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PC-OC (2009) 12

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

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

**SUMMARY REPORT
of the 56th meeting of the PC-OC**

**Strasbourg, 12-14 May 2009
AGORA, Room G 02**

EXECUTIVE SUMMARY

At its 56th meeting, the PC-OC:

50th anniversary of the European Convention on Mutual Assistance in Criminal Matters

- welcomed the fact that the Convention will be in force with respect to all member States of the Council of Europe on 16 June 2009 and highlighted the need to promote the ratification of its Second Additional Protocol (paragraphs 4-6);

Simplified Extradition

- adopted a draft Third Additional Protocol to the European Convention on Extradition and its draft Explanatory Report (paragraphs 7-9, Appendices IV and V);

Rule of speciality and Lapse of Time

- examined draft texts amending Articles 10 and 14 of the European Convention on Extradition, amended them and invited delegations to submit their comments in view of the next PC-OC Mod meeting (paragraphs 10-14);

Channels and means of communication

- instructed the PC-OC Mod to continue the examination of this item on the basis of a revised proposal submitted by Mr Vladimir Zimin (Russian Federation) (paragraph 15);

Follow-up of the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote)

- decided to report to the CDPC that the majority of delegations did not see a need to embark on further work regarding the relationship between asylum procedures and extradition procedures, while agreeing that the PC-OC had identified a number of issues which could be usefully dealt with in the context of the PC-OC's general terms of reference (paragraphs 17-20);

Practical problems and concrete cases concerning the implementation of conventions

- had an exchange of views concerning issues brought to its attention by Belgium, Finland and Andorra (paragraphs 25-30);

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

- took note of information provided by the Secretariat and by the representative of the General Secretariat of the Council of the European Union (paragraphs 31-33);
- set the dates for its next meetings as 30 September-2 October 2009 for the 8th meeting of the PC-OC Mod and 17-19 November 2009 for the 57th meeting of the PC-OC.

1. OPENING OF THE MEETING

1. The Chair, Mr Erik Verbert (Belgium), opened the meeting and welcomed all participants.
2. The Director of Standard Setting of the Directorate General of Human Rights and Legal Affairs (DG-HL), Mr Jan Kleijssen, informed the PC-OC about recent developments within the Council of Europe in the criminal law field, and in particular about the developments concerning the preparation of draft Conventions against counterfeiting of medical products and violence against women, including domestic violence. The PC-OC also took note of the successful organisation of the 4th annual conference on cybercrime in Strasbourg in March 2009, as well as of the results of the fourth meeting of the Cybercrime Convention Committee (12-13 March 2009).

2. ADOPTION OF THE DRAFT AGENDA

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

3. 50TH ANNIVERSARY OF THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

4. On the occasion of the 50th anniversary of the European Convention on Mutual Assistance in Criminal Matters, the PC-OC welcomed the fact that, on 16 June 2009, the Convention would be in force with respect to all member States of the Council of Europe and Israel.
5. The PC-OC held a short exchange of views concerning the ways in which the ratification and implementation of the Second Additional Protocol to the Convention can be promoted, noting with satisfaction that the preparation of the signature and ratification of the Second Additional Protocol had reached an advanced stage in many member States. As regards the possibility of direct contacts between judicial authorities offered by the Second Additional Protocol, the PC-OC supported the proposal by Ms Barbara Göth-Flemmich (Austria) to extend the European Judicial Atlas developed by the European Judicial Network to all member States of the Council of Europe.
6. The PC-OC expressed its opinion that the ratification of the Second Additional Protocol should be kept high on the agenda in all relevant fora, including at the Conference of the Council of Europe Ministers of Justice (Tromsø, Norway, 18-19 June).

4. PREPARATION OF NORMATIVE TEXTS CONCERNING THE EUROPEAN CONVENTION ON EXTRADITION**4.1. SIMPLIFIED EXTRADITION**

7. The PC-OC undertook its final examination of the draft Third Additional Protocol to the European Convention on Extradition and its draft explanatory report.
8. The PC-OC took note of the comments of the Directorate of Legal Advice and Public International Law of the Council of Europe concerning the regime of declarations and reservations foreseen in the draft Protocol, as requested by the PC-OC at its 55th meeting. It decided to adopt the draft Protocol with the technical amendments suggested by the Legal Advice Department. The PC-OC also adopted the draft explanatory report to the draft Protocol with amendments (Appendices IV and V).
9. The PC-OC decided to submit the draft Protocol and its explanatory report to the CDPC at its next plenary meeting. It instructed the Secretariat to request a legal opinion from the Legal Advice Department on the compatibility of this text with the treaty practice of the Council of Europe, and submit this opinion to the CDPC along with the texts. Having been informed by the Russian delegation that the Russian Federation wished to propose further amendments to the draft Protocol, and with the agreement of this delegation, it instructed the Secretariat also to send to the Legal Advice Department amendments to the draft Protocol proposed by the Russian delegation.

