

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

**RESTRICTED GROUP OF EXPERTS ON INTERNATIONAL CO-OPERATION**  
**(PC-OC Mod)**

**Enlarged 4th meeting**

**Strasbourg, 3-4 May 2007**

**Summary meeting report**

**Brief foreword**

The PC-OC Mod, at its enlarged 4th meeting, held preliminary exchange of views concerning the Greek proposal to draft a Second Additional Protocol to the European Convention on the transfer of sentenced persons. With a view to facilitating the discussion concerning the Greek proposal at the next plenary meeting of the CDPC on 18-22 June 2007 the PC-OC Mod sent a questionnaire concerning this proposal to all members of the PC-OC for their replies to be received not later than 8 June 2007.

**The PC-OC Mod finalised the following proposals to be submitted to the CDPC at its forthcoming plenary meeting, after their approval by the PC-OC:**

**a. On practical measures** to improve operation of relevant conventions (see Appendix IV to this Report), asking the CDPC to invite the Committee of Ministers to:

- take note of and support the 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 meeting in 2008, to the Committee of Ministers on this matter;
- take note and support the 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 meeting in 2008, to the Committee of Ministers on this matter;
- take note and support the development of practical measures aimed at strengthening the efficiency of international co-operation through better visibility.

**b. On normative measures** to improve the operation of relevant conventions (see Appendix V to this Report), asking the CDPC to mandate the PC-OC to carry out the work relating to the following aspects of extradition:

- 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
- language(s)
- compensation and return issues
- lapse of time

**The PC-OC Mod agreed that the next plenary meeting of the PC-OC would take place during the week of 5-9 November 2007 and instructed the Secretariat to communicate the exact dates of the meeting to PC-OC members at a later stage.**

## I. Opening of the meeting

1. The Chair of the PC-OC Ms Barbara Goeth-Flemmich (Austria) welcomed the participants and noted that the large participation demonstrated the importance of the subjects on the agenda of the current meeting and the importance of the PC-OC work in general.
2. Then she thanked the previous Secretary of the PC-OC Mr Humbert de Biolley, who has recently taken up a new function in the Council of Europe Office in Brussels, for the excellent work he had carried out for the PC-OC. She also took note of the fact that the new Secretary of the PC-OC had not yet been appointed.
3. The Head of the Criminal Law Division *ad interim*, Mr Chiaromonte, informed the participants that the CDPC Bureau had instructed all subordinate committees of the CDPC that only those documents on which all members of these committees have been previously consulted should be sent to the CDPC for decision.

## II. Adoption of the agenda

4. The Agenda of the meeting was adopted as it appears in Appendix I to this report. The list of participants appears in Appendix II to this report.

## III. Follow-up to 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) - proposal of Greece concerning preparation of a Second Additional Protocol to the Convention on the transfer of sentenced persons (ETS No. 112)

5. The PC-OC Mod took note of the letter of the Minister of Justice of the Hellenic Republic addressed to the Chair of the CDPC, containing the proposal to draft a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons. In this respect it also recalled the conclusions adopted on this matter at the High Level Conference of Ministers of Justice and of the Interior on "Improving European Co-operation in the Criminal Justice Field" (Moscow, 9-10 November, 2006).
6. Ms Maria Gavouneli (Greece) presented the Greek proposal to draft a Second Additional Protocol to the European Convention on the transfer of sentenced persons. She indicated that the main objective of the proposal was to ensure effective social rehabilitation of prisoners and to ensure that deprivation of liberty is not limited to isolating prisoners from the society, but also aim at their rehabilitation and re-integration into that society as law-abiding members. She indicated that when prisons are overpopulated by representatives of different ethnic origin and religion inmates tend to create groups comprised of members having a common language, leading to conditions where social rehabilitation becomes extremely difficult.
7. The Greek delegation considered that the proposed Second Additional Protocol should enable, in appropriate cases and subject to certain safeguards, sentenced persons to be returned to their country of nationality. If it is evident that the chances for rehabilitation are higher in the requesting state for other reasons (family residence, other ties etc.) the person then should remain in this country.
8. In the view of the Hellenic Republic successful rehabilitation is more likely to occur if prisoners are in a familiar environment in terms of language, culture etc. Therefore it would be desirable to take the proposed step to enable sentenced persons to be transferred in a simplified manner to the country of which they are nationals.
9. During its preliminary exchange of views the majority of members of the Group welcomed the proposal in principle and considered that certain issues merited a thorough examination (e.g. possible time limits, additional conditions for co-operation such as the minimum remaining length of sentence to be served etc.). However, two members of the Group referred to possible difficulties that the proposal might cause for their countries due to national legislation.

10. The Group agreed upon the principle of social rehabilitation of sentenced persons as one of the main objectives of the proposed Protocol, subject to the interests of justice in general.
11. The Group took note of the draft EU Framework Decision on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union and. In particular it was noted that the draft Framework Decision was based on mutual recognition of judicial decisions between the EU member states, whereas the possible instrument of the Council of Europe would be based on the common responsibility of the States Parties to co-operate for the effective operation of their penitentiary systems in general and for successful social rehabilitation of their prisoners in particular.
12. The Group took the view that, when examining whether the transfer of prisoners would have a positive effect on the social rehabilitation, it would not suffice to take into account their nationality only, as owing to the considerable movement of persons there may be often stronger ties (social, family ties, residence issues etc.) to be taken into consideration.
13. Two fundamental issues raised by the Group were those of the consent of the person proposed for transfer and the consent of the administering state. On the one hand the Group recognised that the Convention ETS No. 112 is based on the principle of consent of the administering state to receive the person transferred. On the other hand several members of the Group stated that it should not prevent the new Second Additional Protocol from going further and introducing mandatory acceptance as one of its principles, providing only for a list of specific grounds when such acceptance could be refused by the administering state. The Group recognised that these issues would require comprehensive discussions in order to take a decision whether to prepare such a Protocol.
14. The Group also noted that information on foreign nationals serving imprisonment sentences in the Council of Europe members States Parties to the Convention could be useful when examining the possible drafting of a Second Additional Protocol and decided to include the request to provide such information into a questionnaire to be addressed to the PC-OC members (see paragraph 16 below).
15. The Group noted that it could be difficult for some countries to accept the transfer of prisoners to their own countries owing to their limited resources in particular the capacity of their penitentiary institutions. Also the issue of who would cover expenses for the transfer of prisoners was raised. It was recognised that refusals motivated by financial reasons should be avoided as far as possible, if appropriate by the use of bilateral arrangements and/or through multilateral international agreements.
16. In accordance with the instruction given by the CDPC Bureau at its last meeting on 16-18 April 2007 the PC-OC Mod approved a questionnaire relating to a possible Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons (see Appendix III to this Report). It instructed the Secretariat to send it to the PC-OC members inviting them to respond by 8 June 2007.
17. On the basis of the replies received the Secretariat will inform the CDPC on this matter at its plenary meeting in June 2007.
18. As regards other matters relating to the Convention No. 112 the PC-OC Mod took note of the intention of the Russian Federation to ratify this Convention and its Additional Protocol in 2007 in order to enable it to enter into force with respect to this country in 2008.

#### **IV. Discussion on possible steps and initiatives to improve the efficiency of international co-operation in criminal matters – proposals for practical and normative measures**

##### ***a. Practical measures***

19. The PC-OC Mod continued considering the draft proposals being prepared by the PC-OC on practical measures to improve the efficiency of international co-operation in criminal matters. It took note of the decision of the CDPC Bureau to transmit these proposals to the plenary of the CDPC in June 2007. The PC-OC Mod amended the proposals contained in Appendix VI to this Report and transmitted it first to the PC-OC members for approval and possible comments to be sent to the PC-OC Secretariat not later than 22 May 2007 and then to the CDPC for decision.

##### ***b. Normative measures***

20. As regards the draft proposals being prepared by the PC-OC concerning normative measures (see Appendix V to this Report) the Group held a detailed discussion, taking into account comments made by the CDPC Bureau at its last meeting in April and amended the document accordingly. In this respect the PC-OC Mod took note of the approval by the CDPC Bureau of the first seven proposals concerning possible normative improvements as regards extradition.

21. As regards the application of the rule of specialty, upon the request of some delegations present at the meeting, the PC-OC Mod decided to prepare an additional paragraph (paragraph 23 of Appendix V to this Report), setting out situations that should be avoided when using the rule of specialty.

22. It was further noted that the channels of communication used by the Parties in the practical application of the European Convention on Extradition for example, are not in strict conformity with the text of the Convention. Therefore a few members of the Group expressed the view that a new formulation broadening the legal text and eliminating any discrepancies between the legal text and practical situation would be necessary and that the PC-OC should be mandated by the CDPC to consider possible ways to realise this objective.

