGGI (Italy), who was not able to attend the meeting due to illness.
2. The two Vice-Chairs were elected in September 2002 (45th meeting) at the same time as the Chair and in no order of precedence. The Bureau of the Committee is therefore formed as follows :
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. At the opening of the meeting the Committee expressed condolences to the representative of “the former Yugoslav Republic of Macedonia” for the death of President Boris Trajkovski.
6. During its 48th 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

(b) Working papers

Agenda item no.	Doc. Reference	Doc. Title
2	PC-OC (2004) OJ 1	Draft Agenda
2	PC-OC (2004) 05	Annotated draft agenda
3	PC-OC (2004) 03	Summary Report of the 47 th meeting
4	PC-OC (2004) 01	Questionnaire on arrest pending extradition
4	PC-OC (2004) 04	Table of Replies to the Questionnaire
5	PC-OC (2004) 09	Paper on the European Arrest Warrant and ETS 112, submitted by Mr Eugenio

Agenda item no.	Doc. Reference	Doc. Title
		Selvaggi
6	PC-OC (2004) 06	Compilation of declarations by Belgium, Denmark, Luxembourg, the Netherlands, Spain and Sweden and the United Kingdom concerning their obligations under ETS 24, upon adhering to the European Arrest Warrant
6	No doc. reference	Text and Explanatory Report of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182)
7	PC-OC (2003) 01	Summary report of the 46 th meeting:
7	PC-OC (2004) 02	Opinion by Mr Stefano Dambrosio, Prosecutor, Milan, Italy
7	PC-TI (2003) 11rev	Final report of the PC-TI
7	PC-PW (2003) 17	Final report of the PC-PW
8	CDPC (2002) 12	Draft opinion on mutual assistance to countries applying the death penalty
9	PC-OC (2004) 07	Compilation of the Text, Explanatory report, signature and ratification chart and chart of Declarations and Reservations to ETS 116
9	CDPC (2004) 04	Explanatory Note by the Secretariat to the CDPC
10	PC-OC (2003) 07 REV	Summary of replies to the Questionnaire on the Interrelationship of ETS 112 and ETS 51
10	PC-OC (2004) 08	Comments on PC-OC (2003) 07 REV submitted by Mr E Selvaggi
11	No doc. reference	Text and explanatory report of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS 167)
12	PC-OC (2003) 06	ETS 112 model forms, document submitted by the United States
13	PC-OC (2004) 10	Note on national arrest warrants as a basis for a request for extradition, submitted by Mr Eugenio Selvaggi (Italy)
13	PC-OC (2004) 11	The operation of ETS 112, in particular between Italy and Germany. Note submitted by Mr Eugenio Selvaggi (Italy)
13	PC-OC (2004) 12	The operation of ETS 112 and ETS 167 Questions submitted by Ms Lijana Štarienė (Lithuania)
14	No doc. reference	“Transnational criminal justice” website including the PC-OC Restricted access
15	PC-RM (2003) 01	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)
15	PC-OC (2004) 13	Note on the second PC-RM meeting, submitted by Mr Simon Regis (United Kingdom)
15	PC-RM (2004) 06	Report to the CDPC
15	PC-S-NS (2002) 07	New Start Report
15	PC-OC (2004) 14	Terms of Reference of the PC-OC Working Party
15	No doc. reference	Specific Terms of Reference of the PC-TJ
15	No doc. reference	Specific Terms of Reference of the CODEXTER
16	No doc. reference	Framework Decision on the European Arrest Warrant – state of implementation by Member States
18	PC-OC / INF 6	List of officials responsible
18	PC-OC / INF 68	CIS Convention (1997) on the Transfer of Offenders with Mental Disorders to another State for Compulsory Treatment, submitted by the Russian Federation

(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 (from this page you may find the list of information documents by clicking on 'Information', on the menu of this page).

7. Adoption of the summary report of the 47th meeting

The Committee adopted the summary report of its 47th meeting, as it appears in document PC-OC (2004) 03 REV.