4.2. RULE OF SPECIALITY

10. On the basis of its working documents, and notably the replies to a questionnaire on the rule of speciality and additional contributions from three delegations, the PC-OC had decided to modernise Article 14 of the European Convention on Extradition at its 55th meeting. It had instructed the Secretariat to prepare a working document to serve as a basis for further examination. This working document (PC-OC (2009) 03) had subsequently been amended by the PC-OC Mod during its 7th enlarged meeting (25-27 February 2009).
11. The PC-OC examined the revised document on the rule of speciality (PC-OC (2009) 03 rev), in the light of the comments made by the Chair (PC-OC (2009) misc 1). It considered the various amendments proposed to modernise Article 14. It notably agreed on the need to clarify the meaning of the words “proceeded against” in paragraph 1 of this Article, by replacing these words with a list of actions which can legitimately be taken by the formerly requesting State and/or by amending Article 14, paragraph 2. It also considered that a time limit should be introduced for the formerly requested State to take its decision on the extension of the extradition to new offences. As regards the introduction of a new “emergency custody procedure”, a number of delegations expressed very strong reservations vis-à-vis this possibility, which they saw as an excessive limitation of the personal freedom of the person, without adequate safeguards. Many delegations also considered that, with the changes envisaged to Article 14, it could be superfluous to introduce such a procedure.
12. The PC-OC instructed the Secretariat to amend this text on the basis of the discussions held during the meeting and send it to all delegations by 15 June 2009. It invited delegations to submit their written comments on this new text to the Secretariat by 1 September 2009 and instructed the PC-OC Mod to examine this revised text at its next meeting in the light of these comments, amend it as necessary and submit it to the plenary.

4.3. LAPSE OF TIME

13. At its 55th meeting, the PC-OC had examined a background information document on lapse of time and a concrete proposal by Mr Vladimir Zimin (Russian Federation) on this question. It had instructed the Secretariat to prepare a draft text amending Article 10 of the European Convention on Extradition, on the basis of this proposal and Article 8 of the Convention relating to extradition between the Member States of the European Union. The PC-OC Mod had revised this document at its 7th enlarged meeting, including the various options it considered in this connection.
14. Having examined these options, the PC-OC instructed the Secretariat to revise this document in order to reflect the two options retained by the PC-OC and to send this document to all delegations for written comments, to be sent by 1 September 2009. It instructed the PC-OC Mod to examine this revised text at its next meeting in the light of these comments, amend it as necessary and submit it to the plenary.

4.4. CHANNELS AND MEANS OF COMMUNICATION

15. At its 55th meeting, the PC-OC had started examining a proposal by Mr Vladimir Zimin (Russian Federation) concerning ways and means of communication (PC-OC (2008) 19). It took note of the fact that Mr Zimin had revised his initial proposal in the light of comments sent by delegations. It instructed the PC-OC Mod to continue the examination of this item on the basis of this revised proposal (PC-OC (2009) 10).

4.5. COMPENSATION OF PERSONS

16. As regards the compensation of persons in extradition cases, the PC-OC agreed on its report to the CDPC on the results of its stock-taking exercise concerning this issue, as set out in the summary report of its 55th meeting (PC-OC (2008) 29). It decided to ask the CDPC for further guidance as to future action to be taken regarding this subject.

- 5. FOLLOW-UP OF THE 28TH CONFERENCE OF THE EUROPEAN MINISTERS OF JUSTICE (25-26 OCTOBER 2007, LANZAROTE) – the relationship between asylum procedures and extradition procedures**
17. The PC-OC continued its examination of Resolution No. 1 on access to justice for migrants and asylum seekers adopted by the Ministers of Justice in Lanzarote, and in particular its paragraph 16c in which the Committee of Ministers is invited to entrust the European Committee on Crime Problems (CDPC) to “examine [...] the relationship between asylum procedures and extradition procedures”. The Bureau of the CDPC had decided to submit this part of the Resolution to the PC-OC and instructed it to take stock of the situation in different member States and to reflect on possible responses to common challenges. In order to respond to this instruction, the PC-OC had addressed a questionnaire on this issue (PC-OC (2008) 13 Rev Bil) to all delegations.
18. Having examined the replies by 27 States to this questionnaire, the PC-OC took note of documents submitted by the Office of the United Nations High Commissioner for Refugees (UNHCR), highlighting the basic principles identified by UNHCR concerning the relationship between asylum and extradition procedures. It also took note of the oral information provided by representatives of UNHCR, and thanked them for their contribution. Finally, the PC-OC was informed by the Secretariat of the Steering Committee for Human Rights (CDDH) on CDDH’s Guidelines on Human Rights Protection in the context of Accelerated Asylum Procedures;
19. In the light of these elements, the PC-OC observed that, while the majority of member States did not report serious problems regarding the relationship between asylum procedures and extradition procedures, this question was nonetheless an important source of concern for some member States who reported practical problems linked to the complex interaction between international Human Rights and refugee law principles on the one hand and their obligation to extradite persons sought on the other hand. However, the majority of delegations did not see a need to embark on further normative work regarding this question at the present stage and decided to report the results of this stock-taking exercise to the CDPC.
20. The participants agreed that the questionnaire nonetheless allowed the PC-OC to identify a number of issues which could be usefully dealt with in the context of its general terms of reference, in particular when discussing practical problems and concrete cases brought to its attention by the members of the PC-OC.
- 6. MUTUAL LEGAL ASSISTANCE IN COMPUTER-RELATED CASES**
21. The PC-OC took note of the information provided by the Secretariat concerning the follow-up given to the instruction of the CDPC Bureau to the PC-OC to provide guidance to the Cybercrime Convention Committee (T-CY) on best practices concerning mutual legal assistance in computer-related cases. The PC-OC was notably informed that the replies to its questionnaire on this issue (PC-OC (2008) 08 Rev) had been transmitted to the 4th meeting of the T-CY (12-13 March 2009).
- 7. DRAFT CONVENTION ON COUNTERFEITING OF MEDICAL PRODUCTS AND SIMILAR CRIMES INVOLVING THREATS TO PUBLIC HEALTH**
22. The PC-OC took note of the draft Convention of the Council of Europe on counterfeiting of medical products and similar crimes involving threats to public health, prepared by the Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP). In accordance with the instructions of the Bureau of the CDPC, the PC-OC examined in particular Article 19 of the draft Convention which deals with international co-operation.
23. The PC-OC considered that seizure and confiscation of instrumentalities and proceeds of crime is of particular relevance to the subject matter of the draft Convention, and thus could be explicitly mentioned under Article 19, paragraph 4. One delegation was of the view that the future convention should be open to non-European States, and that thus detailed provisions on mutual legal assistance, extradition, seizure and confiscation should be envisaged in accordance with the recent treaty practice of the United Nations.
24. The PC-OC invited delegations who wish to comment on Article 19 of the draft Convention to provide written comments to the Secretariat by 31 May 2009, and instructed the latter to transmit these comments to the Ad hoc Committee on Counterfeiting of Medical Products and similar crimes involving threats to public health (PC-ISP), which will hold its first meeting in June 2009.