23. The PC-OC Mod recalled the decision of the CDPC and the PC-OC plenary that the subject of time-limits should not be dealt with in a binding instrument. At the same time some delegations stressed the need to promote the use of simplified procedures, where appropriate, agreeing upon the importance of respecting the time limits in application of the relevant Conventions.

##### ***c. Transfer of proceedings in criminal matters***

24. The PC-OC Mod held an exchange of views regarding the application of the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No.073), as well as its possible ratification by the other States.

25. The majority of delegations from the states Parties to the Convention appeared to have positive experience in its application and found it to be a useful instrument in particular for facilitating court proceedings.

26. One significant problem that was pointed out by these delegations was the relatively low number of ratifications to the Convention, which prevented its application in respect of other states, especially some of the neighbouring countries.

27. Among delegations of those member States that had not ratified the Convention most stated that national legislation allowed for the transfer of criminal proceedings on reciprocal basis and in some cases even without the need for reciprocity. Therefore, according to these delegations, there was no need for their states to become Parties to the Convention.

**d. Matters to be discussed at the following meetings of the PC-OC and the PC-OC Mod**

28. Owing to the lack of time the Group was not able to discuss fully all matters on its agenda and agreed to continue working on these remaining issues at a later stage after taking into account the priorities to be fixed for the PC-OC by CDPC at its next meeting.

29. The remaining issues would include the following:

Conventions:

- Mutual Legal Assistance
- Transfer of proceedings in criminal matters
- Transfer of sentenced persons

Transversal or other issues:

- Dispute settlement mechanisms
- Reservations
- Individual rights

Longer term issues:

- Extradition of nationals and application of *non bis in idem* rule

**V. Co-operation with other committees and organisations**

30. The PC-OC Mod welcomed the Chair of the Consultative Council of European Prosecutors (CCPE) Mr Harald Range, who presented the results of the first meetings of the CCPE and its future activities. In particular he indicated that the CCPE wished to intensify its work with the PC-OC in particular in the field of international co-operation.

31. He informed the PC-OC Mod of the organisation of the First Conference of European Prosecutors will take place on 4-5 June 2007 in Warsaw on the theme "International Co-operation in the Penal Field" and noted that Mr. Eugenio SELVAGGI (Italy) would represent the CDPC and the PC-OC at the Conference.

32. It was noted that that, although co-operation in the field of mutual legal assistance is mainly confined to the judicial field, including prosecutors, sometimes it enters into the neighbouring areas, namely co-operation in the sphere of the police. Therefore in view of some members of the PC-OC Mod mutual legal assistance perhaps should not be strictly limited to judicial co-operation but rather should expand further, especially in the field of the international fight against terrorism. Co-operation between the PC-OC and the CCPE could facilitate improved co-operation in this field as well as in other related areas.

33. With a view to ensuring the efficiency of different existing networks of international co-operation in penal field a systematic exchange of views between the responsible committees was agreed to be extremely important. To this end the Chair of the CCPE and the PC-OC Mod concurred that this should be the case between these two committees. The PC-OC Mod thanked the Chair of the CCPE for the information provided and for taking part in the meeting.

**VI. Conclusion of the meeting and dates of the next PC-OC plenary meeting**

34. The Group instructed the Secretariat to send to the PC-OC delegations the proposals for normative and practical measures aiming at facilitating and improving co-operation in criminal matters (Appendices IV and V) for their approval and possible comments to be received by 22 May 2007 at the latest, as well as the questionnaire on the proposal concerning possible drafting of a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons (Appendix III) for their responses to be received by 10 June 2007 at the latest.

35. The Secretariat was instructed to include any comments received in the text to be forwarded to the CDPC.
36. The PC-OC Mod agreed that the next plenary meeting of the PC-OC will take place during the week of 5-9 November 2007.

## APPENDIX I

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

## AGENDA

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*

Working documents/ documents de travail:

Draft report of the 3rd meeting of the restricted Group of experts on international co-operation (PC-OC Mod) /  
*Projet de rapport de la 3ème réunion du groupe restreint d'experts sur la coopération internationale (PC-OC Mod)*

PC-OC Mod (2007) 03

Summary Report of the 52nd meeting of the PC-OC /  
*Rapport sommaire de la 52e réunion du PC-OC*

PC-OC (2006) 16

Summary Meeting Report CDPC-BU, 16-18 April 2007 (English only)

CDPC-BU (2007)23

3. Follow-up to 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) - proposal of Greece concerning preparation of an additional protocol to the Convention on transfer of sentenced persons (ETS No. 112) /

*Suivi 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) - la proposition de la Grèce concernant un protocole additionnel à la Convention sur le transfèrement des personnes condamnées (STE no.112)*

Working documents/ documents de travail:

Conclusions 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) /  
*Conclusions 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)*

Comments submitted by the Ministries of Justice /  
*Commentaires soumises par les Ministères de la Justice*

PC-OC Mod(2007)05

Letter from Mr Anastasis PAPALIGOURAS, Minister of Justice, Greece /  
*Lettre de M. Anastasis PAPALIGOURAS, Ministre de la Justice, Grèce*

PC-OC (2007) 01

Proposal of the Hellenic Republic for a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons /  
*Proposition de la République hellénique pour un second Protocole additionnel à la Convention européenne sur le transfèrement des personnes condamnées*

PC-OC (2007) 02

Draft Explanatory Report to a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons /  
*Projet de rapport explicatif du deuxième Protocole additionnel à la Convention européenne sur le transfèrement des personnes condamnées*

PC-OC (2007) 03

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 Proposals for normative measures / Propositions des mesures normatives

4.1.1 Conventions / *Conventions*:

- Transmission of criminal proceedings / *La transmission des procédures répressives*
- Mutual Legal Assistance / *Entraide judiciaire*
- Transfer of sentenced persons / *Le transfèrement des personnes condamnées*

4.1.2 Transversal or other issues / *Les questions transversales et autres questions*:

- Dispute settlement mechanisms / *Mécanismes de règlement des différends*
- Reservations / *Réserves*
- Individual rights / *Droits des individus*

4.1.3 Longer term issues / *Les questions à plus long terme*:

Extradition of nationals and application of *non bis in idem* rule / *Extradition des nationaux ou l'application de la règle « non bis in idem »*

4.1.4 Extradition / *Extradition*

4.2 Proposals for practical measures / Propositions des mesures pratiques

4.2.1 A network of national single points of contact / *Un réseau de points de contacts nationaux uniques*

4.2.2 An electronic database on national procedures / *Une base électronique de données sur les procédures nationales*

4.2.3 Publications, web site and newsletter / *Les publications, la création d'un site Web et la diffusion d'un bulletin*

Working documents/ documents de travail:

Note related to item 4.1 of the draft agenda, (Switzerland) /  
*Note concernant le point 4.1. du projet d'ordre du jour (Suisse)*

**PC-OC Mod(2007)04 Bil**

Draft proposals of the PC-OC concerning Normative Measures /  
*Projet de propositions du PC-OC concernant les mesures normatives*

**CDPC-BU (2007) 10**

Draft proposals of the PC-OC concerning practical measures  
*Projet de propositions du PC-OC concernant les mesures pratiques*

**CDPC-BU (2007) 09**

5. Cooperation with other Committees or Organisations  
*Coopération avec d'autres Comités ou Organisations*

Information concerning the future work of the Consultative Council of European Prosecutors (CCPE) and its priorities / *Information concernant les travaux futurs du Conseil Consultatif des Procureurs Européens (CCPE) et ses priorités*

6. Conclusions of the meeting and preparation of the future work  
*Conclusions de la réunion et préparation des travaux futurs*



**APPENDIX II**

**4<sup>th</sup> meeting of the restricted Group of experts on international co-operation (PC-OC Mod)  
enlarged to all PC-OC members**

**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**

**MEMBER STATES / ETATS MEMBRES**

**ALBANIA / ALBANIE – Apologised/Excusé**

Mr Erton KARAGJOZI, Head of International Judicial Cooperation Unit, Ministry of Justice

**ANDORRA / ANDORRE – Apologised/Excusé**

M. André PIGOT, Magistrat Honoraire, Ancien Membre du Conseil Supérieur de la Justice

**ARMENIA / ARMENIE – Apologised/Excusé**

Mr Hovhannes POGHOSYAN, Head of International Co-operation Department,  
Police of the Republic of Armenia