8. Arrest pending extradition – time limits applicable in each country

At its 47th meeting the PC-OC decided to compile information regarding time limits for provisional arrest and detention pending extradition applicable in states parties to the Extradition Convention (ETS 24). A questionnaire was sent out by the Secretariat (PC-OC (2004) 01), to which 27 States replied by 23 February 2004. The results received by that date were compiled into a table (see doc. PC-OC (2004) 04) by the Secretariat. The Committee examined the useful table summarising the replies.

The Committee instructed the Secretariat to revise the document in order to make it more concise, to incorporate all outstanding replies and include as appendices to the document the full replies provided by States. Each of these replies should be dated and would include, where provided, a reference to the website of the relevant central authority. At the beginning of the document, it should be made clear that it is merely a general guide. Readers should be warned that the document is not an authoritative source on which practitioners should rely absolutely, in particular as it may not be entirely up-to-date. Users of the document should be encouraged to consult the full reply for the particular state, as well as the central authority's website, where provided.

The Chair called for **all outstanding replies to the questionnaire** (and any **corrigenda to the present document PC-OC (2004) 04**), so as to ensure that the document is as inclusive as possible. States will be invited to **update the information when necessary**. The Committee postponed until its next meeting the decision of what publicity to give to the document, once a revised document was available. This question should be linked to the general question of access to the PC-OC's documents.

9. Council of Europe extradition instruments in the light of the entry into force of the European Arrest Warrant

At the 47th meeting of the PC-OC, several delegations supported the idea of examining the impact of the EU's Framework Decision on a European Arrest Warrant (EAW) on the Council of Europe's conventions on extradition, given the fact that the EAW significantly altered relations among certain states parties to ETS 24.

In response to a question posed by Mr Selvaggi (Italy) (see Question A in PC-OC (2004) 09), the Committee found that there was no uniform regulation in the relevant states on the issue of which instrument (EAW or ETS 112) governed a re-transfer for the purposes of serving a sentence, once a person had been convicted pursuant to a EAW. Some states apply the EAW Framework Decision as requiring them to legislate and others apply ETS 112 by analogy. In any case, as the instrument is too new, more experience would need to be gathered in this area.

As for Mr Selvaggi's second question (Question B, PC-OC (2004) 09), the Committee decided that it would be premature to embark upon an amendment to ETS 24 in order to introduce a re-transfer provision.

10. Council of Europe extradition instruments in the light of the entry into force of the European Arrest Warrant – formal requirements for EAW to prevail over other treaty arrangements

States parties to the Council of Europe Convention on Extradition (ETS 24) which have also adhered to the EU's European Arrest Warrant are required to make a declaration to the Secretary-General of the Council of Europe of the fact that EAW arrangements shall prevail over previous extradition treaty arrangements. This declaration has been made so far only by Belgium, Denmark, Luxembourg, The Netherlands, Spain, Sweden and the United Kingdom. A compilation of such declarations appears in document PC-OC (2004) 06. The Committee considered the document and **called upon the relevant states that had not yet done so, to make the necessary declaration.** The representative from the European Commission informed the Committee that a report on this issue is being prepared and shall be ready by the end of 2004.

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

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182) entered into force on 1 February 2004, by virtue of ratifications by Albania, Denmark and Poland.

Participants exchanged information regarding the signature, ratification and implementation of ETS 182. The participant from Albania informed the Committee that amendments to the Code of Criminal Procedure have been undertaken. A number of participants informed the Committee that their countries would be in a position to accede to the Protocol by the end of this year or early in 2005. Israel is also preparing its ratification of ETS 182. In the Slovak Republic, which will

ratify the Protocol by the end of 2004, the Criminal Procedure had already been amended to reflect the content of the Protocol. Certain States already indicated that they would be availing themselves of the opportunity to make reservations to the Protocol concerning some of the problematic special investigative means foreseen. The Polish reservation regarding cross-border observations (Article 9) does not preclude such arrangements in accordance with bilateral agreements with neighbouring States.

Participants also shared information regarding the state of ratification of the Brussels MLA convention of 29 May 2000. In particular, it is already in force between Spain and Portugal (pursuant to a provisional application declaration).

