

Strasbourg, 29/01/2007

PC-OC Mod (2007) 03

**COMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**

**3<sup>rd</sup> meeting of the restricted Group of experts on international co-operation (PC-OC Mod)**

**Strasbourg, 22-23 January 2007**

**Draft meeting report**

**Summary:** PC-OC identified the following proposals to be submitted to the CDPC:

I- It requests the CDPC to take note and support the following proposals for practical measures aiming at facilitating and improving co-operation in criminal matters:

- the setting-up of a network of national single points of contact
- the setting up of an electronic database on national procedures
- development of CoE publications, web site and newsletter

II- It requests the CDPC to be mandated to draft normative instruments in the field of extradition on:

- simplified extradition, when the person consents to his/her surrender
- the application of the rule of specialty
- matters related to channels and means of communication, time limits and language
- compensation and return issues
- lapse of time

III- It discussed three matters which will need further discussion before being finalised:

- the limitation of the use of the political exception clause
- concurrent requests
- procedural safeguards

IV- It did not discussed, by lack of time, either:

- transversal issues: such as the friendly settlement of disputes or reservations
- longer term issues, such as the extradition of nationals or *ne bis in idem* matters
- issues pertaining to other conventions, such as mutual assistance, transfer of prisoners or transmission of criminal proceedings.

The Group will hold its next meeting on 3-4 May 2007. The meeting will be opened to all PC-OC members, on their own expenses. It will aim at finalising the proposals to the CDPC (plenary in June 2007).

**In preparation of the meeting, participants are invited to prepare**

- their preliminary observations on the follow-up to be given to the conclusions adopted in Moscow by the Ministers of Justice and of the Interior and in particular, its para 11, following an initiative by the Greek Minister of Justice to draft a 2<sup>nd</sup> additional protocol to the transfer convention.
- elements relating to the ratification and the application of the convention on transmission of criminal proceedings (ETS 073).

## 1. OPENING OF THE MEETING

The Chair of the PC-OC, Ms. Barbara Goeth-Flemmich (Austria), opened the meeting. She recalled the Group's members of the background of the group's work, notably following the **High Level Conference of Ministers of justice and of the Interior held in Moscow on 9-10 November 2006**. The conclusions adopted by the Ministers at the conference provide political support to the work of the CoE in the field of co-operation in criminal matters and emphasise the important role played by the PC-OC in this matter.

The Head of the Division of Criminal Justice, Ms Bridget O'Loughlin, informed the Group that the conclusions adopted in Moscow have been very positively received by the Ministers Deputies' Group of Rapporteurs on legal questions (GR-J) on 10 January 2007. The Group forwarded the conclusions to the Committee of Ministers which will meet on 31 January and will probably request the CDPC (and its subordinate committees) to ensure follow-up work on that basis and to report to it in the future on progress achieved.

Ms O'Loughlin also informed the Group on the setting-up of the **Consultative Council of European Prosecutors (CCPE)** in Moscow (July 2006). The Bureau of the CCPE met for the first time, in Strasbourg, in December 2006. The Bureau agreed that it would give priority to co-operation in the criminal field. A questionnaire has been prepared and sent to the CCPE members. It is expected that the results of the questionnaire will be discussed at the next meeting of the CCPE, in November 2007. By then, a conference may be organised (to be confirmed) in Poland, in June 2007, on matters related to international co-operation.

The Group suggested that a representative of the CCPE informs the Group on CCPE works and priorities at the forthcoming Group meeting (3-4 May 2007).

Mr Bohacik, vice-Chair of the CDPC, suggested that this would be brought to the attention of the CDPC Bureau which meets next week, 29-31 January 2007.

Ms O'Loughlin also provided information on the **organisation of the Secretariat** of the PC-OC, since the current Secretary, Mr Humbert de Biolley, will take his functions of Deputy to the Director of the CoE Liaison Office in Brussels as of 1<sup>st</sup> February 2007. Discussions are still under way with the Director General *a.i.* of Legal Affairs, Mr Ph. Boillat, to identify the most efficient way to organise the Secretariat and ensure a qualified Secretariat to support the Committee's work. Any decision will be communicated to the Committee in the shortest possible delay.

## 2. ADOPTION OF THE AGENDA

The draft agenda was adopted (Appendix I to this report).

## 3. INFORMATION ON THE RESULTS OF THE HIGH LEVEL CONFERENCE OF MINISTRIES OF JUSTICE AND OF THE INTERIOR ON « IMPROVING EUROPEAN CO-OPERATION IN THE CRIMINAL JUSTICE FIELD » (MOSCOW, 9-10 NOVEMBER 2006).

Further to what was communicated in the opening, the Chair underlined that the discussions held and the conclusions adopted in Moscow were confirming the strong and positive role played by the PC-OC in facilitating international co-operation in criminal matters. The Ministers emphasised in particular the committee's role in monitoring the implementation of the CoE criminal conventions, in preventing disputes, in reviewing and modernising the conventions and in setting-up practical measures in order to facilitate co-operation (see §§ 8-12 of the conclusions, Appendix III to this report).

#### 4. DISCUSSION ON POSSIBLE STEPS AND INITIATIVES TO IMPROVE THE EFFICIENCY OF INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS

The Group discussed measures of practical and of normative nature on the basis of documents PC-OC Mod (2007)01 and PC-OC Mod (2007)02. The result of these discussions appears in appendix II to this report.

The following points of discussion deserve being mentioned:

##### 4.1 PRACTICAL MEASURES

###### 4.1.1 Network of national single points of contact

The Group agreed that:

- the number of national contact persons should be limited to a maximum of 2 or 3 by State. It is proposed that States appoint one single point of contact with one or two substitutes. States can however make different arrangements and distribute tasks among the contact persons according, for instance, to subject matters or by languages;
- the names of contact persons should, in a first phase, be accessible to contact persons themselves and to PC-OC members. It is agreed that in any event no access should be given to it outside judicial authorities, as defined by States. At a later stage, PC-OC could assess the functioning of the network and re-discuss the opportunity to broaden the access to the list.
- The "list of national officials" in charge of international co-operation (PC-OC Inf 6) will continue to exist. It should be regularly updated (the Secretariat should ask the PC-OC members to update the list, as there are obvious outdated data in it). It will be accessible only to PC-OC members and to the contact persons.

###### 4.1.2 Database

The Group heard the presentation by Ms Nadine Bolender, from the Information Technology Department, CoE Secretariat. She showed the application of an electronic system of monitoring the CoE anti-doping Convention and provided information about the current CoE CORTO project which could allow the PC-OC to easily collect and extract data relating to national procedures applicable to matters of international co-operation.

The Group showed its interest in the application of the CORTO project to these matters. Participants were interested in particular by the flexibility to this tool, which would notably allow for:

- a delegation to other persons in order to fill whole or part(s) of the questionnaire;
- possibilities to arrange the format of the reports containing the data collected;
- updating of the correspondents' personal data;
- updating the content of the replies to question.

As to future developments, the Group expressed a strong interest to see the data accessible through "search" buttons (database) which would provide access to the specific elements needed (ex: double criminality requirement → extradition → Portugal). It would be easier than the current format which is presented in the form of a general report presenting all replies to all questions from all States.