8. PRACTICAL PROBLEMS AND CONCRETE CASES CONCERNING THE IMPLEMENTATION OF CONVENTIONS

- 25. In accordance with the decision taken at its 53rd plenary meeting, the PC-OC devoted a part of its plenary meeting to discussing practical cases brought to its attention by its members.
- 26. It took note of the information provided by the Belgian delegation on difficulties encountered by Belgium in extradition cases with South Africa, as well as an example of positive co-operation with Togo.
- 27. The Finnish delegation brought to the attention of the PC-OC a difficulty faced by Finland in the application of the European Convention on Mutual Assistance in Criminal Matters, concerning the hearing of suspects. Similarly to a question discussed by the PC-OC at its 54th meeting (28-30 April 2008), this concerned the refusal of a State to hear its citizens suspected of having committed a crime in Finland, on the grounds that the code of criminal procedure allowed such hearings only where there is a criminal case pending in that State.
- 28. The Russian delegation informed the PC-OC that the Russian authorities were aware of this problem deriving from the Russian code of criminal procedure and a serious mistake in the official translation of the European Convention on Mutual Assistance in Criminal Matters into Russian. It further informed the PC-OC that steps were being taken to remedy these problems, but that this was a lengthy process involving a legislative intervention. In the meantime, the Russian delegation advised other delegations to consider the transfer of criminal proceedings or the interrogation of suspects on a voluntary basis in these cases. However, Finland pointed out that transfer of proceedings is not always successful, due to differences in the qualification of certain crimes, and that voluntary interrogation had been tried unsuccessfully on previous occasions.
- 29. The PC-OC thanked the Russian delegation for this information and invited it to keep the PC-OC informed of future developments in this area at its next meeting
- 30. The PC-OC had an exchange of views concerning information requested by Andorra on the practical use made of the Additional Protocol to the Convention on the Transfer of Sentenced Persons by its Parties. It appeared from the discussions that the protocol was widely applied by some member States, and that their experience was overall positive. Some delegations nonetheless referred to practical problems they had faced in the application of this Protocol, including the absence of a clear definition of the concept of "social rehabilitation". Some delegations referred to problems encountered with some States Parties, who refused transfers either owing to the absence of the consent of the sentenced person, which defeats the purpose of the protocol, or required the sentencing State to bear transfer costs in contradiction with the provisions of the Convention.

9. CO-OPERATION BETWEEN THE COUNCIL OF EUROPE AND THE EU IN THE CRIMINAL LAW FIELD

- 31. The PC-OC welcomed the Conclusions of the Council of the European Union on supporting the Council of Europe's legislative work in the area of criminal justice, adopted at the 2927th Justice and Home Affairs Council meeting (26-27 February 2009).
- 32. The PC-OC took note of a project proposal relating to the development of practical measures for facilitating judicial co-operation in criminal matters, which will be partly financed by the EU and expressed its support for this proposal. It also welcomed the interventions of the representatives of the EU institutions in favour of this project.
- 33. Ms Anna Lipska, representative of the General Secretariat of the Council of the European Union, provided information on developments in the criminal law field since the previous meeting of the PC-OC, and notably on the adoption of the Framework Decisions on the European Evidence Warrant and mandatory transfer of sentenced persons, which will have to be implemented by 2011. She also informed the PC-OC that the Council of the European Union had adopted a Framework Decision on the exchange of information extracted from criminal records and a Decision on the establishment of the European Criminal Records Information System (ECRIS). The PC-OC also took note of a Decision of the Council of the European Union strengthening Eurojust. The PC-OC was alerted to the fact that the incoming Swedish presidency was intending to propose a new initiative in the area of conflicts of jurisdiction and transfer of proceedings.

10. WORKING METHODS OF THE PC-OC AND THE PC-OC Mod

34. The PC-OC had an exchange of views regarding the ways in which the distribution of tasks between the PC-OC and the PC-OC Mod could be clarified and the purpose of the PC-OC Mod as a drafting group be further affirmed. In the light of the growing number and complexity of issues that need to be dealt with by the PC-OC and the PC-OC Mod, as well as increasing time constraints, the PC-OC notably agreed that the agenda of the PC-OC Mod should be limited to drafting points only. This should allow the PC-OC to find more time to concentrate on “policy issues” and give clear drafting instructions to the PC-OC Mod. This should however not prevent the PC-OC Mod from bringing specific questions that arise during its drafting work to the attention of the plenary, seeking further instructions.

11. DATES OF THE NEXT MEETING

35. The PC-OC agreed on the following dates for the next meetings of the PC-OC and the PC-OC Mod:
- 8th enlarged meeting of the restricted Group of Experts: 30 September - 2 October 2009;
 - 57th meeting of the PC-OC: 17-19 November 2009.