Committee members are invited to **transmit to the Secretariat information regarding amendments to implement ETS 182, as this would be useful for PC-OC participants.**

12. Mutual assistance in criminal matters as regards terrorism

The Committee of Ministers gave *ad hoc* terms of reference to the PC-OC to examine international cooperation mechanisms with a view to their reinforcement in particular as regards the fight against terrorism (see Summary Report of the 46th meeting: PC-OC (2003) 1, at para. 8). The PC-OC is required to fulfil its mandate by the end of 2004. In order to give the PC-OC food for thought and discussion on this issue, the Bureau decided at its meeting in January 2004 to commission an opinion on the subject by a prosecutor specialised in the fight against terrorism and familiar, therefore with the challenges which might be met with an improved level of mutual legal assistance. The paper was prepared by Stefano Dambroso, Prosecutor, Milan (Italy) (see doc. PC-OC (2004) 02), and distributed prior to the meeting.

The Committee discussed the paper and found that the problem with the fight against terrorism lied not with the cooperation mechanisms and instruments available, but rather with the general *attitude* towards cooperation. The Committee shared the view of the PC-TI and the PC-PW (see final reports PC-TI (2003) 11rev and PC-PW (2003) 17, respectively) that any new mechanisms should not be limited to the fight against terrorism, but should rather apply to all serious organised crime. It considered that the Second Additional Protocol to the mutual assistance convention, which has only just come into force, already contains a number of very useful mechanisms which would help in the fight against terrorism and other forms of serious transnational crime. It was therefore imperative that this instrument be ratified by many more states and that reservations to it are kept to a minimum.

In particular, ETS 182 contains witness protection provisions and provisions on special investigative means. The best possible contribution to be made in this field is, therefore, for the Protocol to be widely applied. Political will to do so is, therefore, the determining factor. Those States intending to make reservations should reconsider this attitude. In order to address problems encountered in the practical application of this Protocol, the PC-OC would stand ready to draw up a Recommendation on its implementation, on which some preliminary work has already begun (see doc. PC-OC (2002) 07).

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.

13. The death penalty and mutual legal assistance

Concerning the issue of mutual legal assistance with a country which applies the death penalty, the PC-OC Bureau decided at its meeting in January that it might be useful for the PC-OC to take a look at the opinion prepared in 2002 (CDPC (2002) 12), in order to see whether it had any new elements to add to this opinion.

All participants in the meeting reaffirmed their agreement with the basic thrust of the conclusions reached in that opinion. Many delegations took the view that a requesting State could always invoke the “ordre public” ground for refusal or lay down conditions for mutual legal assistance which would resolve the problem of the death penalty in a particular case. Other delegations, however, expressed some hesitation on whether the “ordre public” ground for refusal is a satisfactory solution, especially where the furnishing of assistance could help prevent the imposition of the death penalty, and in particular because doubts were raised as to the possibility under present arrangements of laying down conditions in such circumstances.

Should the CDPC wish to pursue this issue in greater depth, the PC-OC would be in a position to do so.

14. European Convention on the Compensation of the Victims of Violent Crimes (ETS 116)

At its meeting in January 2004, the Bureau of the CDPC decided to ask the Plenary (meeting from 16-19 March 2004) to entrust the PC-OC with the task of looking into the operation of the European Convention on the Compensation of the Victims of Violent Crimes (ETS 116), and in particular to examine why the Convention is not widely implemented. An Explanatory Note by the Secretariat to the CDPC (CDPC (2004) 04) was provided as background information to the PC-OC.

In view of the forthcoming meeting of the CDPC, the Committee held an exchange of views on the reasons for the poor level of ratification of this Convention (15 ratifications and 9 signatures not followed by ratification).