The Group decided to concentrate first on the elements to be inserted on extradition mechanisms. The group will discuss at the next meeting the proposed elements relating to mutual assistance, the transfer of sentenced persons and the transmission of criminal proceedings, on the basis of the proposals submitted by Mr E. Jenni.

#### 4.1.3 Publications and web site

The Secretariat informed the Group about the new format of the transnational criminal justice **web site** (<http://www.coe.int/tcj/>). The new site is supposed to give easier and clearer access to the relevant data. The site (Eng and Fr) should be operational by 1<sup>st</sup> February 2007.

The Group expressed satisfaction with the two **books** recently published:

- “co-operation against crime: the conventions of the Council of Europe”
- “extradition: European standards”.

It was also satisfied with the information that CoE publications can be posted on the CoE/TCJ **web site** and be accessible in a PDF format, free of charge, after a period of 6 months from their publications. There are no problems either to have the books copied on CD-Roms and be made available to interested parties.

The group welcomed the idea that the book on extradition be regularly **updated** according to the Committee’s discussions and findings and is looking forward to see similar editions, i.e. the “jurisprudence” elaborated by the PC-OC on the application of CoE conventions’ provisions, being prepared on transfer of prisoners and, later, on mutual assistance.

The Group also welcomed the idea of having regular **newsletters** on matters related to international cooperation. The contact person would act as a correspondent for this purpose.

## 4.2 PROPOSALS FOR NORMATIVE DEVELOPMENTS

### 4.2.1 Extradition

#### 4.2.1.1 Simplified extradition

The Group endorsed the proposal to develop binding provisions on simplified forms of extradition when the person sought consents to it.

It discussed the application of the requirements of Art 12 ECE in this context (need for a formal extradition request and for supporting documents).

The majority of the Group agreed with the general idea that it is first of all the interest of the person sought to be surrendered to the requesting State as soon as he or she consents to it. It was also understood that this corresponds also to the interests of the requested and of the requesting States. As a consequence, accelerated procedures should be put in place in order to surrender the person in shorter delays. Accordingly, formalities described in Art 12 should be alleviated. Most of the information needed is generally to be found in Art 16.2 ECE (information from the request for provisional arrest). The possibility to use Art 4 of the EU 1995 Convention on simplified extradition, on “information to be provided”, as a reference for future drafting in the CoE context, was also mentioned.

Two members of the Group expressed difficulties with this approach and favoured the application of Art 12 in simplified extradition procedures.

The Group discussed the possibility to revoke consent and agreed that there should be a time limit for this possibility. Such time limit could be when the requested State takes the decision on the surrender of the person.

The group agreed that time limits should be as short as possible for a decision on surrender once the consent has been given. In any event, the limits foreseen by Art 18 ECE ought to be respected.

#### 4.2.1.2 Grounds for refusal

A majority of the members of the Group were of the opinion that the current legal framework does not create many problems in practice.

As to political offences, for a series of important crimes, specific legal instruments deal with the matter and restrict the grounds for refusal on that basis (ex. conventions on terrorism, hijacking of aircrafts, European arrest warrant). In addition, the few cases appearing in practice are often linked to human rights concerns – in particular in terrorist cases. These particular problems cannot easily be dealt with through general normative rules. Ultimately, doubts were expressed on the readiness of many States to accede to any new binding provision excluding the political clause.

One member of the Group considered however that the use of that exception, notably in economic crime cases, creates real difficulties in the relations between his State and other member States. This member considered it being necessary and opportune to go further in the work on revising the circumstances in which this ground for refusal can be used.

As it seemed from the discussion, it would be very difficult to find a solution in the Group and probably even in the PC-OC, as a Committee of Experts. It has been suggested that the question of regulating the “political offences” be submitted to the CDPC for discussion and possible instructions to the PC-OC.

One member mentioned difficulties raised by the use of the exception for fiscal offences and suggested that the Committee recommends to member States, which have not yet done so, to consider ratification of the 2<sup>nd</sup> Protocol to the convention (see in particular Art 2).

**For the following topics, the Group agreed with the proposal as described under the appended document.**

4.2.1.3 Speciality rule

4.2.1.4 Channels and means of communication

4.2.1.5 Time limits

4.2.1.6 Language

4.2.1.7 Compensation

4.2.1.8 Lapse of time

**The Group identified three matters on which the CDPC is called to consider the elements presented in the appended document, to take the appropriate decision and instruct the PC-OC accordingly.**

4.2.1.9 Grounds for refusal/political offences

4.2.1.10 Procedural safeguards

4.2.1.11 Concurrent requests.

**The Group did not have time to discuss the other elements prepared by the Secretariat. It agreed that a discussion on these elements should take place at the Group's next meeting (May 07). These elements are:**

- ❖ Transversal issues applying to several conventions :
  - Dispute settlement mechanisms
  - Reservations
- ❖ Longer term issues:
  - Extradition of nationals,
  - *ne bis in idem*
- ❖ Other conventions
  - Mutual assistance
  - Transfer of sentenced persons
  - Transmission of criminal proceedings (ETS 073)

Participants to the next meeting in May 2007 will be invited by the Chair, in the course of the meeting, to present shortly their experience in applying this convention. The countries having not ratified the conventions will be invited to present the reasons for it or the perspectives of future ratification. Accordingly, proposals to facilitate co-operation on the basis of this convention may be identified and submitted to the CDPC.

#### **Transfer of prisoners – Greek initiative**

The Group decided to invite participants to the next meeting (May 2007) to prepare preliminary comments on the follow-up to be given to the conclusions adopted on this matter by the Ministers of Justice and of the Interior in November 2006 in Moscow and in particular to § 11 of the conclusions, relating to the transfer of prisoners, following an initiative by the Greek Minister of justice to elaborate a 2<sup>nd</sup> additional Protocol to the CoE transfer convention. On the basis of the discussion, preliminary proposals may be identified and submitted to the CDPC which could give specific instructions to the PC-OC on this matter.

## **5. CONCLUSIONS FROM THE MEETING AND PREPARATION OF THE FUTURE WORK**

The Group agreed that its next meeting will take place in Strasbourg on 3-4 May 2007. The aim of the meeting would be to further discuss the appended proposals in order to finalise them in view of their submission to the CDPC for its plenary session in June 2007.

The Group decided to invite all PC-OC members to participate to its next meeting in May. Experts of the PC-OC (non members of this Group) would come on their own expenses.

The Group expects all participants to prepare the discussions in advance. They are invited to send written comments on the appended proposals to the Secretariat. Pending the appointment of a successor to Mr de Biolley, the Head of Division, Bridget O'Loughlin, will be the contact person in the Secretariat: [bridget.oloughlin@coe.int](mailto:bridget.oloughlin@coe.int).