**AUSTRIA / AUTRICHE (CHAIR / PRESIDENTE)**

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

**AZERBAIJAN / AZERBAÏDJAN – Apologised/Excusé**

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

**BELGIUM / BELGIQUE**

M. Erik VERBERT, Attaché, Ministère de la Justice, Service Public Federal Justice, DG Législation, Autorité  
Centrale de Coopération Internationale en Matière Pénale

**BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE – Apologised/Excusée**

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Mr Eddie GRATZ, Legal Assistant, Ministry of Justice

**BULGARIA / BULGARIE – Apologised/Excusée**

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**CROATIA / CROATIE – Apologised/Excusées**

Ms Melanija GRGIC, Head of the Sector, Ministry of Justice, Directorate for International Legal  
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Ms Maja RAKIĆ, Expert Assistant, Ministry of Justice, Directorate for international legal aid, cooperation and  
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**CYPRUS / CHYPRE – Apologised/Excusée**

Mrs Elli KANARI-MORPHAKI, Administrative Officer A, Ministry of Justice and Public Order

**CZECH REPUBLIC / REPUBLIQUE TCHEQUE – Apologised/Excusés**

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Ms Olga SOLCOVA, Legal Officer, International Treaties and Mutual Legal Assistance in Criminal Matters Unit, International Department, Ministry of Justice

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**FINLAND / FINLANDE – Apologised/Excusé**

Mrs Merja NORROS, Deputy Head, Ministry of Justice, Department of International Affairs

**FRANCE**

M. Manuel RUBIO-GULLON, Adjoint au chef du bureau de la législation pénale générale, Ministère de la justice, Direction des affaires criminelles et des grâces

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Ms Elene MARCHILASHVILI, Deputy Director of Department, Ministry of Foreign Affairs, International Law Department

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Ms Maria GAVOUNELI, Legal Advisor, Ministry of Justice

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Mr Jón Þór ÓLASON, Legal Expert, Ministry of Justice

**IRELAND / IRLANDE**

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

**ITALY / ITALIE**

Mr Eugenio SELVAGGI, Deputy District Attorney General, Procura Generale presso la Corte di Appello

**LATVIA / LETTONIE**

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

**LIECHTENSTEIN – Apologised/Excusés**

Mr Harald OBERDORFER, Regierung des Fürstentums Liechtenstein, Ressort Justiz

Mr Gert ZIMMERMANN, Legal Officer, Ressort Justiz, Regierung des Fürstentums

**LITHUANIA / LITUANIE**

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M. Jérôme WALLENDORF, Avocat Général, Parquet Général

**MALTA / MALTE – Apologised/Excusé**

Mr Silvio CAMILLERI, Deputy Attorney General, Attorney General's Chambers, Ministry for Justice and the Arts

**MOLDOVA – Apologised/Excusée**

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Ms Nina JANSSEN, Trainee, Ministry of Justice, Department of International Cooperation in Criminal Matters

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Mrs Liv Christina H. EGSETH, Senior Adviser, Ministry of Justice

Ms Kari MELING, Assistant Director General, The Ministry of Justice and the Police

**POLAND / POLOGNE – Apologised/Excusé**

Mr Tomasz CHALANSKI, Prosecutor, Ministry of Justice, Department of International Cooperation and European Law

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Mme Joana GOMES FERREIRA, Procureur, Procuradoria Geral da República, Coordenadora dos Serviços de Cooperação Judiciária Internacional em matéria penal

**ROMANIA / ROUMANIE**

Mr Florin Răzvan RADU, Directeur, Ministère de la Justice, Direction des Relations Internationales et des Droits de l'Homme

**RUSSIA / RUSSIE**

Mr Vladimir P. ZIMIN, First Deputy Chief, General Department for International Legal Co-operation, Office of the Prosecutor General

**SAN MARINO / SAINT-MARIN – Apologised/Excusé**

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

**SERBIA / SERBIE – Apologised/Excusé**

**SLOVAKIA / SLOVAQUIE**

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

**SLOVENIA / SLOVENIE – Apologised/Excusée**

Ms Maja GABRIJELČIČ, Adviser, Ministry of Justice, Mutual Legal Assistance Sector

**SPAIN / ESPAGNE – Apologised/Excusée**

Mme Isabel VEVIÀ ROMERO, Sous-Directrice adjointe, Sous-Direction Générale Adjointe de la Coopération Juridique Internationale, Ministère de la Justice

**SWEDEN / SUEDE**

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

**SWITZERLAND / SUISSE**

Mme Astrid OFFNER, Cheffe Suppléante des Traités Internationaux, Division de l'Entraide Judiciaire Internationale, Office Fédéral de la Justice *Apologised / Excusée*

M. Erwin JENNI, Chef de la "section extraditions" près l'Office fédéral de la justice, Office fédéral de la justice, section extradition

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" /**

**« L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE » – Apologised/Excusée**

Mme Snezana MOJSOVA, Chef de Division d'intégration européenne et de la coopération internationale, Ministère de la justice

**TURKEY / TURQUIE**

Ms Ülkü GULER, Reporter Judge, Ministry of justice, Department of International Law and Foreign Affairs

**UKRAINE**

Mr Herman HALUSCHENKO, Deputy Head of International Law Department, Head of International Law Division, Secretariat of the President of Ukraine, *Apologised/Excusé*

Ms Tetiana SHORTSTKA, Head of Division, Departement of Internationale Cooperation, Ministry of Justice

**UNITED KINGDOM / ROYAUME-UNI**

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

Mr Graham WILKINSON, Senior Executive Officer for Cross Border Transfers, National Offender Management Service, Home Office

\* \* \* \*

**Consultative Council of European Prosecutors /Conseil Consultatif de Procureurs Européens (CCPE)**  
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## **APPENDIX III**

Strasbourg, 4 May 2007  
PC-OC Docs/(2007)04 Rev.

**PC-OC (2007) 04 Rev.**

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

#### **Committee of Experts** **on the Operation of European Conventions** **on Co-Operation in Criminal Matters** **(PC-OC)**

### **QUESTIONNAIRE**

on

#### **the proposal concerning the drafting of a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons**

The Minister of Justice of the Hellenic Republic, Mr Anastasis PAPALIGOURAS, submitted to the CDPC Bureau and the PC-OC a proposal concerning the drafting of a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons (CETS No. 112), accompanied by the text of the draft Protocol and its Explanatory Report (see Appendix I to this Questionnaire).

At its last meeting on 16-18 April 2007, the CDPC Bureau instructed the Secretariat to send a short questionnaire to the PC-OC members on this proposal and to report to the CDPC at its next plenary meeting (18-22 June 2007), in particular on the prospect of possible elaboration of a Second Additional Protocol, taking into account the views of the PC-OC delegations.

In order to provide the CDPC with a substantiated reply and taking into account the discussions at the last Plenary meeting of the PC-OC (see Appendix II to this Questionnaire) and at the last PC-OC Mod meeting (see Appendix III to this Questionnaire), the PC-OC delegations are kindly requested to respond, by 8 June 2007 at the latest, to the following questionnaire:

1. Would the drafting of a Second Additional Protocol to the CETS No. 112 be desirable?
2. If a Second Additional Protocol is to be drafted, what should be the elements that may be reflected in such a Protocol, on the basis of the proposal of the Hellenic Republic?
3. Are there any additional elements which should, or should not, be included in such a Protocol?
4. If possible, please provide information concerning the number of nationals of each Council of Europe member State serving imprisonment sentences in your country.

**APPENDIX I to the Questionnaire**  
**Proposal of the Hellenic Republic**  
**for a**  
**Second Additional Protocol to the**  
**European Convention on the Transfer of Sentenced Persons**

**Preamble**

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

Desirous of facilitating the application of the Convention on the Transfer of Sentenced Persons opened for signature at Strasbourg on 21 March 1983 (hereinafter referred to as "the Convention") as well as the Additional Protocol thereto opened for signature at Strasbourg on 18 December 1997 (hereinafter referred to as "the Additional Protocol") and, in particular, pursuing its acknowledged aims of furthering the ends of justice and the social rehabilitation of sentenced persons;

Considering that the social rehabilitation of the sentenced persons would be enhanced by their transfer to a place which they consider the place of their primary attachment and where they maintain family, linguistic, cultural, social or economic and other links;

Considering it desirable to supplement the Convention in certain respects,

Have agreed as follows:

**Article 1 – General provisions**

1 The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention and the Additional Protocol thereto.

2 The provisions of the Convention and the Additional Protocol thereto shall apply to the extent that they are compatible with the provisions of this Protocol.

**Article 2 – Conditions for transfer**

1 Upon being requested by the sentencing State, the administering State shall agree to the transfer of a sentenced person without the consent of that person, provided that:

- a that person is a national of the administering State; or
- b that person will be deported to the administering State once he or she is released from prison, as a result of an expulsion or deportation order or any other measure included in the sentence passed on that person or in an administrative decision consequential to that sentence.