Information from States which have not ratified ETS 116:

The participants from **Albania** and **Belgium** mentioned their governments’ commitment to ratifying ETS 116. In **Slovenia**, which has neither signed nor ratified ETS 116, a study is under way regarding the required funding. The authority managing the prospective fund would be the same one established to oversee family maintenance payments. In **Turkey** the current draft law on compensation is intended only to cover victims of terrorism. In the **Slovak Republic** a domestic law has provided for the possibility of compensation since 1991. This law does not give rise to a legal right to compensation, whereas this is a requirement of ETS 116. This position

may have to be reviewed, also considering membership in the EU. Likewise, in **Malta**, a Commission examines claims, but awards them *ex gratia*, and not as of right. In **Croatia** domestic legislation exists which complies with ETS 116. In 2003 a law was passed on the compensation of victims of terrorism and public demonstrations, providing for a system of social solidarity and speedy compensation. In **Ireland** a criminal injuries tribunal exists, which can award compensation regardless of where a conviction has been secured.

Information gathered from States which have ratified ETS 116:

In **France**, the victims' compensation scheme in place is a judicial board to which victims must apply. There is no nationality requirement, but the condition for compensation to be awarded is that the victim declares that, due to the injury, he or she was forced to be off work for 8 days or more. Once the status is established, the same judicial board determines the level of compensation. Moreover, where a court has identified the author of the crime which resulted in the injury to the victim, the judicial board can call upon the author of the crime to reimburse the compensation to the State. In the **United Kingdom** a Criminal Injuries Appeal Panel exists. There is no need for a criminal conviction. Compensation is awarded according to a scale of injuries. Where a court makes a compensation order, the Panel also takes this order into account. In **Norway** a new law was adopted in 2001 and a new Compensation Board was established in 2003. There is no requirement for a criminal conviction, but the victim must prove that he or she has been a victim. For this purpose, the Board reads the police file. The Board can also oblige the author of the injury to reimburse the compensation awarded. **Spain** ratified ETS 116 in 2002, but has gathered little experience of its application. The central authority is the Government unit which awards compensation.

Overall, the Committee noted that some States have ratified the Convention and/or have a compensation scheme in place, whereas some have not, the reasons for which are linked *inter alia* to parallel initiatives within the EU, which are quite advanced.² The financial implications of the establishment of compensation schemes were underlined as a potential obstacle. Many States already have a compensation scheme in place which does not, however, correspond to the system put forward by the Convention.

Given the breadth of information provided in this exchange of views, the participants in the PC-OC doubted that there would be any need to pursue this matter further through a questionnaire to all States. Depending on the decision of the CDPC, the PC-OC Bureau would be able to address this matter further at its meeting in June 2004.

² The representative from the European Commission referred to a green paper on the compensation for victims of violent crimes. A Directive on compensation is currently being elaborated and is about to reach COREPER level.

15. ETS 051 and the Transfer of sentenced persons: feasibility/desirability of the transfer of non-custodial sentences

A summary of the results of the questionnaire regarding this issue was distributed to PC-OC participants (see doc. PC-OC (2003) 07 REV). The Committee discussed the results and how to proceed further, also on the basis of comments submitted by Mr Eugenio SELVAGGI (Italy) (see doc. PC-OC (2004) 08).

Concerning the interaction of ETS 51 and 112, the Committee took the view that, although implementation of the ETS 51 Convention may be weak, the Committee could not at this stage identify a manner in which it could usefully be improved, or how the recognised ‘gaps’ could be filled. It therefore decided to reconsider the issue in future if this situation were to change.

The Committee turned to the questions raised by Mr Selvaggi in this connection (PC-OC (2004) 08) and identified them as stemming rather from an internal problem encountered specifically in Italian law, and not as issues which could usefully be addressed by the Committee as a whole.

16. (ETS 167) Additional Protocol to the European Convention on the Transfer of Sentenced Persons - practical implementation and the relationship between the Protocol and human rights.

Ms Imbi MARKUS, the representative from Estonia, informed the Committee of an individual case of implementation of the Additional Protocol (ETS 167) to ETS 112, which is currently the subject of a complaint before the European Court of Human Rights. The case concerns a transfer from Finland to Estonia, to which the person has not consented. The effect of the transfer would be for the person to serve the sentence differently than the way foreseen in Finland, where the person would normally benefit from mandatory conditional release. In Estonia, the administering state, whose laws would apply to the execution of the sentence, such release would be possible but not automatic. Although technically, the sentence would not change, but its execution would, and therefore the sentence itself would not be aggravated, some took the view that the sentence would be *de facto* aggravated.