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**APPENDIX I**

Strasbourg, 04/10/2006

PC-OC Mod (2006) OJ 2

**COMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**(PC-OC)**

**3<sup>rd</sup> meeting of the restricted Group of experts on international co-operation  
(PC-OC Mod)**

Strasbourg, 22-23 /01/2007– Room /Salle 17

**Agenda**

1. **Opening of the meeting** / *Ouverture de la réunion*
2. **Adoption of the agenda** / *Adoption de l'ordre du jour*
3. **Information on the results of the high Level conference of Ministries of Justice and of the Interior on « improving European co-operation in the criminal justice field » (Moscow, 9-10 November 2006).**  
*Information sur les résultats de la conférence de haut niveau des Ministères de la justice et de l'intérieur : « améliorer la coopération européenne dans le domaine de la justice pénale » (Moscou, 9-10 novembre 2006).*
4. **Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters**  
*Discussion sur les démarches et initiatives envisageables pour améliorer l'efficacité de la coopération internationale dans le domaine pénal*
  - 4.1 **Practical measures** / *mesures pratiques*
    - 4.1.1 **Publications and web site** / *publications et site web*  
Presentation of the publications and of the web site /  
*Présentation des publications et du site web*
    - 4.1.2 **Network/ Réseau**  
Presentation of the proposal to be proposed to the CDPC  
*Présentation de la proposition au CDPC*
    - 4.1.3 **Database** / *Base de données*  
Presentation of a system of electronic monitoring and reporting of CoE Conventions  
*Présentation d'un système automatisé de suivi et de reporting de conventions du CdE*
    - 4.1.4 **Other** (newsletter) / *Autre* (bulletin)
  - 4.2 **Proposals for normative developments** / *propositions de développements normatifs*
    - 4.2.1 **Extradition** / *Extradition*
      - ❖ Simplified extradition / *Extradition simplifiée*
      - ❖ Speciality rule / *Règle de spécialité*

- ❖ Grounds for refusal (political crimes) / *Motifs de refus (infractions politiques)*
- ❖ Concurrent requests (notably with International Tribunals)  
/ *Demandes concurrentes (notamment avec les demandes de Tribunaux internationaux)*
- ❖ Other matters: time limits, translation, transmission of requests, of documents or of information, channels of communication, means of communication.  
/ *Autres: délais, traductions, requêtes et pièces à l'appui, modes de transmission des requêtes et des documents ou information.*

#### 4.2.2 **Mutual assistance** / *Entraide judiciaire*

- ❖ Need for broader ratification and implementation of the 2nd additional Protocol to the European Convention on mutual assistance in criminal matters: any concrete proposal?  
/ *Nécessité d'une ratification plus large ainsi qu'une plus grande application du 2ème Protocole additionnel à la Convention européenne sur l'entraide judiciaire en matière pénale : propositions concrètes ?*
- ❖ Is there a need for action (practical measures or legal – binding or non binding - instrument) on matters such as: the collection and exchange of DNA samples; exchange of information from criminal records; witness protection?  
/ *Quel besoin d'action complémentaire (mesures pratiques ou instrument juridique – contraignant ou non) dans les domaines tels que la collecte et échange d'extraits d'ADN, l'échange d'information provenant des casiers judiciaires ou la protection des témoins ?*

#### 4.2.3 **Transfer of sentenced persons** / *Transfèrement des personnes condamnées*

- ❖ Preliminary exchange of views on the proposal to elaborate a 2nd Additional Protocol to the European convention on the transfer of sentenced persons; proposals for follow-up action.  
/ *Echange de vues préliminaire sur la proposition d'élaborer un 2ème Protocole additionnel à la Convention Européenne de transfèrement des personnes condamnées ; propositions de suivi.*

#### 4.2.4 **Transversal or other issues:**

- ❖ Dispute settlement mechanisms / *Mécanismes de règlement des différends*
- ❖ Reservations / *Réserves*
- ❖ Individual rights / *Droits des individus*
- ❖ Longer term issues: extradition of nationals, ne bis in idem
- ❖ Accession of European Conventions by non Member States
- ❖ Should additional conventions be included in the modernisation exercise? (e.g. Transfer of criminal proceedings ?)  
/ *Faut-il inclure d'autres conventions dans l'exercice de modernisation ?(ex : transfèrement des procédures répressives ?)*

### 5. **Cooperation with other Committees or Organisations**

*Coopération avec d'autres Comités ou Organisations*

### 6. **Conclusions from the meeting and preparation of the future work**

*Conclusions suite aux deux premières réunions du Groupe et clôture de la réunion*

## APPENDIX II

### **Draft proposals of the PC-OC to the CDPC as discussed and agreed by the Restricted Group of experts on international co-operation (PC-OC Mod) at their 3<sup>rd</sup> meeting, Strasbourg, 22-23 January 2007**

<b>PROPOSALS FOR PRACTICAL MEASURES</b>
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#### **PROPOSAL N°1 ON THE SETTING UP OF A NETWORK OF SINGLE POINTS OF CONTACTS**

##### Background

The PC-OC, committee of experts on the operation of European conventions on international co-operation in criminal matters, fulfils an essential role in promoting networking among national authorities in charge of judicial co-operation. In addition, regional and multilateral activities conducted under the CoE programmes of assistance further promote networking among practitioners and judicial actors.

##### Proposal

The efficiency of international co-operation could be improved through better communication among national authorities in charge of such co-operation. It is therefore proposed that the Council of Europe sets up a network of national points of contacts from States party to the CoE conventions.

The existing “list of national officials in charge of international co-operation” set up by the PC-OC (PC-OC Inf 6) and comprising of names and contact details of civil servants from national central authority/ies dealing with co-operation requests constitutes a basis for the development of such a network. The list could however be simplified by reducing the number of persons presented by each State to a maximum of 2 to 3 (a single point of contact –PoC – and one or two substitutes), with their complete contact details, including e-mails (and, where available, the contacts of the person(s) to be reached beyond the working hours).

##### Role of contact persons

The contact person is expected to:

- a) Reply to requests related to co-operation or contacting the proper person or giving information on how to contact the proper person. The elements of reply could include notably:
  - a. Preliminary information on the competent authority
  - b. Information on feasibility of action necessary in view of investigation or on the best way to tailor a proper request of judicial co-operation;
- b) Speed up, upon request, the execution of a request for judicial co-operation notably by contacting the proper person, body or institution;
- c) Giving information on the relevant applicable (national or foreign) law or on specific questions on the national legal system;
- d) Diffusing the relevant information both towards the other members of the network and to their national competent authorities;

- e) Act as national correspondent for the purpose of updating (or securing the updating by the competent national authorities) the information given to the CoE's Secretariat which are put on the CoE web site and database<sup>1</sup>;
- f) Developing personal contacts in order to increase the efficiency of transnational procedures;
- g) Be the national correspondent of the newsletter, i.e. collecting information at national level, transmitting to the CoE Secretariat and diffusing newsletter at national level.<sup>2</sup>

### Requirements

The contact persons should have

- a) the necessary competence on judicial co-operation at large,
- b) be available, easily contactable and committed to efficiently deal with requests put to him/her,
- c) knowledge of languages: at least one of the two official CoE languages (English, French).

### Accessibility of names and data

The list of names of persons of contact (PoC) would be available among all persons composing the network and to PC-OC members.

It could be accessible through the database to be set up by the PC-OC<sup>3</sup>.

No access should be given to the list of names outside members of the list, PC-OC members and judicial authorities, as defined by each State Party to the conventions. Access would be provided through a password.

### Activities of the network

Depending on the availability of financial resources, the network could occasionally meet in order to enhance personal contacts among the network's members and discuss matters related to the efficiency of the network's work (exchange of best practice, code of conduct, substantial matters, etc).