2 The administering State may refuse, upon a reasoned opinion, the transfer of a sentenced person of the previous paragraph if:

- a the judgment relates to acts which would not constitute an offence under the law of the administering State; however, the transfer may not be refused on the ground that the law of the administering State does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the sentencing State.
- b. the enforcement of the sentence would be contrary to the principle of ne bis in idem;
- c. the enforcement of the sentence is statute-barred, according to the law of the administering State;

- d. there is immunity under the law of the administering State, which makes it impossible to enforce the sentence;
- e. the sentence has been imposed on a person who, under the law of the administering State, owing to his or her age, could not yet have been held criminally liable for the acts in respect of which the judgment was issued;
- f. the judgment was rendered in absentia, unless the sentencing State certifies that the person was summoned personally or informed via a representative, competent according to the national law of the sentencing State, of the time and the place of the proceedings which resulted in the judgement being rendered in absentia, or that the person has indicated to a competent authority that he or she does not contest the case;
- g. the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which cannot be executed by the administering State in accordance with the legal or health system of that State;
- h. in exceptional cases, where enforcement of the sentence in the administering State would not serve the purposes of facilitation of the social rehabilitation and successful reintegration of the sentenced person into the society.

### **Article 3 – Notification to the sentenced person**

- 1 The competent authority of the sentencing State shall inform the sentenced person, in a language he or she understands, that it has decided to request its transfer to the administering State.
- 2 In all cases where the sentenced person is still in the sentencing State, the person shall be given a opportunity to state his or her opinion orally or in writing. Where the sentencing State considers it necessary in view of the sentenced person's age or physical or mental condition, that opportunity shall be given to his or her legal representative.
- 3 Where the sentenced person has availed him/herself of the opportunity provided in the previous paragraph, the opinion of the sentenced person shall be forwarded to the administering State. If the person stated his or her opinion orally, the sentencing State shall ensure that the written record of such statement is available to the administering State.

### **Article 4 – 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 5 – Signature and entry into force**

- 1 This Protocol shall be open for signature by the member States of the Council of Europe and the other States signatory to 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, 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 deposit.



#### **Article 6 – Accession**

- 1 Any non-member State which has acceded to the Convention may accede to this Protocol after it has entered into force.
- 2 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 7 – 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 Contracting 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 three months after the date of receipt of such notification by the Secretary General.

#### **Article 8 – Temporal application**

This Protocol shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

#### **Article 9 – Denunciation**

- 1 Any Contracting State may at any time 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 three months after the date of receipt of the notification by the Secretary General.
- 3 This Protocol shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of both the Convention and this Protocol before the date on which such denunciation takes effect.
- 4 Denunciation of the Convention automatically entails denunciation of this Protocol.

#### **Article 10 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has been invited to accede to the Convention 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 5 or 6;
- d 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????????? day of ?????????? 200?, 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, to the other States signatory to the Convention and to any State invited to accede to the Convention.

**Draft Explanatory Report**  
**to a Second Additional Protocol to the**  
**European Convention on the Transfer of Sentenced Persons**

**Introduction**

1. The system created by the Council of Europe on the transfer of sentenced persons operates on three major conditions operating concurrently:
  - a. Transfer is possible only to the sentenced person's State of nationality;
  - b. The consent of the administering State, i.e. the State to which the sentenced person is transferred with a view to serve his or her sentence, is necessary; and
  - c. The consent of the sentenced person is also necessary.
2. Currently, there is no obligation for any State to take charge for purposes of enforcement of a sentence or order, even when it is known that the person concerned will eventually return, voluntarily or as a result of an expulsion order, to its State of origin.
3. It is generally considered that enforcement of a sentence should enhance the possibility of social rehabilitation of the sentenced person. However, large numbers of sentenced persons languish in foreign prisons away from their social environment, thus being deprived of any meaningful chance to reintegrate their societies.
4. The existing machinery has proven to be cumbersome and formalistic, totally disassociating the criminal sanction imposed in one State with the social rehabilitation of a person with family, linguistic, cultural, social, economic or other ties to another State. As a result, the ever-increasing prison population in most European States is condemned to a perennial cycle of criminality and punishment, without any real chance of re-entering the society the sentenced person has left behind.
5. It becomes therefore necessary to revisit the system provided by the Council of Europe and create the tools necessary in order to accomplish the social rehabilitation of sentence persons, already accepted as the primary objective of any such transfer. We propose, therefore, a new Additional Protocol, which will build upon the strengths of the existing system and severely curtail cumbersome and time-consuming procedures to the ultimate benefit of the person involved.

**General considerations**

6. The purpose of the proposed Second Additional Protocol to the Convention on the Transfer of Sentenced Persons is to provide a shift in the fundamental rules for the transfer of sentenced persons, so as to facilitate and further enhance their social rehabilitation. Two are the important parameters of the new proposed instrument:
  - a. The State with which the sentenced person has a legal link, either because it is the State of his or her nationality or it is the State where that person will be returned on an expulsion or deportation order as a result of the sentence passed on him or her or a administrative decision consequential to that sentence, cannot refuse a request by the sentencing State for the transfer of that person, as it is presumed that the social rehabilitation of the sentenced person will be facilitated by his or her presence in his or her familiar social environment.

- b. The new rule would still be set aside, if the minimum rights of the sentenced person are at risk and consequently that person will remain at the sentencing State.
  - c. Either way, the sentenced person must be duly notified of the proposed transfer in a language he or she understands and is given full opportunity to express his or her views on the subject. The opinion of the person concerned constitutes an integral part of the new simplified procedure for the transfer of sentenced persons proposed.
7. Article 2 paragraph 1 purports to establish the principle of transfer of the sentenced person to the State, where the conditions for his or her social rehabilitation are presumed to be better. The procedure to be followed remains the one established by the Convention and the Additional Protocol thereto, with only the necessary adjustments made. This familiarity with the rules is expected to minimise the time required for the competent authorities to conform with the new rules and consequently it will greatly enhance the effectiveness of the system.
  8. Article 2 paragraph 2 indicates the possible grounds for refusal of a transfer that may invoked by the administering State. Under case (a) the principle of dual criminality remains, although adjusted to the modifications already agreed upon in the Second Additional Protocol to the European Convention on Extradition (CETS no. 98). The remaining grounds for refusal mirror the provisions included in article 9 of the draft Council Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (Doc. 15875/06, COPEN 121, 27 November 2006).
  9. Article 3 stipulates the procedure according to which, in the absence of the requirement of consent, the sentenced person still expresses his or her opinion on the matter of his or her transfer. That opinion constitutes an integral part of the whole procedure, culminating— admittedly in exceptional circumstances— in the possibility of refusal on grounds related to social rehabilitation.
  10. In view of the close cooperation between the sentencing and the administering States required for the new simplified procedure to work, Article 4, providing for the intervention of the European Committee on Crime Problems in order to facilitate the interaction of the competent national authorities and, if need be, to achieve a friendly settlement, becomes necessary. The existence of such a provision offers the additional advantage of enhancing the culture of dispute settlement in the Council of Europe, in accordance with the results of the High Level of the Ministries of Justice and of the Interior on Improving European cooperation in the criminal justice field, held in Moscow on 9-10 November 2006.
  11. The remaining Articles 5-10 constitute standard content of all Council of Europe conventions and reflect 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.

**APPENDIX II to the Questionnaire**

Strasbourg, 20/11/2006

**PC-OC (2006) 16**

**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 52<sup>nd</sup> meeting of the PC-OC**

**Strasbourg, 18-20 October 2006**

Secretariat memorandum prepared by the  
Directorate General of Legal Affairs

**1. OPENING OF THE MEETING**

The Chair, Mr **Eugenio Selvaggi** (Italy) opened the meeting and welcomed all participants.

The Head of the Criminal Justice Division, Ms **Bridget O'Loughlin**, informed the participants about the high level conference of the European Ministries of Justice and of the Interior "improving European co-operation in criminal matters", to be held in Moscow on 9-10 November 2006.

She also provided information on the 27<sup>th</sup> Conference of European Ministers of Justice held in Yerevan on 12-13 October 2006 on "victims: place, rights and assistance". The adopted Resolution shows the need for more co-operation in assisting victims of transnational crimes but also in preventing such crimes and where necessary, to prosecute such criminals. The need for enhanced co-operation and for future work has also been confirmed on legal and technical aspects of crimes such as counterfeit medicines/pharmaceutical crimes.

**2. ADOPTION OF THE AGENDA**

The agenda was adopted.