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

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

ANDORRA / ANDORRE

Mme Florencia ALEIX, Ministère des Affaires Etrangères, Représentante Adjointe auprès du Conseil de l'Europe, STRASBOURG

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

ARMENIA / ARMENIE

Mr Hovhannes POGHOSYAN, Head of International Co-operation Department, Police Headquarters, YEREVAN

AUSTRIA / AUTRICHE

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

AZERBAIJAN / AZERBAÏDJAN

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

Mr Murad KAZIMOV, Deputy Head of the International Relations Department of the Prosecutor's Office, BAKU

BELGIUM / BELGIQUE

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

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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

BULGARIA / BULGARIE

Mr Borislav NOTEV, Junior Expert, International Cooperation and Legal Assistance in Criminal Matters Department, Ministry of Justice, SOFIA

CROATIA / CROATIE

Ms Vesna MERLIĆ, Head of Unit, Department for Bilateral Co-Operation, Ministry of Justice, ZAGREB
Apologised / Excusée

Ms Melanija GRGIC, Head of the Sector, Directorate for International Legal Co-Operation and Human Rights, Ministry of Justice, ZAGREB
Apologised / Excusée

Ms Maja RAKIĆ, Expert Adviser, Department for International Legal Assistance, Co-Operation and human rights, Ministry of Justice, ZAGREB
Apologised / Excusée

CYPRUS / CHYPRE

Ms Eleni LOIZIDOU, Senior Counsel, Attorney General's Office, Apelli str.1, NICOSIA
Mrs Elli KANARI-MORPHAKI, Senior Administrative Officer, Head of International Legal Cooperation, Ministry of Justice and Public Order, NICOSIA

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

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

DENMARK / DANEMARK

Ms Malene MAXE PETERSEN, Prosecutor, Office of the Director of Public Prosecutions, COPENHAGEN K

Ms Katrine BUSCH, Head of Section, International Department, Ministry of Justice, COPENHAGEN K

ESTONIA / ESTONIE

Ms Astrid LAURENDT-HANIOJA, Adviser of the International Judicial Co-operation Division, Criminal Policy Department, Ministry of Justice, TALLINN

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

FINLAND / FINLANDE

Ms Merja NORROS, Ministerial Counsellor, Unit for International Affairs, Ministry of Justice, HELSINKI

FRANCE

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

GEORGIA / GEORGIE

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

GERMANY / ALLEMAGNE

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

GREECE / GRECE

Ms Maria GAVOUNELI, Legal Advisor, Ministry of Justice, ATHENS

Apologised / Excusée

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

Apologised / Excusée

HUNGARY / HONGRIE

Mme Klara NEMETH-BOKOR, Directeur de Département, Ministère de la Justice et de la Police, BUDAPEST

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

IRELAND / IRLANDE

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

ITALY / ITALIE

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

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

LATVIA / LETTONIE

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

LIECHTENSTEIN

Mr Harald OBERDORFER, Regierung des Fürstentums Liechtenstein, Ressort Justiz , Vaduz

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

LITHUANIA / LITUANIE

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

LUXEMBOURG

Mme Annick HARTUNG, Attachée de Gouvernement, Direction des Affaires Pénales,
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Apologised / Excusée

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Ms Selma DE GROOT, Legal Adviser, International Legal Assistance in Criminal Matters Division, Ministry
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NORWAY / NORVEGE

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

POLAND / POLOGNE

Mr Tomasz CHALANSKI, Prosecutor, Department of International Cooperation and European Law, Ministry
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Mr Mirosz AUGUSTYNIAK, Senior Specialist, Department of International Cooperation and European Law,
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PORUGAL

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ROMANIA / ROUMANIE

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

Apologised / Excusé

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

RUSSIA / RUSSIE

Mr Vladimir P. ZIMIN, First Deputy Chief, General Department for International Legal Co-operation, Office of
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SAN MARINO / SAINT-MARIN

M. Guido CECCOLI, Ambassadeur, Représentant Permanent de Saint-Marin auprès du
Conseil de l'Europe, STRASBOURG

Apologised / Excusé

SERBIA / SERBIE

Ms Jasmina SAHINOVIC, Chief Inspector Criminal Police Department, Unit for International Police
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SLOVAKIA / SLOVAQUIE

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

Apologised / Excusé

Mr Rastislav MIHALOVIČ, Legal Adviser, Ministry of Justice, BRATISLAVA
Ms Anna ONDREJOVÁ, Head of EC/EU Law Unit, General Prosecutor Office, BRATISLAVA

SLOVENIA / SLOVENIE

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

SPAIN / ESPAGNE

Mme Rocío DÍAZ, Conseillère Technique, Sous-direction générale de coopération juridique internationale,
Ministère de la Justice, MADRID

Apologised / Excusée

SWEDEN / SUEDE

Mr Per HEDVALL, Director, Division for Criminal Cases and International Judicial Co-operation, Ministry of
Justice, STOCKHOLM

Apologised / Excusé

Ms Cecilia RIDDSELIUS, Deputy Director, Division for Criminal Cases and International Judicial
Co-operation, Ministry of Justice, STOCKHOLM

SWITZERLAND / SUISSE

Mme Astrid OFFNER, Cheffe suppléante de l'Unité Traités internationaux, Département fédéral de justice et
police DFJP, Office Fédéral de la Justice OFJ, BERN

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

Mrs Marija Deljova SULEVSKA, Head of the Unit for International Legal Relations, Ministry of Justice,
SKOPJE

TURKEY / TURQUIE

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

UKRAINE

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

Apologised / Excusé

UNITED KINGDOM / ROYAUME-UNI

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

* * * *

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS / CONSEIL CONSULTATIF DE
PROCEUREURS EUROPÉENS (CCPE)**

**No nomination / Pas de nomination

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

Apologised / Excusé

**STEERING COMMITTEE FOR HUMAN RIGHTS / COMITÉ DIRECTEUR POUR LES DROITS DE
L'HOMME**

(CDDH)

