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[PC-OC\Docs 2008\PC-OC Mod (2008) 03  
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PC-OC Mod (2008) 03

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

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

**SUMMARY REPORT**  
**of the 5th meeting of the restricted Group of experts**  
**on international co-operation (PC-OC Mod)**

**Strasbourg, 17-20 March 2008**  
**NBGEN, Room G 01**

## EXECUTIVE SUMMARY

At its 5th meeting, the PC-OC Mod:

### ***Simplified Extradition***

- amended the draft Additional Protocol to the European Convention on Extradition and invited delegations to send their comments (see paragraphs 3-8, Appendix IV);
- invited the PC-OC plenary to examine the revised draft in the light of these written comments;

### ***Compensation of persons***

- took note of the replies to the questionnaire on this issue and requested all delegations to reply to this questionnaire, if they have not already done so, by 10 April 2008;
- invited the PC-OC plenary to continue its examination of this issue (see paragraphs 9-11);

### ***Rule of speciality***

- took note of the replies to the questionnaire on this issue and requested all delegations to reply to this questionnaire, if they have not already done so, by 10 April 2008;
- invited the PC-OC plenary to discuss this question in the light of the replies to the questionnaire and practical examples to be submitted by its members (see paragraphs 12-14);

### ***Lapse of time***

- took note of the background information document prepared by the Secretariat;
- invited the PC-OC plenary to examine this issue further in the light of the Group's discussions (see paragraphs 15-19);

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

- requested PC-OC members to submit to the Secretariat questions on this issue, to be compiled into a draft questionnaire by the Secretariat;
- invited the PC-OC plenary to examine and adopt this draft questionnaire (see paragraphs 20-23);

### ***Opinion of the Consultative Council of European Prosecutors (CCPE) on "Ways of improving international co-operation in the criminal justice field"***

- took note of the Opinion of the CCPE and decided to present it to the PC-OC plenary;

### ***Information concerning the implementation of practical measures***

- took note of the information provided by the Secretariat on the current state of implementation of practical measures (see paragraph 25);
- instructed the Secretariat to send reminders to those States who have not yet provided the necessary information;

### ***Composition of the PC-OC Mod***

- considering the risk of disruption of its work on simplified extradition, proposed to the plenary not to change the current composition of the Group until the 55th plenary meeting of the PC-OC (see paragraph 26).

## **1. OPENING OF THE MEETING**

1. The Chair, Ms Barbara Goeth-Flemmich (Austria), opened the meeting, welcoming the fact that in addition to the members of the PC-OC Mod, many other States were represented at the meeting. The Head of the Criminal Law Division and Secretary to the CDPC, Mr Carlo Chiromonte, stressed once more the importance of the work of the PC-OC in the framework of the priorities of the Council of Europe, a fact which was reflected in the heavy agenda of the meeting.

## **2. ADOPTION OF THE DRAFT AGENDA**

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

## **3. PREPARATION OF NORMATIVE TEXTS CONCERNING THE EUROPEAN CONVENTION ON EXTRADITION**

### **3.1 SIMPLIFIED EXTRADITION**

3. The PC-OC Mod examined a draft additional protocol to the European Convention on Extradition, concerning simplified extradition. This text had been prepared by the Secretariat on the basis of the discussions held during the 53<sup>rd</sup> plenary meeting of the PC-OC and the written comments submitted by PC-OC members on the previous text (PC-OC (2007) 11 rev). Mr Hasan Bermek, Secretary to the PC-OC, presented in detail the changes between the present document and its previous versions.
4. The Chair informed the participants about the reply of the CDPC to the PC-OC concerning the question of time limits. She stressed the fact that the CDPC Bureau had been favourable to the inclusion of such time limits in the future instrument on simplified extradition, provided that they are necessary and justified.
5. Ms Anna Lipska from the Secretariat of the Council of the European Union, present during the meeting due to her Secretariat's role in assisting the Slovenian presidency of the EU, informed the Group that member States of the EU had adopted a common position regarding the preparation of an instrument on simplified extradition within the Council of Europe. This common position aims at ensuring that all member States of the EU actively participate in the drafting of this instrument and that they support the work of the Council of Europe in this field.
6. Some delegations raised the question as to whether simplified extradition needed to be treated in a separate protocol or together with the other subjects which are being examined by the PC-OC, as part of a protocol modernising the Convention on Extradition in general. The PC-OC Mod decided to bring this question to the attention of the plenary.
7. The PC-OC Mod discussed the draft text article by article and amended it substantially. The modified version of the draft Protocol appears in Appendix IV to the present report. This Appendix also contains, in footnotes, details on the discussions held within the Group on problematic issues, the various options proposed to the PC-OC plenary, as well as information on the final decisions which will have to be taken by the plenary.
8. The PC-OC Mod decided to instruct the Secretariat to send the revised draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition to all PC-OC members as soon as possible, and to request the latter to submit to the Secretariat written comments

on the revised draft by 11 April 2008. It invited the PC-OC plenary to examine the revised draft in the light of these written comments. The Group also considered that it would be useful for the plenary to focus on the most problematic articles, which should be highlighted in a letter to be sent by the Chair to all PC-OC members;

### **3.2. COMPENSATION OF PERSONS**

9. The PC-OC Mod had a preliminary examination of the replies by 16 States to the questionnaire on the compensation of persons in the framework of extradition procedures (PC-OC (2007) 10 rev).
10. While agreeing on the importance of the issues relating to compensation, the participants considered that the preparation of a normative text dealing with these matters was less urgent than some other issues on the PC-OC's agenda, such as simplified extradition, the rule of speciality or lapse of time. In view of the complexity of the issues involved, the PC-OC Mod decided that a more complete picture was necessary in order to proceed with the work on the modernisation of standards relating to compensation. Therefore, it encouraged delegations who had not yet replied to the questionnaire to do so by 10 April 2008.
11. The Group invited the PC-OC plenary to continue its examination of this item. In this context, the participants agreed that it could be useful to commission an expertise on the case-law of the ECHR regarding compensation after the reception of more replies.