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

The Committee discussed this item on the basis of the elements prepared by the limited Group of experts, following its first two meetings (doc PC-OC Mod (2006)06).

## ***I. PRACTICAL MEASURES***

### **a. Publications**

The Committee welcomed the two publications which are expected to be in the bookshops by end of 2006:

- a) a **compendium of CoE criminal Conventions** (in French, English and possibly in Russian language);
- b) the **“explanatory notes and relevant CoE documents on extradition”**.

This latter publication was particularly welcomed, as it presents the results of discussions held in the PC-OC on concrete questions regarding the application of specific provisions of the extradition treaties.

The Committee underlined the need that such “explanatory notes” be regularly updated and accessible to the public at large through the web site of the Committee (even if a time period is to be respected between the distribution in the bookshops and the –free- access on the web or through CD-Roms).

The preparation of additional publications is foreseen, such as explanatory notes on the transfer of sentenced persons and, subsequently, on mutual assistance in criminal matters. The publications would also be sold to the public and, at a later stage, be made available on the web site (and on CD-ROMs). The Secretariat would ensure their regular updating.

### **b. Web site and data base**

#### **i. CoE web site on transitional criminal justice**

The web site of the Committee presents the latest news relating to co-operation in criminal matters as well as the documents related to Committee meetings and links with other web sites and databases. The Committee found this new presentation of the web site to be a real improvement.

It suggested that additional news and links be inserted, notably to

- CoE web sites on economic crimes (GRECO, Moneyval, Assistance programmes such as CARDS, PACO) on terrorism, on the Court of Human Rights
- Europol, European commission, ...

#### **ii. CoE database on national information on co-operation procedures**

An ideal database was first considered, comprising all relevant norms (multilateral, regional and national) in the field of co-operation in the criminal field, as well as links to case law of international (and national) jurisdictions, and possibly to commentaries.

Considering the available resources (financial and human), and considering also the real needs of practitioners, the committee agreed on a simpler form of database. Sixteen members of the committee supported this initiative.

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.

The elements or data to be inserted would include:

- the competent authority (name of the institution, address, telephone, fax and e-mail where available)
- languages requirements
- time limits
- documentation
- statutes of limitation for special offences
- double criminality
- extradition of nationals
- means of communication
- other particularly relevant information (which could include national legislation, national guides on procedure, ...).

As relates the transfer of sentenced persons, specific questions could deal with matters such as: conditional release, transfer of “residents”, transfer of mentally disordered persons, continued enforcement or transformation of the sentence;...

The database would be hosted on the CoE web site. The CoE will provide with 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 committee agreed that the database would be accessible to the public. However, if the details of the contact person of the network mentioned below under c) are to be found on the database, some members of the Committee asked that such data should not be accessible to the public but should be limited to PC-OC members and to the members of the network, through a password.

The Committee 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. It agreed on the clear understanding 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.

The Committee welcomed the idea that a “guide” for practitioners could introduce the database (see document from the Chair, PC-OC Mod (2006)04) 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 .

### **Conclusion:**

The Committee agreed on a database to be set up. The database should be as simple as possible and should reply to basic questions related to co-operation in criminal matters. The definition of elements to be inserted and the modus operandi, including updating, of the database will be further elaborated by the limited Group of experts. Links to national websites and to national guides of procedures (where they exist) should be provided. A “guide” for practitioners could introduce the database.

### **c. *Networking***

The Committee held a discussion on the basis of documents PC-OC (2006)13 and PC-OC Mod (2006)5.

It started by referring to the list of officials in charge of judicial co-operation, put together since several years by the PC-OC (document: PC-OC Inf 06). That list is very detailed and for some States presents a full list of competent civil servants. The list is found to be very useful for practitioners who need specific information with a view to prepare a request for judicial co-operation or to enquire about the status of an ongoing co-operation. Such a list is considered to be the forerunner of the European Judicial Network set up by the European Union.

The Committee felt however that there is a need to have a simpler list of one person of contact per State (possibly with names of (a) substitute(s)), with his/her full details and to consider that these persons form part of a CoE network of contact persons in the field of judicial co-operation. Ten members of the Committee strongly supported the initiative.

The existing “list of national officials in charge of international co-operation” (PC-OC Inf 6) constitutes a good basis for the development of a network – that list will be updated and will remain available to all Committee members, in addition to the network, once created.

The Portuguese expert made a presentation on the functioning of existing networks: the European Judicial Network (EJN) and the IbeRed network. She drew the following main lessons from these experiences:

- the efficiency of the networks depends to a large extent of its individual members; a careful appointment is therefore essential;
- these persons should:
  - o be able to speak several languages
  - o be competent in judicial co-operation matters
  - o be motivated and available.

The Committee referred to and agreed on the note appended to this document outlining the role and requirements of contact persons.

The network would aim at facilitating as much as possible, through better interpersonal relations, co-operation in preparing and in executing requests. As an example: if a requesting State is willing to obtain information on the period of detention pending extradition in a requested State, such information could easily and rapidly be given by a person of contact in that State rather than through the formal channels of judicial co-operation.

The Chair underlined that the development of a CoE network of national points of contact would have no negative impact on already existing networks of the same type. Considering the existence of the EJN, the creation of a network would in particular be relevant as regards the co-operation with non EU member States. Links with existing networks, i.a. EJN and IbeRed, would be ensured.

The committee could prepare best practices for the network’s members, once appointed.

Some members of the Committee suggested that the list of persons of contact in each State be communicated to judges and prosecutors; this would enable them to directly contact the person of contact in the other states. Some other members considered that inter-States contacts, in the context of CoE conventions, should always be done through central authorities and that therefore, the access to the contact persons should be limited to the network’s members and to central authorities. It has also been proposed that each State decides the authorities (judges, prosecutors) to which it gives access to the contact of network’s members.

**Conclusion:**

The Committee decided the setting up of a network of national points of contact in order to facilitate the efficiency of international co-operation through enhanced personal relations.

It requested its limited Group of experts to further deal with some modalities of the operation of this network and with matters linked to the access to the list of contact persons (possibly through the database mentioned under b)).

A comprehensive presentation should be agreed by the Committee in time before the next plenary session of the CDPC.



**d. Office of specialists**

The Committee concluded that an Office of specialists in the CoE Secretariat, which would help practitioners on various aspects of the application of the CoE conventions, would be possible only with additional resources, which are presently not available.

**e. Newsletter**

The Committee welcomed the suggestion that a newsletter be produced, presenting regularly the latest developments in the field of international co-operation, i.e. for instance, accession to conventions, important events or conferences, important decisions by international (or national) jurisdictions such as the ECtHR, important national developments.

**II. NORMATIVE MEASURES**

The Chair recalled the specific terms of reference of the committee, by which the Committee is asked to work on normative measures upon instruction of the CDPC. At this stage, the committee should prepare suggestions for normative changes to be presented to the CDPC

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. The Convention also directly impacts on individuals' rights and freedoms, on which the CDPC asked the PC-OC to pay particular attention.

The Committee also 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 would therefore lead to a necessary change to that instrument.

**a. Extradition**

**i. Simplified extradition**

General

The 1957 European Convention on Extradition could be revised in order to include mechanisms of simplified extradition when the person consents to his or her extradition. If such consent is expressed, many committee members were of the opinion that there is indeed no need to go through all the formalities of an extradition procedure.

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

Several committee members underlined that 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. However, any new norm should not have any negative or limitative impact on the current practice.

Need for formal extradition request?

If a person is arrested in State A under a request for provisional arrest or under an arrest warrant issued by Interpol and consents to his or her extradition in front of a competent authority of that State, is there a need for a formal request of extradition from State B or could State A surrender the person to State B without such request?

Practice varies widely among States. In some of them, there is a need for such extradition request. 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. In other States, there is no need for the formal extradition request; the person can be rapidly surrendered, once the consent has been given.

### **Conclusion**

Following a discussion showing the differences in practice among States, the Chair suggested leaving this question opened at this stage, while noting that this could be left to a decision by each State whether to ask or not for the extradition request.

### **Need of documents required under Art 12 of the convention?**

The practice among States differs also in this matter. In some States, the documents required under Art 12 are needed with a view to proceed on an extradition request, even in a simplified way. In other States essential information is sufficient in order to proceed with a simplified extradition. This depends on the law of the requested State, by which the competent authority, according to the documentation or information received, can either decide to deal with the matter through an accelerated procedure or through the normal extradition process (e.g. if a critical legal issue arises or if the person is also an asylum seeker).

Reference has been made Art 3 and 4 of the EU Convention on simplified extradition (“information to be provided”).