**No nomination / Pas de nomination

EUROPEAN COMMUNITY / COMMUNAUTE EUROPEENNE

COMMISSION

M. Peter CSONKA, Chef d'Unité, Commission Européenne, Direction Général Justice, Liberté et Sécurité, Unité D3 Justice pénale, BRUXELLES
Apologised / Excusé

Ms Iva ZAMARIAN, Legal Officer, European Commission, DG Justice, Freedom and Security, Unit E3 – Criminal Justice, BRUXELLES

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

Mr Hans NILSSON, Head of the Division of Judicial Cooperation, Office 30 40 MN 20, DGH 2B, Cooperation in Criminal Matters, General Secretariat of the Council of the European Union, BRUSSELS

Apologised / Excusé

Ms Anna Halina LIPSKA, Administrator, Office 2050MN41, DGH2B, Justice and Home Affairs, General Secretariat, Council of the European Union, BRUSSELS

OBSERVERS WITH THE COUNCIL OF EUROPE /
OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE

HOLY SEE / SAINT-SIEGE

Apologised / Excusé

UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE

Ms Paula A. WOLFF, Chief, International Prisoner Transfer Unit, Office of Enforcement Operations, Criminal Division, Department of Justice, WASHINGTON, D.C. 20530

CANADA

Ms Elaine KRIVEL, Q.C. Counsellor, International Criminal Operations, Department of Justice, Canadian Mission to the European Union, BRUSSELS

Mr Jacques LEMIRE, Counsellor - International Criminal Operations, Embassy of Canada, PARIS

JAPAN / JAPON

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

Apologised / Excusé

MEXICO / MEXIQUE

OBSERVERS WITH THE COMMITTEE /
OBSERVATEURS AUPRES DU COMITE

States Observers / Etats Observateurs

ISRAEL

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

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

Apologised / Excusé

Mr Gilad SEMAMA, Assistant to the State Attorney, Department of International Affairs,
 Ministry of Justice, JERUSALEM

**INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES**

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

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

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APPENDIX II

Agenda

1. **Opening of the meeting**
 2. **Adoption of the draft agenda**

Working documents

Draft agenda	PC-OC (2009) OJ1
Draft annotated agenda	PC-OC (2009) 08
 3. **50th anniversary of the European Convention on Mutual Assistance in Criminal Matters**
 4. **Preparation of normative texts concerning the European Convention on Extradition**

Working documents

“New Start” Report	PC-S-NS (2002) 7
Report of the 56th CDPC Plenary meeting	CDPC (2007) 24
Summary Report of the 55th meeting of the PC-OC	PC-OC (2008) 29
List of decisions of the CDPC Bureau meeting, 19-20 February 2009	CDPC-BU (2009) 6
List of decisions of the 7 th enlarged meeting of the PC-OC Mod	PC-OC Mod (2009) 2
- 4.1. Simplified extradition**
- Working documents
- | | |
|---|---------------------------------------|
| Draft 3 rd Additional Protocol to the European Convention on Extradition | PC-OC (2008) 05 rev 4 |
| Revised Draft Explanatory Report to the 3 rd Additional Protocol | PC-OC (2008) 20 rev 3 |
| Memorandum from the Directorate of Legal Advice and Public International Law | Memorandum |
- 4.2. Rule of speciality**
- Working documents
- | | |
|--|---------------------------------------|
| Questionnaire on the rule of speciality | PC-OC (2008) 01 Rev |
| Replies to the questionnaire on the rule of speciality | PC-OC (2008) 04 Rev 2 |
| Summary of replies | PC-OC (2008) 12 |
| Draft text on the rule of speciality | PC-OC (2009) 03 rev |
| Comments of the Chair on the rule of speciality | PC-OC (2009) misc 1 |
- 4.3. Lapse of time**
- Working documents
- | | |
|--|-------------------------------------|
| Background information prepared by the Secretariat | PC-OC (2008) 06 |
| Draft text on lapse of time | PC-OC (2009) 06 rev |
| Comments of delegations | PC-OC (2009) 09 |
- 4.4. Channels and means of communication**
- Working documents
- | | |
|---|---------------------------------|
| Original proposal by Mr Vladimir Zimin (Russian Federation) | PC-OC (2008) 19 |
| Revised proposal by Mr Vladimir ZIMIN (Russian Federation) | PC-OC (2009) 10 |
| Proposals sent by delegations | PC-OC (2009) 02 |
- 4.5. Compensation of persons**
- Working documents
- | | |
|---|---------------------------------------|
| Questionnaire on compensation issues | PC-OC (2007) 10 Rev |
| Replies to the questionnaire on compensation issues | PC-OC (2008) 03 Rev 3 |
| Summary of replies | PC-OC (2008) 21 |