**Action requested by the CDPC:** The PC-OC invites the CDPC to invite the Committee of Ministers to:

- take note and support the proposal to setting up a network of national single points of contact on co-operation in the criminal field;
- instruct the CDPC to set-up this network and to report, following its session in 2008, to the Committee of Ministers on this matter.

## **PROPOSAL N°2 ON THE SETTING UP OF AN ELECTRONIC DATABASE**

### Background

The web site of the PC-OC currently presents information related to national procedures on judicial co-operation. This information is however neither comprehensive, nor overall consistent or systematically reviewed and updated. As a consequence, practitioners who need guidance on judicial co-operation with specific countries, often lack accurate information.

<sup>1</sup> Ref. to the proposal n° 2 below to create an electronic database of national elements and procedures on judicial co-operation in criminal matters.

<sup>2</sup> Ref. to the proposal n° 3 below on the web site, publications and newsletter.

<sup>3</sup> Idem as in footnote 1

Access to relevant and updated information on the procedure applicable in each State party to the respective conventions is essential for an efficient preparation and execution of co-operation requests.

### Proposal

The PC-OC suggests that the Council of Europe sets up and hosts an electronic database on national procedures applicable to co-operation in the criminal field. CoE would be responsible for the management and updating of the database.

The database should be as simple as possible (“light weight database”) and should reply to basic questions related to co-operation with the other States parties to the CoE conventions. Extradition, mutual assistance and transfer of sentenced persons will be contemplated in a first step.

### Content of the database

The elements or data to be inserted would include with regard to extradition, for each State:

- the competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for judicial co-operation in criminal matters;
- languages requirements;
- time limits;
- documentation needed;
- statutes of limitation for special offences;
- double criminality requirement;
- extradition of nationals provisions;
- possibility and requirement for simplified extradition;
- means of communication;
- other particularly relevant information (which could include national legislation, national guides on procedure, links to national web sites...).

[The following are proposals from one expert, which have not yet been discussed by the Group:

*The elements or data to be inserted would include with regard to mutual legal assistance, for each State:*

- *the competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for judicial co-operation in criminal matters;*
- *languages requirement;s*
- *time limits;*
- *documentation needed;*
- *list of possible requests;*
- *statutes of limitation for special offences, if applicable;*
- *double criminality requirement, if applicable;*
- *application of the rule of speciality*
- *means of communication;*
- *other particularly relevant information (which could include national legislation, national guides on procedure, links to national web sites...).*

*The elements or data to be inserted would include with regard to the transfer of sentenced persons, for each State:*

- *the competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for judicial co-operation in criminal matters*
- *languages requirements*
- *time limits*
- *documentation needed*
- *continued enforcement or transformation of the sentence*
- *conditional release*
- *transfer of mentally disordered persons*

- *transfer of “residents”*
- *means of communication*
- *other particularly relevant information (which could include national legislation, national guides on procedure, links to national web sites...).*]

The database could offer a link to the details of the person of contact (see above, proposal n°1), member of the network.

A “guide” for practitioners could introduce the database and would for instance stress the need for practitioners to consult the lists of signatures and ratifications as well as the declarations and reservations of any convention, etc .

#### Management of the database

The database would be hosted on the CoE web site. The CoE will provide the software.

The data could be sent to the Secretariat in any of the two official languages (French and English); the data in the database would however, for practical and financial reasons, be available only in English.

The PC-OC agreed on the principle that it would be the responsibility of the Committee members to forward the data, on a regular basis (yearly), to the Secretariat. The Secretariat should find ways to have a simple way to update the data, in order to avoid as much as possible extra work for the national correspondent. It is indeed clearly understood that any database is useful only at the condition that the data are accurate and regularly updated. This shared database would exist under shared responsibility.

#### Accessibility

The database would be accessible to the public. Access to the personal data of the national correspondent would however be restricted (see above under proposal I).

#### **Action requested by the CDPC:**

The PC-OC invites the CDPC to invite the Committee of Ministers to:

- take note and support the proposal to setting up a database on information on national procedure on judicial co-operation in the criminal field;
- instruct the CDPC to set-up this database and to report, following its session in 2008, to the Committee of Ministers on this matter.

### **PROPOSAL N°3 ON THE TRANSNATIONAL CRIMINAL JUSTICE WEB SITE, PUBLICATIONS AND A NEWSLETTER**

#### Web site

The web site on “transnational criminal justice - TCJ” should primarily meet the needs of members of PC-OC as well as those of practitioners of judicial co-operation in the criminal justice field.

It should provide easy access to the applicable instruments and to the tools elaborated – mostly by the PC-OC- to facilitate their implementation (be they legal instruments such as Recommendations or practical measures such as the database).

It should also include all relevant information and documents on PC-OC work in order to efficiently prepare and follow the Committee meetings.

The TCJ web site should propose additional links to other relevant web sites in the field of judicial co-operation: CoE web sites (ECtHR, Codexter, Moneyval, CPT) and others such as European Union, UN,...

Links to the proposal N°1 –network- and 2 –database- should also be provided for.

### Publications

Two publications have been finalised in 2006: “Extradition – European standards” and “co-operation against crime: CoE conventions”.

The first publication is of particular interest as it presents the legal instruments applicable on a specific matter, i.e. extradition, as well as commentaries on the application of the main conventional provisions. These commentaries are elaborated by the PC-OC when discussing practical problems on the application or interpretation of the convention(s). The publication compiles these solutions in one volume and is therefore considered to offer useful guidance to practitioners of judicial co-operation as well as for future discussions in the PC-OC on similar issues.

Similar publications should be undertaken by the Secretariat on other matters such as mutual assistance and the transfer of sentenced persons.

The Secretariat should ensure regular updating of such publications in order to incorporate progressively the outcomes of PC-OC discussions. These updates should be made available to the public through the web site.

### Newsletter

More extensive diffusion of information pertaining to judicial co-operation is needed. Practitioners / PC-OC members are encouraged to communicate news to the Secretariat which could disseminate them through the web site and by e-mail, in the form of a newsletter.

The Newsletter could present information on:

- new measures (legislative or non normative) at national level;
- relevant decisions (case law) at national level (in particular supreme court);
- relevant decisions taken by ECtHR and by CJEC might be useful;
- new conventions;
- technical measures adopted by States, such as database, ....

### **Action requested by the CDPC:**

The PC-OC invites the CDPC to invite the Committee of Ministers to take note and support the development of practical measures aimed at strengthening the efficiency of international co-operation through better visibility and exchange of information via web site, publications and a newsletter.

<b>PROPOSALS FOR NORMATIVE MEASURES</b>
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## **Background**

The PC-OC's terms of reference entrusts it to work on normative measures upon instruction of the CDPC. At this stage, the Committee is presenting to the CDPC the following suggestions for normative changes.

The Committee decided to deal in a first stage with extradition matters. The European convention on extradition (1957) is indeed one of the oldest European conventions in the criminal field and deserves to be fully reconsidered. In addition, extradition directly impacts on individuals' rights and freedoms, on which the CDPC asked the PC-OC to pay particular attention.

The Committee agreed that in doing so, it could also raise aspects of international co-operation relating to other CoE conventions. Matters linked to extradition can also have an impact on mechanisms foreseen by other conventions and could lead to a change to that instrument.