The information to be provided should in any case enable the requested State to assess notably whether the case deals with an extraditable offence, the double criminality requirement (for which a description of the facts and of the applicable legislation is needed), as well as possible grounds for refusal.

A Committee member suggested that the requirements of Art 12 be reviewed not only in the perspective of simplified extradition but also in the “normal” extradition procedures. The aim would be to avoid costs and delays, in particular in cases of the purpose of extradition for the purpose of executing a sentence, where the decision (which can be of hundreds of pages) has to be sent (and translated). As an alternative, in such cases, only the relevant information (e.g.: Mr/s A was sentenced, for these facts – summarised- by Court X, on date xx, to a penalty of xxx; that decision is final) and a copy of the decision could be sufficient.

### **Conclusion:**

Committee requested its limited Group of experts to proceed with additional work on the application of Art 12 of the convention relating to the requirements of a request of extradition and of documents; the Group will envisage the cases in which the possibility of having information (instead of documents) could suffice in order to proceed with simplified extradition. This could lead to amendments to the extradition convention and/or to recommendations on the application of Art.12.

### **Consent**

The committee agreed that 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. The consequences of such withdrawal, both practical and legal will need further consideration (could the time limit for the production of the documents be for instance suspended until the withdrawal?). The principle mentioned by Art 13.4 EAW according to which the consent should not be revocable was also mentioned.

**The consequences of the consent**

The Committee agreed that

- the consent should not deprive the requested State to invoke a ground for refusal set forth in the Convention.
- In terms of the speciality rule (Art 14 ECE), the Committee briefly considered the following different options (see Art 7.1 EU Convention '95):
  - o either the person's consent has no consequence on the speciality rule, or
  - o the person can consent and renounce to the speciality rule or
  - o it is to the Requesting State to inform the requested State of a non application of the speciality rule, with a possibility for the requested State to oppose.
 (For other applications of the speciality rule, see below item V. See also Art 10 of the EU 1996 Convention).

The Committee also briefly examined the application of Art 15 of the convention on the re-extradition to third States or surrender to international tribunals.

**Time limits**

The question of inserting shorter time limits is closely linked to solutions to questions related to the necessity of a formal request and of documents (possibly to be translated).

Time limits could be envisaged for the decision on surrender, once the consent is given, and for the actual surrender, after the decision is taken (20 days maximum?).

**Conclusion** (on the last three items)

Committee requested its limited Group of experts to proceed with additional work on:

- the consequences of the consent as to:
  - o the application of Art 14 of the convention on the specialty rule
  - o the application of Art 15 of the convention on the re-extradition to third States or surrender to international tribunals.
- the nature of consent and the possibility of withdrawal.
- the possibility to insert time limits for a decision, after consent, and for actual surrender of the person.

**ii. Grounds for refusal (Art 3, 4, 5 ECE)**

The Committee agreed not to deal with fiscal or military offences at this stage.

It took note of the question related to political offences and suggested that its members further reflect on possible developments in this matter and send ideas to the Secretariat. Due consideration should be given notably to developments in the CoE recent Conventions (ex. the Convention on the prevention of terrorism) and 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>1</sup>.

<sup>1</sup> 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."

### iii. Lapse of time (Art 10 ECE)

The Committee agreed that Art 10, which foresees that the laws of either the requesting or the requested State can be considered, could be revised.

Several experts considered that the laws on lapse of time in the requesting State should prevail in order to decide on extradition. The Schengen agreement (Art. 62<sup>2</sup>) provides for such a rule. It was however observed that this can lead to legal or practical difficulties. As a matter of fact, it can be difficult for the requested State to interpret the application of the legislation of another State, i.e. the requesting State.

On the other side, the Committee observed that the EAW foresees (Art 4.4<sup>3</sup>), as an optional ground for refusal, 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.

An expert from a non EU State informed the committee on its national practice, developed under bilateral treaties, by which the legislation of the requesting State is to be considered in this matter. As a possible way forward, the idea to keep the optional basis (the laws of either the requesting or the requested State) could be kept.

The committee instructed the limited Group of experts to work further on this matter.

### iv. Reservations (Art 26 ECE)

The Committee decided to bring the following proposals 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.

### v. Rule of speciality (Art 14 ECE)

The Committee agreed with the preparatory work done by its Working Party in that:

- ❖ the principle of the application of the speciality rule should be reaffirmed
- ❖ renunciation to the speciality 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 the requesting State 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? How? Should a model form be used for receiving the consent of the person?

<sup>2</sup> Art 62, Schengen agreement: "As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply."

<sup>3</sup> 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"

**As a conclusion**, the Committee

- ❖ suggested that its members would analyse these questions and send proposals to the Secretariat in time before the next meeting of the working party and
- ❖ instructed the limited Group of experts to prepare, on this basis, elements for further consideration by the committee.

#### vi. Time limits

Following a discussion on the ways in which time limits are applied in the various States party to the conventions, the Committee considered that it would not be realistic to insert strict time limits in a binding instrument, as national procedures differ too widely among States.

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 States.

**As a conclusion**, it requested its limited Group of experts to identify possible measures to include in a **non binding instrument** addressing a set of principles, including on time limits, on extradition procedures, so as to reduce time limits and avoid long extradition procedures (and long detention before extradition). Such an instrument could also address matters of co-operation such as languages, sending of documents etc.

#### vii. Compensation

The committee discussed the three hypotheses identified by the working party:

- ❖ 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 (at least to cover the detention period) and to provide with the possibility for the person to return to the requested State. 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. Several members of the committee were of the opinion that 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 idea has been raised 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 Committee took note of the question of compensation which should be dealt with in a careful manner. In addition, it took note of the question of the return of the extradited person to the requested State in case of acquittal. It requested that the limited Group of experts further explores the need for (a) new binding or non binding instrument(s) on these issues and report with possible suggestions.

#### viii. Language (Art 12 ECE)

A proposal was made to the effect 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. As it seems, this constitutes a usual practice for some States. 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 (person X has been sentenced by court Y + date for facts Z, constituting crimes ZZ) without having to translate the full verdict.
- ❖ An extradition for the purpose of prosecution: information that "person X is charged with crime Y with a possible sentence of Z" 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.

**As a conclusion**, the Committee concluded that, considering the wide variety of national legislation and practice among States, various solutions could be envisaged in a **non binding instrument** outlining best practices to be followed by States (cf. to the conclusions adopted under *vi. Time limits*, above). Such legal text could identify which documents or which information should be transmitted and translated, with reference to Art 12 ECE. This would not exclude a possible modification of Art 12 ECE, if need be.

#### ix. Channels/means of communication (Art 12 ECE and Art 5, 2nd Protocol)

The committee examined the application of 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." 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.

**The Committee agreed that these articles could possibly be updated** in order to refer not only to diplomatic channels or to Ministries of Justice, but to 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. **It decided to present this proposal to the CDPC for consideration.**

It further instructed the limited Group of experts to consider the possibility of normative developments as regards the **practical measures of communication** in application of the Convention (post, fax, e-mail). 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.

**x. Model form for request**

The Committee agreed that there is no added value in developing a model form for extradition requests. It might consider such a form for MLA requests (on the basis of previous PC-OC works).

**xi. Dispute settlement**

The Committee had a discussion on this issue taking into account notably the documents made available to the Committee (i.a. the note prepared by the Secretariat, the proposal from the Russian Federation) as well as the mechanisms foreseen in the recent CoE conventions.

It underlined some legal difficulties linked, for instance, to the authority that any arbitral decision on a dispute 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 current constitutional provisions.

It instructed its limited Group of experts to further explore this matter, on the additional basis of the documents and results of the Conference in Moscow (9-10 November 2006) on improving European co-operation in the criminal justice field.

**xii. Documentation (Art 12 ECE)**

The Committee discussed on the application of Art 12.2 as related to the transmission of documents or information in the context of extradition procedures. Further work will have to be carried out by the Group of experts on this (cf. also viii above).

**xiii. Procedural safeguards**

The committee examined the detailed proposals prepared by the working group (doc PC-OC Mod (2006)06). It held a discussion on the opportunity to insert individual's rights in the CoE instruments on extradition<sup>4</sup>.

Two main issues were considered:

- the insertion of a “general clause on human rights” in the convention.  
The Committee agreed that the 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 by the UN Convention on torture. There is no need to amend the extradition Convention on this. The case law of the Court provides with sufficient guarantees.

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<sup>4</sup> 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).

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. This would primarily be addressed to non CoE member States.

A general non discrimination clause could also be envisaged, as foreseen in the preamble of the FD on the European Arrest Warrant.