- 5. Follow-up of the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote) – the relationship between asylum procedures and extradition procedures**
- Working documents
- | | |
|---|---|
| Resolution No. 1 on access to justice for migrants and asylum seekers | Resolution No. 1 |
| Summary Report of the CDPC Bureau meeting 16-18 January 2008 | CDPC-BU (2008) 07 |
| Questionnaire on the relationship between asylum procedures and extradition procedures | PC-OC (2008) 13 Bil Rev |
| Replies to the Questionnaire on the relationship between asylum procedures and extradition procedures | PC-OC (2008) 18 Rev 3 |
| Summary of replies | PC-OC (2009) 04 rev |
- Documents sent by the UNHCR
- | |
|--|
| Comments |
| Note on Extradition |
| Diplomatic Assurances |
| Extraterritorial Application |
- 6. Mutual legal assistance in computer-related cases**
- Working documents
- | | |
|--|-------------------------------------|
| Questionnaire on MLA in computer-related cases | PC-OC (2007) 15 |
| Replies to the questionnaire | PC-OC (2008) 08 Rev |
| Summary of replies | PC-OC (2009) 05 |
- 7. Draft Convention on counterfeiting of medical products and similar crimes involving threats to public health**
- Working documents
- | | |
|------------------------|-----------------------------------|
| Draft Convention | PC-S-CP (2009) 04 |
| Background information | PC-OC (2009) 07 |
- 8. Practical problems and concrete cases concerning the implementation of conventions**
- | |
|-------------------------|
| Finland |
| Belgium |
- 9. Co-operation between the Council of Europe and the EU in the criminal law field**
- Working documents
- | | |
|---|----------------------------------|
| Project Proposal “Effective practical tools to facilitate judicial cooperation in criminal matters” | Project proposal |
|---|----------------------------------|
- 10. Working methods of the PC-OC and the PC-OC Mod**
- 11. Any other business**
- 12. Dates of the next meeting**

APPENDIX III

List of decisions adopted at the 56th meeting of the PC-OC 12-14 May 2009

The PC-OC decided to:

1. 50th anniversary of the European Convention on Mutual Assistance in Criminal Matters

- welcome the fact that, on 16 June 2009, the Convention will be in force with respect to all member States of the Council of Europe;
- on the occasion of the 50th anniversary of the Convention, have an exchange of views on the ways in which the ratification and implementation of the Second Additional Protocol to the Convention can be promoted;
- take note of the stage of preparation of the signature and ratification of the Second Additional Protocol in different member States;
- agree on the need for keeping the ratification of the Second Additional Protocol on the agenda in all relevant fora, including at the next Conference of the Council of Europe Ministers of Justice (Tromsø, Norway, 18-19 June);

2. Preparation of normative texts concerning the European Convention on Extradition

a) Simplified extradition

- adopt the draft 3rd Additional Protocol to the European Convention on Extradition (PC-OC (2008) 05 Rev 5) and its draft Explanatory Report with amendments and submit it to the CDPC;
- instruct the Secretariat to send these texts to the Treaty Office for a legal opinion in view of the next CDPC plenary;
- instruct the Secretariat also to send to the Treaty Office amendments to the draft Protocol proposed by the Russian delegation;

b) Rule of speciality

- examine a draft text amending Article 14 of the European Convention on Extradition prepared by the Secretariat and amended by the PC-OC Mod at its 7th enlarged meeting;
- instruct the Secretariat to amend this text on the basis of the discussions held during the meeting and send it to all delegations by 15 June 2009;
- invite all delegations to submit their written comments on this new text to the Secretariat by 1 September 2009;
- instruct the PC-OC Mod to examine this revised text at its next meeting, amend it as necessary and submit it to the plenary;

c) Lapse of time

- examine a draft text amending Article 10 of the European Convention on Extradition prepared by the Secretariat and amended by the PC-OC Mod at its 7th enlarged meeting;
- in the light of this examination, instruct the Secretariat to draft a new text with two new options retained by the PC-OC and to send this text to all delegations by 15 June 2009;
- invite all delegations to submit their written comments on this new text to the Secretariat by 1 September 2009;
- instruct the PC-OC Mod to examine the new proposal in the light of these written comments, amend it as necessary and submit it to the plenary;

d) Channels and means of communication

- take note of a revised proposal submitted by Mr Vladimir Zimin (Russian Federation) dealing with this issue;
- instruct the PC-OC Mod to continue the examination of this item on the basis of this proposal;

e) Compensation of persons

- agree on the content of its report to the CDPC on the results of its stock-taking exercise regarding the compensation of persons in connection with extradition, as set out in the summary report of its 55th meeting (PC-OC (2008) 29);
- ask the CDPC for further guidance as to future action to be taken regarding this subject;

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

- take note of the replies by 27 States to the questionnaire PC-OC (2008) 13 Bil, as well as a summary of replies prepared by the Secretariat (PC-OC (2009) 04 rev);
- take note of the documents submitted by UNHCR on this issue, as well as the oral information provided by representatives of UNHCR;
- take note of the information provided by the Secretariat of the Steering Committee for Human Rights (CDDH) on CDDH's Guidelines on Human Rights Protection in the context of Accelerated Asylum Procedures;
- take note of the fact that, while the majority of member States did not report serious problems regarding the relationship between asylum procedures and extradition procedures, this question is nonetheless an important source of concern for some member States;
- agree that, at the present stage, a majority of delegations did not see a need to embark on further work regarding this question;
- agree that the questionnaire nonetheless allowed the PC-OC to identify a number of issues which could be usefully dealt with in the context of the PC-OC's general terms of reference, in particular when discussing practical problems and concrete cases brought to the attention of the PC-OC by its members;
- report the results of this exercise to the CDPC;

4. Mutual legal assistance in computer-related cases

- take note of the replies to the questionnaire PC-OC (2008) 08 Rev, a summary of replies prepared by the Secretariat (PC-OC (2009) 05), as well as the oral information provided by the Secretariat on the last meeting of the Cybercrime Convention Committee (T-CY) (12-13 March 2009);

5. Draft Convention on counterfeiting of medical products and similar crimes involving threats to public health

- take note of the draft Convention of the Council of Europe on counterfeiting of medical products and similar crimes involving threats to public health, and in particular its Article 19 on international co-operation;
- consider, *inter alia*, that seizure and confiscation could be explicitly mentioned under Article 19, paragraph 4;
- invite delegations who wish to comment on Article 19 of the draft Convention, to provide written comments to the Secretariat by 31 May 2009;