<b><i>Extradition</i></b>
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### ***A- Matters for requests for instructions by CDPC:***

#### **I.1 Simplified extradition**

##### ***Proposal***

The 1957 European Convention on Extradition could be revised in order to include mechanisms of simplified extradition when the person sought consents to his or her extradition. If such consent is expressed, there is no need to go through all the formalities of an extradition procedure. A simplified procedure could be proposed as an amendment to the existing extradition convention. As a result, delays of surrender would in most cases be reduced substantially. This would contribute to reach the main objective to increase the efficiency and rapidity of extradition mechanisms.

The simplified extradition mechanism proposed in the EU convention on simplified extradition of 1995 could serve as a reference for discussions in the CoE context.

Forms of simplified extradition already exist in practice (one expert informed that 2/3 of extradition requests are dealt with through such simplified procedures). It would be desirable to elaborate a treaty basis for this, accessible to a high number of States. Any new norm should however not have any negative or limitative impacts on the current practice of simplified extradition.

##### ***Modalities:***

- a. ***Application of the requirements from Art 12 ECE (need for formal extradition request and supporting documents)***

The question is whether, in the situation where a person is arrested and consents to his or her extradition, there is a need for a formal request of extradition and for the supporting documents requested by Art 12 ECE or could the "arresting" State surrender the person without such request and documents?

Practice varies among States. In a majority of States where simplified extradition is applied, it is considered that it is of the interest of the person sought to be quickly surrendered once his or her consent has been expressed. States often find the information they need in the request for provisional arrest, in application of Art 16.2 ECE.

In a few States however, there is a need for the extradition request and for the documents requested by Art 12. 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.

It was also proposed that Art 4 of the EU 1995 convention on simplified extradition, on “information to be provided” be used as a reference in the CoE context and would describe the information which has to be transmitted to the requested State.

A **solution** could be to leave it to the States’ discretion whether to ask or not for the application of Art 12. Such an option could either be foreseen in a binding instrument or be made by way of declaration when acceding to such instrument.

b. *Expression and withdrawal of the consent; consequences of the consent*

The consent expressed by the person sought should be **voluntary**, conscious and in full awareness of the legal consequences. The person should not be deprived from the procedural guarantees defined by each State, notably the access to a defence lawyer and to an interpreter.

Many states foresee cases where the consent may be **withdrawn**. It is proposed that a time limit be fixed, after which the consent should not anymore be revocable. Such limit could be the date of the administrative decision on the surrender.<sup>4</sup>

It is understood that:

- the consent should not deprive the requested State to invoke a ground for refusal set forth in the Convention.
- the person can consent to the surrender and renounce to the application of the **speciality rule** (Art 14 ECE)<sup>5</sup>, with a possibility for the requested State to oppose.

The Committee also briefly examined in this context the application of Art 15 of the convention on the re-extradition to third States.

It is proposed that States would indicate, in application of any new binding instrument on simplified extradition if articles 14 (speciality rule) and 15 (re extradition) ECE are applicable.

c. *Time limits*

Time limits could be envisaged for the decision on surrender, after the consent is given. States should be encouraged to take a decision and to surrender the person in the shortest delays (which could not exceed the limits expressed in Art 18 ECE).

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<sup>4</sup> See also Art 13.4 of the EAW according to which the consent should not be revocable.

<sup>5</sup> See also see Art 7.1 EU Convention 1995

**Request to CDPC:**

PC-OC requests the CDPC to be mandated to draft the necessary legal instruments to give a treaty basis to simplified forms of extradition when the person sought consent. It could take the form of (a) – framework- provision(s) amending the extradition convention, supplemented by (a) non binding instrument(s) assisting States in implementing this mechanism.

**I.2 Rule of specialty (Art 14 ECE)**

The principle of the application of the specialty rule should be reaffirmed.

Renunciation to the specialty rule could be envisaged:

- a. in case of simplified extradition, if the person consents
- b. following the surrender, before the requesting State's judicial authorities.

In the latter situation, the following practical questions would need further discussion: should such consent be transmitted to the requested State? Would the requesting State need the agreement of the requested State before prosecuting the person? Should safeguards set forth in Art 13 EAW apply in this case as well (the consent should be expressed “voluntarily and in full awareness of the consequences”, right to legal counsel)? Could States assess the circumstances in which the consent was given, e.g. through its consulates? Should all documents and evidence be sent to the requesting State in application of Art 14 a.? How? Should this requirement be lightened? Should a model form be used for receiving the consent of the person? It has been proposed to include a presumption that the requested State agrees with the waiving of the specialty rule, unless it reacts otherwise?

As a conclusion, some members of the group supported the idea to regulate renunciation to the specialty rule following the surrender, before the requesting State's judicial authorities, keeping in mind Article 10.1.d of the Convention of 27 September 1995 drawn up on the basis of Article K.3. of the treaty on European Union, relating to extradition between the Members of the EU.

The question of the application of the specialty rule in relation with re extradition to third States (Art 15 ECE) was also mentioned.

**Request to the CDPC:**

PC-OC requests the CDPC to be mandated to draft the necessary legal instruments – binding and/or non binding - outlining conditions and modalities of application of the specialty rule and of the renunciation to the rule, with reference to Art 14 ECE.

**I.3 Channels/means of communication (Art 12 ECE and Art 5, 2nd Protocol)**

According to Art 5 of the 2<sup>nd</sup> additional protocol to the ECE, ratified by 40 States: "The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties." These articles could possibly be updated in order to refer also the central authority “as defined by each Party by declaration”, which can be, as it is the case for some States, the Prosecutor's Office.

Parties could also be encouraged to make agreements on the use electronic means of communication (e-mails), at least in order to facilitate the exchange of information regarding the preparation or the execution of co-operation requests. Any new instrument should however remain as flexible as to possibly be applicable to future technological innovations and hence avoid the need to be regularly updated.

**Request to CDPC:**

PC-OC requests the CDPC to be mandated to draft the necessary legal instruments – binding and/or non binding - to broaden the definition of national authorities responsible for co-operation requests and to encourage states to use, whenever appropriate, electronic means of communication.

**I.4 Time limits**

The need for expedient procedure applies for extradition for the purpose of prosecution as well as for the purpose of executing a sentence. In the latter case, shorter procedures are needed notably because the period of detention pending extradition seems to be not always taken into consideration by requesting States.

Some experts agreed that a limit of 6 months before the 1<sup>st</sup> instance decision could be inserted through a binding instrument. Stricter time limits would probably not be realistic. The 6 months time limit would give an idea of the maximum period of time to be expected in an extradition procedure. This time limit seems to cover the different situations and procedures in an extradition process. Such time limit should not impact on the possibility for a person to ask for interim measures in application of the European Convention on Human rights.

The Group thought that additional views are needed on this question. Participants to the next meeting of the group will be invited to prepare suggestions or positions on this matter.

**Request to the CDPC:**

PC-OC requests the CDPC to be mandated to draft the necessary legal instruments of two kinds:

- binding measures on a maximum time limit for a decision on extradition and
- non binding measures addressing a set of principles so as to reduce time limits and avoid long extradition procedures (and long detention before extradition). Such (an) instrument(s) could also address issues of co-operation such as languages and translation, sending of documents/information etc.