- The insertion of “procedural safeguards” for the person involved in an extradition procedure. The committee agreed that these rights should be respected in the requested State. They should however be subject to more discussions at a subsequent meeting of the Group. 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.

Several experts found that these rights or safeguards were already in some ways guaranteed by the ECHR and the development of its case law. The insertion of such safeguards in the extradition treaties could therefore, according to these experts, not be needed. Furthermore, these additional procedures could impede the efficiency of extradition procedures and thus be contrary to the main objective of the “modernisation” exercise, i.e. to increase the efficiency of international co-operation.

In addition, a discussion is currently underway in the EU context on a draft framework decision on procedural rights. Future discussions in the CoE committees should take duly into account these works and their results.

While working on possible legal development, 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.

**As a conclusion**, the Committee agreed that this was an important question and instructed its limited Group of experts to work further on concrete suggestions (e.g., through non binding guidelines to States on the concrete modalities of implementing these safeguards).

#### **xiv. Concurrent requests (Art 17 ECE)**

The Committee instructed the limited Group of experts to deal further with this issue, notably in cases of concurrent requests for surrender issued by a State and by an international criminal jurisdiction.

### ***Longer term issues***

The Committee, according to the instructions of the CDPC, discussed the following issues in the perspective of longer term results:

#### **i. Extradition of nationals (Art 6 ECE)**

The Committee discussed this matter in connexion with the application of the principle “*aut dedere aut judicare*”. While being aware of the difficulty of this question, which is directly linked to constitutional guarantees in several States, the committee agreed that discussion should be resumed at a later stage.

In future discussions, the following matters could be discussed in more details:

- 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 the co-operation by the requesting case to the requested State in cases where the latter refuses extradition and initiates prosecution against the person sought.

**As a conclusion**, the committee instructed its limited Group of experts to envisage concrete suggestions regarding that matter, notably as relates to the transmission of evidence by the requesting State in cases of a prosecution initiated in the requested State and the links with the application of the convention on the transmission of criminal proceedings (CETS 73).

## ii. **Ne bis in idem (Art 9 ECE)**

The Committee noted 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”). It also referred to recent decisions by the Court of Justice in Luxembourg on the matter.

## b. **As to other Conventions:**

### i. **Mutual assistance**

The Committee agreed that it is 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.

### ii. **Transfer of sentenced persons**

#### **Area of possible developments**

The Committee agreed that normative developments, binding or not binding, could be envisaged as regards notably:

- the consent of the detainee, 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.

It will also discuss the question linked to the application of the European Arrest Warrant when a person, national from the requested State, was extradited and sentenced in the requesting State and was “re-transferred” in its State of nationality. The legal basis of such “re-transfer” could be further discussed.

#### **Greek initiative**

The Greek expert submitted to the Committee a proposal to envisage legal developments in the field of transfer of prisoners in order to bring the CoE legal instruments closer (e.g. in the form of an additional Protocol) to the initiative which is currently under consideration in the EU. The Council of the European Union is considering the adoption of a framework decision which would allow the EU member states to transfer prisoners to their EU member State “of origin” in view of enforcing their sentence in that State.

The Chair took note of the initiative, while noting the differences between the EU and the CoE approaches to the transfer of prisoners: in the CoE 1983 convention, the consent of the prisoner is an essential element of the transfer, as transfer is mainly considered in view of his/her rehabilitation. Such a consent is however not required in the EU instrument.

**As a conclusion**, it instructed the limited Group of experts to work further on these issues, taking also into account the outcomes of the conference on “improving European co-operation in the criminal justice field” (Moscow 9-10/12/2006) as well as the evolution of the case law of the ECtHR.

### **iii. Transmission of criminal proceedings**

The Committee underlined the positive aspects of the Convention on the transmission of criminal proceedings (CETS 73) and instructed its Group of experts to look further into its status of ratification and into matters pertaining to its application.

## **4. QUESTIONS RELATED TO THE PRACTICAL APPLICATION OF THE CONVENTIONS**

The Committee discussed the application of the European Convention on Extradition on the basis of a concrete question raised by the expert of the Russian Federation, related to requests of extradition in cases of crimes of lesser importance.

Although the convention does not foresee any threshold of penalty, members of the Committee were of the opinion that, with a view to enhance co-operation among States, extradition mechanisms could be used primarily to fight forms of serious and organised crime. Extradition requests for lesser crimes might also not meet the condition of double criminality (to be seen in concreto).

### **POINTS FOR INFORMATION**

#### **Information from the representative of the EU Presidency (Finland)**

The Committee took note of the presentation made by the expert from Finland on behalf of the EU Presidency, on initiatives in the EU related to matters of international co-operation.

#### **Information on the future conference in Moscow (9-10 November 2006)**

The Committee was informed on the status of preparation of the conference on “improving European co-operation in the criminal justice field” (Moscow, 9-10 November 2006), in which many Ministers from CoE member States are expected to participate. The Committee asked to be kept informed of the results of the Conference, which will be important for its future work.

#### **Information on ongoing work in the CoE**

The Committee was also informed on the status of work in the PC-ES, notably as far as judicial co-operation is concerned. The Committee referred to previous works which may be of interest of the PC-ES, notably on collecting DNA samples.

## **5. ELECTION OF A NEW CHAIR OF THE COMMITTEE**

The Committee elected Mrs Barbara GOETH-FLEMMISH (Austria) as chair of the Committee, for a period of one year. Mrs Joana GOMES FERREIRA (Portugal) will continue to act as Vice Chair, following her election in March 2006.

**6. NEXT MEETINGS, CONCLUSION AND CLOSING OF THE MEETING**

The Committee was informed that, for budgetary reasons, it would have only one meeting in 2007. It suggested organising two meetings of its limited Group of experts before the plenary session of the CDPC (June 2007). The results of the Group's meetings would be communicated to the PC-OC members for comments by written procedure. On that basis, the PC-OC findings and suggestions will be brought to the CDPC for decisions and instructions, mainly as far as normative developments are concerned. The next plenary meeting of the PC-OC could take place after the summer of 2007.

**APPENDIX III to the Questionnaire****Summary of the discussions at the enlarged 4th meeting of the PC-OC Mod concerning the proposal to draft a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons**

1. The Restricted Group of Experts on International Co-operation (PC-OC Mod) at its enlarged 4th meeting (3-4 May 2007) took note of the proposal of the Minister of Justice of the Hellenic Republic concerning the drafting of a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons (CETS No.112) and held a preliminary exchange of views on this subject.
2. The majority of members of the Group welcomed the proposal in principle, highlighting the preliminary character of the present discussion and raising issues that in their view merited thorough consideration (e.g. possible time limits, additional conditions for co-operation such as the minimum remaining length of sentence to be served etc.).
3. In particular, the Group agreed upon the principle of social rehabilitation of sentenced persons as one of the main objectives of the Protocol. It also agreed, however, that this goal should not be construed to the detriment of the interests of justice in general.
4. Differences were outlined between the draft EU Framework Decision on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union and a possible Council of Europe instrument. In particular it was noted that the draft Framework Decision was based on mutual recognition of judicial decisions between the EU member states, whereas the possible instrument of the Council of Europe would be based on common responsibility of the States Parties.
5. The Group took the view that when examining whether the transfer of a person would have a positive effect on the social rehabilitation it would not suffice to take into account his/her nationality only. It stressed that in times of globalisation and the consequent free movement of persons there are other ties (social, family ties, residence issues etc.) that should be taken into consideration.
6. Two fundamental issues raised by the Group were those of the consent of the person to be transferred and the consent of the administering state. On the one hand the Group recognised that the Convention CETS No. 112 is based on voluntary acceptance by the administering state to receive the person transferred. On the other hand several members of the Group stated that it should not prevent the new Second Additional Protocol from going further and introducing such acceptance as one of its principles, providing only for a list of specific grounds when such acceptance could be refused by the administering state. The Group recognised that these issues would require comprehensive discussions if and when such a Protocol is prepared.
7. The Group also noted that information on foreign nationals serving imprisonment sentences in the Council of Europe members States parties to the Convention could be useful when examining the possible drafting of a Second Additional Protocol.
8. The Group stressed that for some countries difficulties to accept transfer of prisoners could be connected to the situation in and the capacity of their penitentiary institutions. Also the issue of who would cover expenses for the transfer of prisoners was raised. It was recognised that refusals motivated by financial reasons should be avoided as far as possible, if appropriate by the use of bilateral and/or multilateral arrangements.