6. Practical problems and concrete cases concerning the implementation of conventions

- take note of the information provided by the Belgian delegation on difficulties Belgium encountered in extradition cases with South Africa, as well as an example of positive co-operation with Togo;
- take note of a difficulty brought to its attention by Finland relating to the implementation of the European Convention on Mutual Assistance in Criminal Matters;
- take note of the information provided by the Russian delegation on steps taken in order to extend national legal possibilities of co-operation under this Convention and invite the Russian delegation to keep the PC-OC informed of future developments in this area at its next meeting;
- have an exchange of views concerning information requested by Andorra on the practical use made of the Additional Protocol to the Convention on the Transfer of Sentenced Persons by its Parties;

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

- welcome the Conclusions of the Council of the European Union on supporting the Council of Europe's legislative work in the area of criminal justice, adopted at the 2927th Justice and Home Affairs Council meeting (26-27 February 2009);
- take note of the proposal for a project relating to the development of practical measures for facilitating judicial co-operation in criminal matters, which will be partly financed by the EU;
- express support for this proposal;
- take note of the Information provided by Ms Anna Lipska, representative of the General Secretariat of the Council of the EU, on new instruments in the criminal law field having been adopted or being negotiated within the EU;

8. Working methods of the PC-OC and the PC-OC Mod

- in the light of the growing number and complexity of issues that need to be dealt with by the PC-OC and the PC-OC Mod, as well as increasing time constraints, agree on ways in which the purpose of the PC-OC Mod as a drafting group can be further affirmed;

9. Dates of the next meetings

- agree on the following dates for the next meetings of the PC-OC:
 - o 8th enlarged meeting of the restricted Group of Experts: 30 September - 2 October 2009;
 - o 57th meeting of the PC-OC: 17-19 November 2009.

Appendix IV**Draft Protocol [PC-OC (2008) 5 Final]**

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

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

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

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

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

Have agreed as follows

Article 1 - Obligation to extradite under the simplified procedure

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

Article 2 – Initiation of the procedure

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

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

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

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

Article 3 - Obligation to inform the person

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

Article 4 - Consent to extradition

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

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

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

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

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

Article 5 - Renunciation of entitlement to the rule of speciality

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

(a) consents to extradition; or

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

Article 6 – Notifications in case of provisional arrest

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

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

Article 7 – Notification of the decision

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

Article 8 – Means of communication

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

Article 9 - Surrender

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

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

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

Article 11 - Transit

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

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

Article 12 - Relationship with the Convention and other international instruments

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

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

Article 13 – Friendly settlement

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

Article 14 - Signature and entry into force

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

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

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

Article 15 - Accession

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

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

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

Article 16 – Territorial application

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

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

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

Article 17 – Declarations and Reservations

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

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

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

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

Article 18 - Denunciation

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

Article 19 - Notifications

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

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 14 and 15;
- d any declaration made in accordance with Article 4, paragraph 5, Article 5, Article 16 and Article 17, paragraph 1;
- e any reservation made in accordance with Article 17, paragraph 2 and any withdrawal of such a reservation;
- f any notification received in pursuance of the provisions of Article 18 and the date on which denunciation takes effect;
- g any other act, declaration, notification or communication relating to this Protocol.

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

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

Appendix V

Draft Explanatory Report to the Protocol (PC-OC (2008) 20 Final)

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

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

Introduction

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

37. The need for the modernisation of the legal instruments of the Council of Europe in the criminal justice field, including the European Convention on Extradition (hereinafter referred to as "the Convention"), in order to enhance international co-operation, has been highlighted on several occasions. In particular, the "New Start" report¹ approved by the CDPC in June 2002 pointed to the necessity of realising a European area of shared justice. The Warsaw declaration and the Plan of Action adopted by the third Summit of Council of Europe Heads of State and Government of the member states of the Council of Europe (Warsaw, 16 -17 May 2005) underlined the commitment, at the highest political level, to making full use of the Council of Europe's standard-setting potential and to promoting implementation and further development of the Organisation's legal instruments and mechanisms of legal cooperation.

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

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

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

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

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

42. The CDPC, at its 56th plenary session (June 2007), decided to mandate the PC-OC, *inter alia*, to draft the necessary legal instruments to give a treaty basis to simplified forms of extradition when the person sought consents, along the lines proposed by the PC-OC. Having studied various options, the PC-OC agreed that an additional protocol to the Convention was the most appropriate solution in this respect. Consequently, it adopted a draft Third Additional Protocol to the Convention at its 56th meeting (May 2009) and submitted it to the CDPC for approval.

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

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

General considerations

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

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

47. The PC-OC observed that practice varied among States. In a majority of States where a simplified procedure of extradition is applied, it is considered that it is in the interest of the person sought to be quickly surrendered once her/his consent has been given. Some States concerned often find the information they need in the request for provisional arrest. In other States however, there is a need for the extradition request and for all or some of the documents provided for in Article 12 of the Convention. The consent of the person would, in this case, be taken into account in the extradition procedure in order to have a quicker final decision and a quicker surrender.

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

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

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

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

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

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

Commentaries on the Articles of the Protocol

Article 1 - Obligation to extradite under the simplified procedure

54. This Article sets out the basic principle of the Convention, namely the obligation to extradite persons sought, subject to the consent of such persons to their extradition under the simplified procedure, given in accordance with Articles 3 to 5, and the agreement of the requested Party. It is clear from the wording chosen that the consent of the person to her/his extradition does not entail an obligation for the requested Parties to extradite the person in all cases.