The Committee took the view that, essentially, this is a problem of the internal legislation of the two countries, rather than a problem of the application of the Convention and the Protocol. The Committee reiterated that the execution of a penalty is governed by the law of the administering State. An exchange of views showed that there is insufficient similar practice regarding this problem in other countries. The PC-OC therefore took note of this issue. It was not of the opinion that this was a case to bring before the CDPC for friendly settlement.

17. Model forms for the operation of the transfer convention (ETS 112)

At the 46th meeting of the PC-OC, the observer from the United States had submitted draft model cooperation forms relating to the operation of the Convention on the Transfer of Sentenced Persons (PC-OC (2003) 06), which the Committee now examined.

The Committee took note of the proposed model forms and decided that, although they could be useful specifically for transfers occurring in cooperation with the United States, they would be less appropriate for more general use. In particular, many States already had developed a certain practice with particular transfer partners and this relationship would not necessarily benefit from the introduction of a standardised form.

18. 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. National arrest warrants as a basis for a request for extradition

In the note submitted by Mr Eugenio SELVAGGI (Italy) (PC-OC (2004) 10), the problem was raised of the expiry of the validity of a national arrest warrant. Experience as a requested State showed that it was not clear from an arrest warrant issued by a national authority and on the basis of which an extradition was to take place, when the time limit for the arrest would begin and when it would therefore expire. Would the period begin from the moment of the arrest in the requested State or from the moment of the surrender to the requesting State? From the point of view of the requesting State, an extradition may actually take place, only for the (requesting State) authorities to discover that the validity of the original warrant of arrest had expired, causing a complicated situation, from a legal point of view.

The Committee noted that it is important to be sensitive to the procedural issues in the requesting State. In the interest of avoiding misunderstandings and adverse consequences, the State issuing the arrest warrant should always specify in the warrant (or the extradition request) *when* the time limit will begin to run.

B. The operation of ETS 112, in particular between Italy and Germany.

The note submitted by Mr Eugenio Selvaggi (Italy) (PC-OC (2004) 11) points to a particular problem of the competing enforceability of different court decisions, due to a German provision of criminal procedure which allows for the dispensation (or reinstatement) of the execution of a prison sentence, where the person shall be extradited (or returns after extradition). It was noted that a similar provision also exists in the criminal procedure of the Slovak Republic. The Committee underlined the need for better coordination among cooperation partners. In particular, central authorities should keep one another informed of procedural steps ongoing which shall affect the outcome and objective of cooperation requests. Information should also be coordinated among national as well as international authorities, in particular to avoid problems of different competing requests received by different national authorities regarding the same individual.

C. The operation of the Convention on the Transfer of Sentenced Persons (ETS 112)

The Committee examined the questions submitted by Ms Lijana ŠTARIENĖ (Lithuania) (PC-OC (2004) 12), in particular regarding the possibility for a State to refuse to receive a transfer where the person would soon after have benefited from release in the sentencing State. The Committee noted that the lengthy handling of transfer procedures is a regrettable but often inevitable reality of the operation of ETS 112, especially when appeals delay the process. A pragmatic approach to time-consuming transfers must be adopted, in particular as regards the usefulness of the transfer. Especially where 6 months or less of the sentence remain to be served, a transfer is unlikely to be worth the effort involved. Nevertheless, other considerations, such as reintegration and ensuring that the country of origin has the opportunity to take steps to include a person in a post-sentence resocialisation programme, are still relevant. Ultimately, however, States are free to approve or reject a transfer, as ETS 112 does not give rise to an obligation to transfer.