**I.5 Language (Art 12, Art 23 ECE)**

Practice shows that a request for extradition would have better chances to be quickly handled in the requested State if the request is addressed in the language of that State. However, this could create practical difficulties in some States where access to translators to the various languages of CoE member States is difficult. Such States would easier find translators in CoE official languages (with the risk that the same documents would have to be translated again in the language of the requested State).

A distinction could be made between the two types of requests

- ❖ an extradition for the purpose of executing a sentence: it could be sufficient to have the most relevant information without having to translate the full verdict;
- ❖ An extradition for the purpose of prosecution: information that a person is charged with a specific crime with a possible specific sentence could be sufficient. As such, there is little use of having a full national arrest warrant with all the appendices to be sent and translated. The use of an international warrant of arrest has been proposed as a useful solution.

The Group also referred in this context to Art 4 of the EU convention on simplified extradition, outlining which information (instead of documents) is needed.

**Request to the CDPC:**

PC-OC requests the CDPC to be mandated to draft the necessary legal instruments – of binding and/or of non binding nature- outlining solutions for a simpler, less expensive and quicker extradition procedure and proposing best practices to be followed by States. Such legal text could identify which documents or which information should be transmitted and translated, with reference to Art 12 ECE.

**I.6 Compensation and return of the person**

Three hypotheses are to be considered:

- ❖ the person is extradited and then acquitted in the requesting State:  
Some States consider that the requesting State could be held responsible and be asked to pay compensation and to provide with the possibility to return. Some States compensate for detention and pay for the return of the person.  
Some other States do not consider that they would be liable to compensate in such cases.  
Some members observed that the acquittal may be caused by factors not dependent from the requesting State (ex: the requested State did not provide with evidence or the person's lawyer provide with information on a decision related to same facts in a third country - *ne bis in idem*).
- ❖ the person is arrested in the requested State and the requesting State withdraws its request of extradition:  
Compensation could be provided by the requesting State. A member underlined that this could also apply if the requesting State sends the extradition request too late.  
In one State, compensation is paid by the requested State, which took the responsibility to affect the person's rights and freedoms. The same could apply for instance if an authority from the requesting State does not in fact take the person over, despite a positive decision on extradition.
- ❖ the person is arrested in the requested State which refuses to extradite the person, following a period of detention:  
If a compensation is to be granted in such a case, it could be provided either by the requesting State, which issued the request and lead to the detention, or by the requested State, who effectively arrested the person.

As it seems, practice in terms of compensation widely varies among States. An approximation of legislation or practice would be desirable in this matter, in particular as it directly concerns the individual's rights. Any future work should therefore carefully consider the case law of the ECtHR in this matter.

In conformity with the idea of the development of a transnational criminal justice, the PC-OC is of the opinion that the treatment of persons in transnational criminal procedures such as extradition should not in principle be too different than the treatment of nationals in the same circumstances.

As a conclusion, the group agreed that a questionnaire to all PC-OC members should be prepared. Mr Selvaggi offered to assist the Secretariat to prepare such a questionnaire before the next meeting.

**Request to the CDPC:**

PC-OC requests the CDPC to take note of the matter, which will be followed by the PC-OC through a questionnaire to all members. The PC-OC will elaborate future proposals on the basis of the result of the questionnaire and on further discussions on this matter.

## I.7 Lapse of time (Art 10 ECE)

Art 10 of the convention foresees that the laws of either the requesting or the requested State shall be considered. In practice, experts seem to consider that the laws in the requesting State prevail. The Schengen agreement (Art. 62<sup>6</sup>) shares the same approach. This can however lead to legal or practical difficulties: the requested State is not always best equipped to interpret the application of the legislation of another State.

On the other side, the EAW foresees (Art 4.4<sup>7</sup>), as an optional ground for refusal to surrender, the situation where the prosecution or the punishment is statute barred according to the law of the requested state and where that State has jurisdiction over the acts according to its law. This legal basis appeared to be supported by several experts.

Some members observed that States developed a practice under bilateral treaties, dealing with this matter.

A possible way forward could be to keep the optional basis (the laws of either the requesting or the requested State) but to transform lapse of time as an optional ground for refusal. Art 10 can be amended by transforming “shall not be granted” by “may not be granted”. Further work would also be needed on modalities and consequences of interruption of lapse of time.

### **Question:**

PC-OC requests the CDPC to be mandated to draft the necessary legal instruments – of binding nature, possibly completed by instrument of non binding nature- dealing with lapse of time.

### **B- Outstanding questions: positions and requests to be finalised by the PC-OC before being sent to the CDPC**

## I.8 Grounds for refusal (Art 3, 4, 5 ECE)

Difficulties have mostly emerged in practice when States have considered the application of Art 3 – Political offences. The number of such cases where difficulties appeared is however rather limited even if they often attract great attention. Solutions presented by the conventions on terrorism, hijacking of aircrafts, European Arrest Warrant, restricting the use of this ground for refusal, were considered.

The majority of the group questioned therefore the opportunity to embark in a revision of Art 3 ECE.

One member of the group insisted on the difficulties to which the use of that article can lead to in practice, which can have a detrimental effect on relations between member States, in the field of international co-operation in criminal matters, and beyond. He reiterated the suggestion that offences should not be regarded as political offences when the crime for which co-operation is required is subject to an international convention to which both States at stake are parties (see also the 2003 Protocol to the Convention on suppression of terrorism and the 2005 Convention on the prevention of terrorism - Art 20: exclusion of the political exception clause)<sup>8</sup>;

6 Art 62, Schengen agreement: “As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply.”

7 Art 4.4 EAW: “The executing judicial authority may refuse to execute the European arrest warrant: 4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law”

8 Article 20 – Exclusion of the political exception clause . 1 None of the offences referred to in Articles 5 to 7 and 9 of this Convention, shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence, an offence connected with a political offence, or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal

Consideration could also be given to developments in the EU, in particular the European Arrest Warrant (EAW) where, in view of political prosecution, a general clause of non discrimination was included in its Preamble (para. 12)<sup>9</sup>.

The Committee agreed not to deal with fiscal offences but rather to encourage States to accede to the 2<sup>nd</sup> additional Protocol to the ECE, which Art.2 offers solutions in this regard. It also agreed not to deal with military offences at this stage, as they do not seem to create much difficulty in practice.

#### **Request to CDPC:**

PC-OC requests the CDPC to

- discuss the opportunity to review Art 3 ECE on “political offences” and instruct the PC-OC to carry out any further work as deemed appropriate;
- discuss the PC-OC proposal not to deal with fiscal or military offences at this stage.