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## APPENDIX IV

Strasbourg, 4 May 2007  
(cdpc-bu/docs 2007/cdpc-bu (2007) 09 E Rev)

CDPC-BU (2007) 09 Rev

### EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Bureau  
(CDPC-BU)

### **DRAFT PROPOSALS OF THE PC-OC CONCERNING PRACTICAL MEASURES TO IMPROVE OPERATION OF RELEVANT CONVENTIONS AS DISCUSSED AND AGREED BY THE RESTRICTED GROUP OF EXPERTS ON INTERNATIONAL CO-OPERATION (PC-OC MOD) AT ITS 4TH MEETING<sup>5</sup> STRASBOURG, 3-4 MAY 2007**

Secretariat memorandum prepared by  
the Directorate General of Legal Affairs (DGI)

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<sup>5</sup> Along with the PC-OC Mod members all delegations of the PC-OC were invited to attend this enlarged meeting of the Restricted Group at their own expense.

Site web du CDPC : [www.coe.int/cdpc](http://www.coe.int/cdpc)  
Courriel du CDPC : [dgi.cdpc@coe.int](mailto:dgi.cdpc@coe.int)

**PROPOSAL N°1 ON THE SETTING UP OF A NETWORK OF SINGLE POINTS OF CONTACTS**Background

1. 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

2. 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.
3. 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

4. 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>6</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>7</sup>

Requirements

5. The contact persons should:
  - a) have 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) have a knowledge of at least one of the two official CoE languages (English, French).

Accessibility of names and data

6. The list of names of persons of contact (PoC) would be available among all persons composing the network and to PC-OC members.
7. It could be accessible through the database to be set up by the PC-OC<sup>8</sup>.

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

7 Ref. to the proposal n° 3 below on the web site, publications and newsletter.

8. 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

9. 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).

**10. 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

11. 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.
12. 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

13. 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.
14. 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

15. The elements or data to be inserted with regard to extradition for each State should include at least the following:
- the competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for extradition;
  - 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...).
16. The elements or data to be inserted with regard to mutual legal assistance for each State should include at least the following:

- the competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for rendering mutual legal assistance;
  - languages requirements
  - time limits;
  - documentation needed;
  - list of possible actions sought;
  - statutes of limitation for special offences, if applicable;
  - double criminality requirement, if applicable;
  - limitation of use of evidence obtained
  - means of communication;
  - other particularly relevant information (which could include national legislation, national guides on procedure, links to national web sites...).
17. The elements or data to be inserted with regard to the transfer of sentenced persons for each State should include at least the following:
- the competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for transfer of sentenced persons;
  - 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...);
  - information about the Convention in the official language of that State.
18. The database could offer a link to the details of the person of contact (see above, proposal n°1), member of the network.
19. 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

20. The database would be hosted on the CoE web site. The CoE will provide the software.
21. 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.
22. 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

23. 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

24. 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.
25. 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).
26. It should also include all relevant information and documents on PC-OC work in order to efficiently prepare and follow the Committee meetings.
27. The TCJ web site should propose additional links to other relevant web sites in the field of judicial co-operation: CoE web sites (ECHR, Codexter, Moneyval, CPT) and others such as European Union, UN.
28. Links to the proposal N°1 –network- and 2 –database- should also be provided for.

#### Publications

29. Two publications were finalised in 2006: “Extradition – European standards” and “co-operation against crime: CoE conventions”.
30. 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.
31. Similar publications should be undertaken by the Secretariat on other matters such as mutual assistance and the transfer of sentenced persons.
32. 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

33. 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.
34. 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 ECJ might be useful;
  - new conventions;
  - technical measures adopted by States, such as database.
35. 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.

## APPENDIX V

Strasbourg, 4 May 2007  
(cdpc-bu/docs 2007/cdpc-bu (2007) 10E Rev)

CDPC-BU (2007) 10 Rev

### EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Bureau  
(CDPC-BU)

### **DRAFT PROPOSALS OF THE PC-OC CONCERNING NORMATIVE MEASURES TO IMPROVE OPERATION OF RELEVANT CONVENTIONS AS DISCUSSED AND AGREED BY THE RESTRICTED GROUP OF EXPERTS ON INTERNATIONAL CO-OPERATION (PC-OC MOD) AT ITS 4TH MEETING<sup>9</sup> STRASBOURG, 3-4 MAY 2007**

Secretariat memorandum prepared by  
the Directorate General of Legal Affairs (DGI)

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<sup>9</sup> Along with the PC-OC Mod members all delegations of the PC-OC were invited to attend this enlarged meeting of the Restricted Group at their own expense.

## Background

1. 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.
2. 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.
3. 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>Extradition</b>
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### A. Matters for requests for instructions by CDPC:

#### I.1 Simplified extradition

##### Proposal

4. The 1957 European Convention on Extradition (ECE) 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.
5. 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.
6. 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)
7. 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?
8. 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.

9. 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.
10. 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.
11. 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

12. 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.
13. 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>10</sup>
14. 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>11</sup>, with a possibility for the requested State to oppose.
15. The Committee also briefly examined in this context the application of Art 15 of the convention on the re-extradition to third States.
16. 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

17. 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).
18. 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.

<sup>10</sup> See also Art 13.4 of the EAW according to which the consent should not be revocable.

<sup>11</sup> See also see Art 7.1 EU Convention 1995

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

19. The principle of the application of the specialty rule should be reaffirmed.
20. 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.
21. 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?
22. 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.
23. In cases where the requesting state needs the consent of the requested state to proceed against an extradited person for a crime committed prior to his surrender, the rule of specialty, as formulated in Article 14 of the ECE, might prevent the requesting state from arresting that person, awaiting the consent of the requested state. Such a provisional arrest might be necessary when the extradited person is about to be released. The exceptions to the rule of specialty, provided for in Article 14 of the ECE, could be extended to cover this situation. The requesting state should notify the requested state either before or immediately after the arrest of that person and should be under an obligation to ask for the consent of the requested state.
24. The question of the application of the specialty rule in relation with re extradition to third States (Art 15 ECE) was also mentioned in the similar context.

### 25. 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)

26. 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.
27. The advantages of the use electronic means of communication (e-mails) were also mentioned.

**28. Request to CDPC:**

PC-OC requests the CDPC to be mandated to consider possible ways of improving the wording of the relevant provisions (Art 12 ECE and Art 5, 2nd Protocol) notably by bringing the text up to date.

**I.4 Time limits**

29. 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.
30. Some members of the Group expressed the view that time limits could be inserted into a binding instrument. However, the Group referred to the discussions that took place at the last plenary meeting of the PC-OC as regards the ways in which time limits are applied in the various States Parties to the conventions and decided to follow the conclusion of the PC-OC Plenary that "it would not be realistic to insert strict time limits in a binding instrument, as national procedures differ too widely among States".

**31. Request to the CDPC:**

PC-OC requests the CDPC to be mandated to consider drafting 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 measures 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)**

32. 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).
33. 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.
34. 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.
35. 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.

## 1.6 Compensation and return of the person

36. Three hypotheses are to be considered:

- the person is extradited and then acquitted in the requesting State:

37. 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.

38. Some other States do not consider that they would be liable to compensate in such cases.

39. 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:

40. 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.

41. 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:

42. 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.

43. 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 ECHR in this matter.

44. 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.

45. 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.

### 46. 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.

## 1.7 Lapse of time (Art 10 ECE)

47. 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. 6212) 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.
48. On the other side, the EAW foresees (Art 4.413), 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.
49. Some members observed that States developed a practice under bilateral treaties, dealing with this matter.
50. 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.

### 51. Request to the CDPC:

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. They are sent to the CDPC at this stage for information only.**

**The CDPC should not take any action on these items and is invited to take a decision on these items only after the PC-OC has finalised discussions on them.**

## 1.8 Grounds for refusal (Art 3, 4, 5 ECE)

52. 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.
53. The majority of the group questioned therefore the opportunity to embark in a revision of Art 3 ECE.
54. 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>14</sup>;

<sup>12</sup> Art 62, Schengen agreement: "As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply."

<sup>13</sup> 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"

<sup>14</sup> 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 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



55. 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) 15.
56. 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.

### 1.9 Procedural safeguards

57. PC-OC considered two ways to provide higher protection of individuals in extradition procedures<sup>16</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 priority 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.

15 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."

16 Background 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).

58. 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.
59. 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.

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

60. 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.
61. 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”.

#### **C. Longer term issues**

62. Following the instructions given by the CDPC, the PC-OC will discuss the following issues in the perspective of longer term results:

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

63. 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.

64. 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).

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

65. 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.

<b>Transversal issues</b>
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**II.1 Dispute settlement**

66. 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.

67. 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.

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

68. 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.

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

69. 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.

**III.2 Mutual assistance**

70. 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.

**III.3 Transmission of criminal proceedings**

71. 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.

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