D. The operation of the Protocol (ETS 167) to the Convention on the Transfer of Sentenced Persons (ETS 112)

The Committee examined the question submitted by Ms Lijana ŠTARIENĖ (Lithuania) (PC-OC (2004) 12), in particular regarding the relevance of the opinion of the person to be transferred (see also discussion under paragraph 16 above). The Committee referred to the explanatory report of the Protocol, reiterating that the person's opinion must be taken into account, by both cooperation parties. However, once again (see under paragraph 18 C above), neither the Transfer Convention, nor its Protocol, gives rise to an obligation to transfer or to receive a transfer. It is therefore open to the Administering State to refuse to transfer the person, even under the Protocol, under which the person's consent is not legally required.

19. Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site

Information was provided to the participants by the Secretariat, in particular regarding a new restricted access page on the transnational criminal justice website (www.coe.int/tcj). The link to this page ('Restricted Access') can be found in the menu, under the item 'PC-OC meetings'. It contains the most recent version (**updates and corrections welcome**) of the list of cooperation officials and their contact details (PC-OC INF 06), as well as PC-OC meeting documents which are not public. Participants were informed of the username and password required to consult the restricted access webpage.

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

20. PC-OC Bureau. Ms Imbi MARKUS (Estonia, Vice-Chair of the PC-OC) informed the Committee of the decisions taken by the Bureau at its meeting held on 12 January 2004, regarding representation of the PC-OC in other committees. The Bureau also discussed the terms

of reference entrusted to the PC-OC regarding improvement of cooperation mechanisms in the fight against terrorism and decided to commission a study by a Prosecutor (see para. 12 above).

21. PC-OC Working Party on follow-up to the New Start report. Ms Imbi MARKUS (Estonia, Vice-Chair of the PC-OC) reported to the Committee of the third meeting (12-13 January 2004) of the Working Party (WP) on follow-up to the “Visibility” and “Consistency” chapters of the New Start report (PC-S-NS (2002) 07). In particular she mentioned a study on the topic of double criminality being undertaken by Prof. Otto LAGODNY, of the University of Salzburg. The Committee approved the extension of the terms of reference of the WP until 31 December 2004. (see WP terms of reference, PC-OC (2004) 14).

22. The Committee was informed that the first meeting of the **Committee of Experts on Transnational Criminal Justice (PC-TJ)** – entrusted by the CDPC to give follow-up to the ‘Renewal’ chapter of the New Start Report – is to be held in the third week of June 2004.

23. PC-RM Mr Simon REGIS (United Kingdom) represents the PC-OC in the Committee of Experts on the Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (PC-RM). He reported to the PC-OC on the second meeting of the PC-RM, held in February 2004 (see document PC-OC (2004) 13). In particular, the Committee was informed of the work schedule of the PC-RM which would soon be considering the international cooperation chapter of the draft Protocol. The Committee thanked Mr REGIS for his thorough report and instructed him to check whether the PC-RM plans to include asset-sharing in the protocol and to keep the PC-OC informed. If this is the case, the PC-OC would take a position on the matter. **Those states which do have asset-sharing regulations in place are invited to transmit them to the Secretariat for distribution among other interested participants.**

24. The Committee of Experts on Terrorism CODEXTER Mrs. Gertraude KABELKA (PC-OC member for Austria until September 2003) represented the PC-OC (as well as Austria) at the CODEXTER's first meeting in late October 2003.

At the first meeting the CODEXTER discussed its Draft Specific Terms of Reference for 2004 (Appendix VI of the Draft Meeting Report), and it was decided to continue to provide for representation of the PC-OC in the CODEXTER, as a basic institution with a fundamental task and a long lasting tradition.

Mrs. KABELKA cannot continue to represent the PC-OC, as she was elected Chair of the CODEXTER and, at any rate, she is no longer a member of the PC-OC, having retired from her functions in the Austrian Ministry of Justice. The PC-OC appointed Mr. Per HEDVALL (Sweden) as its representative in future meetings of the CODEXTER. In case Mr. HEDVALL would be unavailable for a meeting, the PC-OC appointed Ms Julie DUTRY (Belgium) as a substitute member.