### **I.9 Procedural safeguards**

PC-OC considered two ways to provide higher protection of individuals in extradition procedures<sup>10</sup>:

- The insertion of “procedural safeguards” for the person involved in an extradition procedure. These safeguards would include notably: obligation to inform, access to legal counsel, access to interpreter, right to expedient procedure, possibility to challenge the lawfulness of the detention, obligation to hear the person on his/her extradition, obligation to compensate. The safeguards applicable to a person who was tried in absentia should also be included. This approach is consistent with the CDPC’s instruction that the PC-OC deals with this as a priory matter. It would give a direct and coherent follow-up to the conclusions of the PC-TJ, in its final report. It should also be considered in the light of the perspective to broaden the access to the convention to non CoE member States (which are not bound by the ECHR). Several experts found that these rights or safeguards were already in some ways guaranteed by the ECHR and its case law; their insertion in the extradition treaties would therefore not be needed. Furthermore, these additional procedures could impede the efficiency of extradition procedures.
- the insertion of a “general clause on human rights” in the convention. As fundamental rights (mainly right to life, rights not to be tortured or to be subject to inhumane or degrading treatment) are protected by the ECHR and the Court’s case law and by the UN Convention on torture, there is no need to amend the extradition Convention on this. A general clause on human rights could be envisaged, by which States are recalled that extradition treaties have to be implemented in full respect of obligations deriving from international human rights treaties, including ECHR. Reference can be made to such non discrimination clause foreseen in the preamble of the FD on the European Arrest Warrant.

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assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives

9 Art 12 of the Preamble on the EAW: “This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union(7), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person’s position may be prejudiced for any of these reasons.”

10 Backround information is to be found essentially in the PC-TJ final report (PC-TJ(2005)10) and in the research made by Ms Azaria (PC-TJ(2005)07).

Future discussions in the CoE committees should take duly into account the current discussions in the EU on a draft framework decision on procedural rights.

Due consideration should also be given to the difficulties that some States may have in acceding to any new legally binding instrument which would include such rights or safeguards in a mandatory manner.

***Request to CDPC:***

PC-OC requests the CDPC to discuss the opportunity to include procedural safeguards in extradition mechanisms and to instruct the PC-OC to carry out any further work as deemed appropriate.

**I.10 Concurrent requests (Art 17 ECE)**

The PC-OC considered that cases of concurrent requests for extradition/surrender issued by several States and/or by (an) international criminal jurisdiction(s) deserved further discussions. It agreed however that such situation appears rarely in practice.

PC-OC considered the difference in nature of an extradition and a surrender requested by an international tribunal. The PC-OC consequently decided not to embark at this stage in a normative exercise on this question and to insert it among other matters under “longer term issues”.

**! the issues mentioned below have not been discussed by the Group. These are proposals prepared by the Secretariat, submitted for consideration by the Group and by the PC-OC, in view of future proposals to be submitted to the CDPC.**

**C - Longer term issues**

*Following the instructions given by the CDPC, the PC-OC discussed the following issues in the perspective of longer term results:*

**I.11 Extradition of nationals (Art 6 ECE)**

*The issue of extradition of nationals was discussed in connexion with the application of the principle “aut dedere aut judicare” and while having in mind constitutional guarantees set forth by several States protecting their nationals.*

*Future discussions could deal with the following matters:*

- *the introduction of the “Dutch clause”, by which States can extradite their nationals on the condition that the person is sent back for the execution of his/her sentence;*
- *the prosecution in the requested State if the extradition is refused, bearing in mind possible difficulties of having a mandatory application of this principle and*
- *the opportunity to elaborate a non binding instrument on co-operation between the requesting and the requested States in cases where the latter refuses extradition and initiates prosecution against the person sought (e.g. transmission of evidence by the requesting State)*
- *the links with the application of the convention on the transmission of criminal proceedings (ETS 73).*

**Request to the CDPC:**

The PC-OC requests the CDPC to take note of the proposals for future action in the field of extradition of nationals and to decide on any appropriate action to be taken by the PC-OC in this matter.

**I.12 Ne bis in idem (Art 9 ECE)**

The PC-OC observes, at this stage, the need to come back later to this issue, notably in order to clarify some ambiguities in the languages of the instruments (“offences” against “faits”). Recent decisions by the Court of Justice in Luxembourg could help in clarifying the matter.

**Transversal issues****II. 1 Dispute settlement**

The PC-OC discussed this issue on the basis of:

1. the proposal from the Russian Federation to foresee, by way of an additional Protocol to the Conventions on extradition and on mutual assistance, an arbitral procedure to settle disputes, on the basis of the provisions set forth in the 2003 Protocol to the convention on suppression of terrorism;
2. the note prepared by the Secretariat which describe the dispute settlement mechanisms foreseen by the CoE Conventions, i.e. mostly, the role of the CDPC, and the other possibilities to settle disputes: arbitration or international jurisdiction.

As to the first proposal, the PC-OC observed the difficulty for several members to be possibly bound by a procedure of arbitration which would be initiated by only one party to the dispute. It also underlined some legal difficulties linked notably to the authority that any arbitral decision could possibly have on a final judicial decision taken by a national –independent- competent jurisdiction. Several States underlined that such authority could hardly be compatible with their national constitutional provisions.

**Request to the CDPC:**

PC-OC request the CDPC to be mandated to draft additional binding provisions on the settlement of disputes arising from the application or the interpretation of the European Convention on Extradition and its Protocols. These provisions could:

- recall the general principle of friendly settlement of disputes and the various procedures available (i.e. mainly negotiation, mediation, arbitration, judicial settlement, or other arrangement of the parties’ choice),
- confirm the role of CDPC which shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of the Convention and its Protocols’ execution
- [propose alternative or additional procedure to facilitate the settlement of these difficulties – to be completed according to the results of the Group’s discussions]

## **II.2 Reservations (Art 26 ECE)**

The following proposals are submitted to the CDPC for consideration:

- reservations should be limited to specific provisions;
- existing reservations should be reviewed and, where necessary, updated or withdrawn,
- a limited duration of validity could be envisaged, through a new legal basis, for future reservations. The interest of such a limitation should however be balanced with the interest to have as many States as possible ratifying the instrument and with the necessity of an efficient co-operation.

### **Request to the CDPC:**

The PC-OC requests the CDPC to take note of the proposals for future action in the field of reservations and to decide on any appropriate action to be taken by the PC-OC in this matter.

<b>Other conventions</b>
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## **III.1 Transfer of sentenced persons**

To be completed after the meeting in May 2007

[Further to the follow-up to be given to § 11 of the high Level Conference of Ministers of Justice and of the Interior in Moscow in November 2006, the PC-OC could envisage following area of possible developments:

- increasing the level of ratifications of the Additional Protocol
  - Normative developments, binding or not binding, could be envisaged as regards notably:
  - Procedural guarantees for the sentenced person in a transfer procedure
  - the consent of the detainee to be transferred, which should be given freely and in full awareness of the legal consequences and its revocability, as well as suitable time limits for the withdrawal ;
  - an obligation to inform the executing State of any contagious illness contracted by the sentenced person;
  - the transfer of mentally disturbed offenders.]
- [GREEK initiative to be discussed]

### **Request to the CDPC:**

To be completed following the meeting in May 2007.

## **III.2 Mutual assistance**

It is probably too early to discuss the modernisation of a mechanism which has been recently updated by a 2<sup>nd</sup> additional Protocol (ratified by 12 States). Some practical applications of the convention and its Protocols could however be discussed further, such as the application of Art 22 on the transmission of information from criminal records and the application of MLA mechanisms to requests for DNA samples.

**Request to the CDPC:** the PC-OC requests the CDPC to decide on any appropriate action to be taken by the PC-OC in this matter, either rapidly or among other longer term issues.