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

Article 2 – Initiation of the procedure

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

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

Paragraph 1

57. This paragraph concerns the main situation targeted by the Protocol, namely the simplified procedure following provisional arrest. It indicates that the starting-point for the simplified extradition procedure is the request for provisional arrest as provided for in Article 16 of the Convention. In accordance with Article 16, paragraph 3 of the Convention, a "red notice" or other message sent through Interpol may also be considered a request for provisional arrest for the purposes of this Protocol.

58. This paragraph also indicates the consequence of using the simplified procedure on the submission of documents, i.e. in such cases the submission of a request for extradition and the supporting documents required by Article 12 of the Convention are no longer necessary. The decision of extradition may be made on the basis of the information, specified under sub-paragraphs (a) to (h), which is either contained in the request for provisional arrest or complements it. This paragraph should not be understood as deterring the requesting Party from submitting any other information which it considers useful for allowing the requested Party to take a decision on extradition under the simplified procedure.

59. Information has to be communicated both to the arrested person, providing the basis on which consent to extradition may be given, and to the competent authority of the requested Party, providing the authority with the necessary information to enable it to take its decision on using the simplified procedure of extradition. As a rule, this information should be regarded by the competent authority of the requested Party as being sufficient for taking a decision on extraditing the person concerned. It comprises all the details needed for a proper examination of the question of the requested Party's agreement to the surrender as regards the person concerned, the summary of facts of the offence, the legal description of the offence and reference to the relevant provisions or information about the sentence which has already been delivered. As regards sub-paragraph (h), where the judgment was rendered in absentia, the drafters considered that it

would be desirable for the requesting Party to send additional information on the possibility of a retrial or the relevant circumstances of the proceedings so as to allow the requested Party to ascertain, without asking for supplementary information, whether the safeguards of the European Convention on Human Rights (ECHR) have been observed.

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

61. Thus, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, States have the possibility of making a reservation to this paragraph, specifying that they require a request for extradition, and possibly some or all of the documents mentioned under Article 12 of the Convention, in cases of extradition under the simplified procedure.

Paragraph 2

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

Paragraph 3

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

Article 3 – Obligation to inform the person

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

65. This Article requires the Parties to ensure that persons arrested for the purpose of extradition are informed of the request concerning them and of the possibility of their consenting to their extradition. The information is to be given by the 'competent authority, e.g. the authority empowered to take persons into custody. This does not necessarily imply the intervention of a judicial authority, and such information could for example be provided by the police at the moment of arrest. It should be given without undue delay after the person is taken into custody and in accordance with the law of the requested Party.

Article 4 – Consent to extradition

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

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

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

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

70. As to the legal consequences of consent, the information given to the person should include the implications of renunciation of the guarantees of the ordinary procedure, as well as the possible irrevocability of the consent given, in accordance with paragraph 4.

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

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

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

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

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

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

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

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

Article 5 - Renunciation of entitlement to the rule of speciality

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

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

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

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

Article 6 – Notifications in case of provisional arrest

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

Paragraph 1

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

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

Paragraph 2:

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

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

88. Similarly, in exceptional cases, Parties that have made a reservation to Article 2, paragraph 1 may apply the ordinary extradition procedure despite the consent of the person concerned.

Article 7 – Notification of the decision

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

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

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

Article 8 –Means of communication

92. Article 8 does not replace Article 12, paragraph 1 of the Convention (as modified by the Second Additional Protocol to the Convention). It completes Article 12 of the Convention in that it provides for the use of modern means of communication as well as communication through the Interpol, in order to ensure efficient communication in the context of the simplified extradition procedure.

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

Article 9 – Surrender

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

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

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

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

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

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

Article 11 - Transit

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

100. By way of derogation from Article 21, paragraph 3 of the Convention, a request for transit may be made through electronic or any other means affording evidence in writing (such as fax or electronic mail), and the decision of the Party requested to grant transit may be made known by the same method.

101. The request does not have to be accompanied by the documents referred to in Article 12, paragraph 2 of the Convention. It is important to note that the information contained under Article 2, paragraph 1 may be considered sufficient in general for the purposes of granting transit. Nevertheless, in exceptional cases where this information is not sufficient for the State of transit to reach a decision on granting transit, paragraph 2 allows for the possibility of requesting supplementary information from the Party requesting transit.

102. The drafters considered that Article 11 could also cover cases where only the requesting Party and the Party requested to grant transit are Parties to the Protocol. In this case, the Party requested to grant transit can ask for additional information in accordance with Article 11(b), for example in relation to safeguards foreseen in Article 4, paragraphs 1 and 2 of this Protocol.

Article 12 – Relationship with the Convention and other international instruments

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

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

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

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

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

Article 13 – Friendly settlement²

108. This Article makes the European Committee on Crime Problems the guardian over the interpretation and application of the Protocol and follows the precedents established in other European conventions in the criminal justice field. It also follows Recommendation (99) 20 of the Committee of Ministers, concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field. The reporting requirement which it lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Protocol, so that it may contribute to facilitating friendly settlements and proposing amendments to the Convention and its Protocols which might prove necessary.³

Articles 14 to 19 – Final clauses

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

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

² The PC-OC considered that there was a discrepancy between the French and English versions of the Protocol with regard to this Article ("[le CDPC] suivra l'exécution" as opposed to "[the CDPC] shall be kept informed regarding the application"), which also concerns many existing conventions in the criminal justice field. It decided to align the French version on the wording used in the English version.

³ While this is a standard paragraph found in the explanatory reports of other conventions in the criminal justice field (for example, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters), one delegation considered that it was not accurate to state that the CDPC was "the guardian over the interpretation and application of the Protocol" or that it had powers to propose amendments to the Convention and its Protocols. The PC-OC decided to submit this Explanatory report to the CDPC with the current wording, drawing the attention of the CDPC to this issue and inviting it to take a decision on this matter.

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

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