25. The Committee was informed of the new features of the Council of Europe’s treaties website (<http://conventions.coe.int/>), of which PC-OC members are regular users. In particular, the treaties website now contains extensive documentation in German, Italian and Russian, in addition to the official French and English texts. Reference to Council of Europe treaties from No.s 001 until 193 began with the letters ETS (standing for “European Treaty Series”), whereas

conventions adopted from 2004 onwards would have the denomination CETS (“Council of Europe Treaty Series”), followed by the three-digit number. For technical reasons, however, the website uses only the code CETS for the whole series.

26. Information on co-operation in criminal matters between the Members of the European Union

European Arrest Warrant

Ms Anne FARRELL, the representative from Ireland, which currently holds the Presidency of the European Union, gave the Committee an overview of developments within the EU. Eight member States had passed legislation necessary for the implementation of the EAW Framework Decision, whereas the remaining 7 members are set to do so by summer 2004. Hungary has already done so in advance of accession to the EU on 1 May 2004.

Mr Guy STESENS, the representative of the Secretariat of the Council of the European Union, informed the Committee of the address of the website on the implementation of the European Arrest Warrant: <http://ue.eu.int/ejn2/default.asp?lang=EN>

Ms Ana Maria GALLEGO TORRES, the representative from Spain, informed the Committee of the address of a website aimed at giving a practical guide on the implementation of the European Arrest Warrant in Spain. The address is <http://ww.mju.es/euroorden> and the website is in Spanish.

Mutual Legal Assistance

The EU has concluded agreements with Norway and Iceland, which bring them within the EU’s mutual legal assistance regime.

Ireland is in the process of drafting legislation for the EU Council Directive on the execution of orders for the freezing of property and evidence. A draft Framework Decision on the mutual recognition of confiscation orders will be tabled at the Justice and Home Affairs Council at the end of March 2004. The European Commission representative informed the meeting of a proposal it had adopted on 14 November 2003 for an EU Council Framework Decision on a European Evidence Warrant.³ The proposal applies the principle of mutual recognition to a European Warrant for the purpose of obtaining certain types of objects, documents and data for use in proceedings in criminal matters.

The proposal focuses on objects, documents or data obtained under procedural law measures such as production orders and search & seizure orders. It includes requests for copies of criminal records. It does not address taking statements from suspects, defendants, witnesses or victims. Nor does it address procedural investigative measures which involve obtaining evidence in real-time, such as interception of communications and monitoring of bank accounts.

³ The text of the proposal (doc COM(2003)688) can be found on the EU’s EUR-Lex website (<http://europa.eu.int/eur-lex/>) in the “legislation in preparation” section.

Although this proposal does not cover the obtaining of these other types of evidence, it is a first step towards replacing the existing regime of mutual assistance within the European Union by a single EU body of law based on mutual recognition and subject to minimum safeguards.

Transfer of Sentenced Persons

The representative from the European Commission informed the Committee that a *Green Paper on ETS 112 and ETS 167* will be published by the European Commission in April 2004.

Compensation of victims

Mr STESENS informed the Committee of the Draft Directive on which it is hoped that final agreement shall be reached in April or May 2004.

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

Mrs Vesselina MALEVA (Bulgaria), informed the Committee of steps Bulgaria had taken with regard to Council of Europe Conventions in the Criminal Field. In particular, Bulgaria signed the European Convention on the International Validity of Criminal Judgments, the European Convention on the Transfer of Proceedings in Criminal Matters and the Additional Protocol to the Convention on the Transfer of Sentenced Persons in October 2003, during the 25th Conference of the European Ministries of Justice in Sofia. The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters was signed on 8 November 2001 in Strasbourg.

In January 2004 the Bulgarian National Assembly adopted three laws on ratification of these Conventions and the Additional Protocol to the Transfer Convention. On 18 February 2004, the fourth law on the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters was adopted. In the near future, the Ministry of Foreign Affairs would notify the Secretary General of the Council of Europe about the ratifications of these Conventions and Protocols.

A working group of Bulgarian experts has prepared amendments and supplements to the Bulgarian Criminal Procedure Code concerning the application of these international acts. The texts of the amendments and supplements were assessed by a Council of Europe expert and the amendments will be finalised and submitted for adoption.