### ***III.3 Transmission of criminal proceedings***

*The PC-OC underlined the positive aspects of the Convention on the transmission of criminal proceedings (ETS 73) and considers it opportune to look further into its status of ratification and into matters pertaining to its application.*

***Request to the CDPC:***

*The PC-OC requests the CDPC to decide on any appropriate action to be taken by the PC-OC in this matter, either rapidly or among other longer term issues.*

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**APPENDIX III**

10 November 2006

**HIGH-LEVEL CONFERENCE  
OF THE MINISTRIES OF JUSTICE AND OF THE INTERIOR**

Moscow (Russian Federation)

9 – 10 November 2006

**IMPROVING EUROPEAN CO-OPERATION IN THE CRIMINAL JUSTICE FIELD*****CONCLUSIONS***

1. The Ministers of Justice and of the Interior and Heads of Delegation taking part in the Conference on “Improving European Co-operation in the Criminal Justice Field” (Moscow, 9-10 November 2006),
2. Referring to the Warsaw Declaration adopted by the Heads of State and Government at their Third Summit in May 2005, which proclaims: “we will further develop legal co-operation within the Council of Europe with a view to better protecting our citizens and to realising on a continental scale the aims enshrined in its Statute”;
3. Referring also to the Action Plan adopted by the Summit and which provides for strengthening the security of European citizens notably by combating terrorism, corruption and organised crime, trafficking in human beings and cybercrime as well as to the Resolution adopted by the Third High-level multilateral meeting of the Ministries of the Interior in Warsaw in March 2005 on the fight against terrorism and organised crime to improve security in Europe;
4. Bearing in mind the provision of this same Action Plan whereby “we will make full use of the Council of Europe’s standard-setting potential and promote implementation and further development of the Organisation’s legal instruments and mechanisms of legal co-operation, keeping in mind the conclusions of the 26th Conference of European Ministers of Justice (Helsinki, 7-8 April 2005)” and also the conclusions adopted at the 7th Session of the Conference of Prosecutors General of Europe (Moscow, 5-6 July 2006);
5. Convinced of the Council of Europe’s essential role in developing a common legal area based on respect for human rights and the rule of law;
6. Bearing in mind the significant number of the Council of Europe treaties in the criminal justice field (currently over thirty), in particular the conventions on extradition and mutual assistance in criminal matters and their additional protocols, which have provided the basis for legal co-operation in criminal matters in Europe for almost 50 years;
7. **Underline** the need to improve the efficiency of international co-operation in criminal matters in order to prevent and effectively combat criminality while ensuring respect of the European Convention on Human Rights, and **welcome** the significant achievements of the Council of Europe in this domain, in particular through the work of the European Committee on Crime Problems (CDPC);

8. **Support** the essential role of the Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC) in monitoring the application of the Council of Europe conventions on international co-operation in criminal matters in order to find solutions to concrete problems, accelerate procedures and prevent disputes between States;
9. **Encourage** the Council of Europe:
  - a. to put in place various practical measures to this end:
    1. in particular, they support the idea that a network of national contact points be developed in order to facilitate contacts between those responsible for international judicial co-operation, notably in the areas of combating terrorism, corruption and organised crime, trafficking in human beings and cybercrime;
    2. they also support the establishment of a database of procedures in force in the member States concerning the various types of co-operation which would allow for easier access to this information;
    3. they furthermore invite the States party to the co-operation conventions to continue their exchanges of good practices;
  - b. to continue the efforts to improve the operation of the main conventions regulating international co-operation in criminal matters, in particular those regarding extradition (as well as mutual legal assistance and transfer of criminal proceedings), in order to identify the difficulties encountered and to consider the need for any new instruments;
10. **Agree** that the Council of Europe's instruments offer possibilities for the friendly settlement of disputes arising from the application of the conventions. They **encourage** the PC-OC to strengthen its role in preventing disputes, taking into account, in particular, the nature and content of such disputes and, wherever necessary, to submit proposals to the CDPC, in consultation with the Committee of legal advisers on public international law (CAHDI), to improve the settlement procedures;
11. **Call on** the PC-OC to continue facilitating the transfer of sentenced persons in application of the Council of Europe instruments and to follow closely the developments in the case-law of the European Court of Human Rights as well as in the European Union in this matter, and to analyse the feasibility of an extension in the Council of Europe context of any provisions which may be adopted by the European Union; they also **support** the Council of Europe's actions under way in the penitentiary field, which aim at improving the standards of detention and which thus facilitate international co-operation in this field;
12. **Consider** that for the PC-OC to be able to fulfil adequately its role in this domain, regular meetings of the Committee should be ensured;
13. **Call on** the Committee of Experts on Terrorism (CODEXTER) to continue its effective work to identify the existing lacunae in international law or action on the fight against terrorism, as well as to pursue ongoing activities, in particular the drawing up of the Country profiles on counter-terrorist capacity covering, *inter alia*, international co-operation in this area;
14. **Call on** those States which have not already done so to sign and ratify at the earliest opportunity the relevant Council of Europe conventions, in particular the Protocol amending the European Convention on the suppression of terrorism, the Conventions on the prevention of terrorism, on laundering, search seizure and confiscation of the proceeds from crime and on the financing of terrorism as well as on action against trafficking in human beings, so that they can enter into force without delay;

15. **Call on** those States which have not already done so to become Parties, in conformity with their national procedures, to the Convention on Cybercrime so as to ensure the broadest possible application of the co-operation machinery it provides for and **invite** the CODEXTER to continue its examination of the issue of cyberterrorism;
16. **Call** also for the signature and ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which provides a legal basis for increased co-operation between States using methods suited to combating modern types of crime;
17. **Support** the current work on drafting a convention to criminalise the sexual exploitation of children and **observe** with interest the preparatory work for a possible binding legal instrument on counterfeit medicines and pharmaceutical crimes, in particular following the international conference held on the issue in Moscow on 23 and 24 October 2006; they **reiterate** the importance of international co-operation to combat these evils;
18. **Welcome** the positive results of the assistance activities conducted by the Council of Europe in its member States with a view to promoting, notably through legislative and institutional reforms as well as training programmes, international co-operation and the application of European instruments in this area; they note, in particular, the many activities and co-operation programmes conducted in certain member States and in certain regions; they **encourage** the Council of Europe to continue and expand, to the extent possible, these activities;
19. **Welcome** the results achieved by the monitoring bodies in the criminal field such as the Group of States against Corruption (GRECO) and the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) and, with the perspective of setting up monitoring mechanisms as provided for in the above-mentioned conventions (in the fields of money-laundering, terrorism and trafficking in human beings), underline their importance for the consistent and effective application of the relevant standards;
20. **Express** their warmest thanks to the authorities of the Russian Federation for the excellent organisation and success of this Conference in the context of the Chairmanship of the Committee of Ministers of the Council of Europe, and for their generous hospitality.

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**APPENDIX IV****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****ITALIA / ITALIE**

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*Apologised / Excusée***PORTUGAL**

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**SLOVAKIA / SLOVAQUIE**

Mr Branislav BOHÁČIK, Ministry of Justice, BRATISLAVA

**SWEDEN / SUEDE**

Mr Per HEDVALL, Ministry of Justice, STOCKHOLM

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