On 26 February 2004 Bulgaria ratified the Protocol amending the European Convention on the Suppression of Terrorism and was therefore the first State to have ratified this Protocol. On 4 February 2004 Bulgaria ratified the Additional Protocol to the Criminal Law Convention on Corruption.

In relation to item 10 of the agenda (see paragraph 15 of this report), Mr Vladimir ZIMIN (Russian Federation) informed the Committee of a 1997 CIS Convention on the Transfer of Offenders with Mental Disorders to another State for Compulsory Treatment (see doc. PC-OC INF 68, available in Russian only). The Convention is in force in respect of 10 members of the Commonwealth of Independent States (CIS), i.e. all except Turkmenistan and Kirghistan. The mechanism envisaged is similar to that of ETS 112. The consent of the person and his or her

legal representative is required, as well as the two States' agreement to the transfer. The court's decision on compulsory treatment should be final. Double criminality is required. The State receiving the transfer should provide treatment and ensure the necessary security measures.

28. Event to mark the 50th meeting of the PC-OC

Further to a proposal by Mr SELVAGGI (Italy), and provided the necessary funds would be available, the PC-OC could mark its 50th meeting by holding, on the third day of its meeting, a seminar on a topic of interest to practitioners and theoreticians specialising in international co-operation in criminal matters. The Chair invited participants **to make proposals for topics during the meeting or in writing**. The Bureau could examine these proposals at its next meeting (June 2004).

Mrs Irena STÁTŇÍKOVÁ (Czech Republic) suggested that a seminar could be devoted to a topic contained in the New Start report. Mr Nicolaos PARASKEVOPOULOS (Greece) suggested that trends and limitations of mutual legal assistance could be explored in a seminar. Mr Miloš HAŤAPKA (Slovak Republic) welcomed the prospect for the PC-OC to receive input from sources outside its own circle. He suggested that, in terms of format, it would be interesting to hold morning workshops.

29. Miscellaneous

The Chair welcomed the first attendance in the PC-OC meetings by an observer from Mexico. Mr Agustín M. DE PAVIA informed the Committee that, although Mexico has had long-standing relations with a number of European countries (especially Spain) in the area of cooperation in criminal matters, ties had begun to grow with many more countries in recent years.

The Committee bade farewell to Mr Miloš HAŤAPKA for whom this was the last PC-OC meeting. Mr HAŤAPKA had represented the Slovak Republic in the Committee for the past 9 years, and would be taking up other duties in his Ministry. On behalf of the Committee, the Chair thanked Mr HAŤAPKA for the fine contribution he had made to the work of the Committee over the years.

30. Dates of forthcoming meetings

Dates of the 49th meeting: 11 - 13 October 2004

The Committee was informed that further meeting dates would be set at the 49th meeting, in particular to take into account the dates of the CDPC Plenary meeting, which is now to be held regularly in March. In the light of the necessary rearrangement of the PC-OC's regular meeting schedule, the Bureau would discuss possible options and make proposals to the plenary at the 49th meeting in October.

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 meeting report of the previous meeting
4. Provisional arrest and detention pending extradition – time limits applicable in each country
5. Council of Europe extradition instruments in the light of the entry into force of the European Arrest Warrant
6. Mutual Assistance in Criminal Matters: the practical application of the European Convention and its Protocols
7. Mutual assistance in criminal matters as regards terrorism
8. The death penalty and mutual legal assistance
9. The European Convention on the Compensation of the Victims of Violent Crimes (ETS 116)
10. ETS 51 and the Transfer of sentenced persons: feasibility / desirability of the transfer of non-custodial sentences
11. ETS 167 Additional Protocol to the Convention on the Transfer of Sentenced Persons: practical implementation and the implications for Human Rights protection
12. Model forms for the operation of the transfer Convention (ETS 112)
13. Practical difficulties arising out of the application of the Conventions
14. Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site
15. Information about work being carried out in the Council of Europe with interest to the PC-OC
16. Information on co-operation in criminal matters between
 - the Members of the European Union;
 - other States
17. Event to mark the 50th meeting of the PC-OC
18. Miscellaneous
19. Dates of forthcoming meetings

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