### **3.3. RULE OF SPECIALITY**

12. The PC-OC Mod had a preliminary examination of the replies by 23 States to the questionnaire on the rule of speciality (PC-OC (2008) 01 rev). It encouraged delegations who had not yet replied to the questionnaire to do so by 10 April 2008.
13. The PC-OC Mod considered that the rule of speciality should be a major priority, to be dealt with as quickly as possible. It took note of concrete examples of problems caused by this rule mentioned by some of its members, and requested these members to submit short written summaries of these cases to the PC-OC plenary. The PC-OC Mod considered that the rule of speciality touched upon a variety of issues, such as the possibility of detention for new offences in the requesting Party, time limits for the requested Party to consent to the extension of extradition to other offences or the question of re-extradition. The PC-OC Mod invited the plenary to identify the most important issues which need to be addressed in a binding or non-binding instrument, on the basis of the replies to the questionnaire and the concrete examples submitted by its members. Following this, the PC-OC Mod suggested that the plenary entrust some of its members with the task of presenting a concrete proposal regarding the rule of speciality at the next PC-OC Mod meeting.
14. The PC-OC Mod also observed that many practitioners were not aware of the practical difficulties the rule of speciality can cause for requesting States and thought that the awareness of the relevant national authorities to these problems needed to be raised. It agreed that the members of the PC-OC should think of ways in which information concerning the rule of speciality could be made available to the practitioners.

### **3.4. LAPSE OF TIME**

15. The PC-OC Mod started its examination of the issue of lapse of time in extradition procedures, on the basis of a background document prepared by the Secretariat and possible options for the modernisation of the Convention on extradition proposed therein.

16. The majority of PC-OC members considered it desirable to transform lapse of time from a mandatory ground for refusal into an optional ground for refusal. However, as regards applicable law for the determination of lapse of time, the opinions within the PC-OC Mod were clearly divided. In line with the tendency in more modern instruments to limit lapse of time considerations to the law of the requesting State, a number of delegations expressed support for this option. However, these members were concerned that some other States might not be willing to follow this approach for the modernisation of the Convention, which might result in the future instrument being ratified less widely. If this approach were to be followed, it might be necessary to allow for the law of the requested State to be taken into account nevertheless when that State has jurisdiction over the offence concerned in accordance with its law.
17. By contrast, two delegations were of the view that lapse of time considerations should be limited to the law of the requested States only. Another question which was raised by some delegations was the relationship between lapse of time and the double criminality requirement, and in particular the compatibility between the double criminality requirement and the limitation of lapse of time considerations to the law of either one of the Parties.
18. Given the diversity of opinions, the PC-OC Mod considered that the plenary should continue to discuss this issue in the light of these elements. Some delegations thought that it could be desirable for the future binding instrument to offer several options to the States. For example, lapse of time could be transformed into an optional ground for refusal as a minimum for all States, while giving them the flexibility to restrict lapse of time considerations only to the law of the requesting Party if they wish to do so.
19. The PC-OC Mod saw no need to draft a non-binding instrument, in addition to the binding instrument mentioned above, dealing with lapse of time issues. However, it considered the possibility of extending the information currently included in the database on national procedures on extradition, which contains information on lapse of time only in connection with special offences.

#### **4. FOLLOW-UP OF THE 28<sup>TH</sup> CONFERENCE OF THE EUROPEAN MINISTERS OF JUSTICE (25-26 OCTOBER 2007, LANZAROTE) : THE RELATIONSHIP BETWEEN ASYLUM PROCEDURES AND EXTRADITION PROCEDURES**

20. The PC-OC Mod examined Resolution No. 1 on access to justice for migrants and asylum seekers adopted by the Ministers of Justice, in particular its paragraph 16c, on the basis of which the Committee of Ministers entrusted the CDPC with the task of examining “the relationship between asylum procedures and extradition procedures”.
21. The PC-OC Mod took note of the information provided by Mr Branislav Boháčik (Slovakia), Chair of the CDPC, regarding problems connected to asylum procedures and extradition procedures. Mr Boháčik stressed that the two procedures are not necessarily co-ordinated in all member States, which causes long delays for the requesting States in extradition cases and raises questions concerning, among others, personal liberty or collection of evidence. Mr Boháčik stated that the PC-OC had the expertise, which could help CDPC to tackle this issue and that he and another member of the CPDC (Mr Roland Miklau, Austria) would prepare a paper, highlighting the problems involved, and submit it to the PC-OC at its 54<sup>th</sup> meeting.
22. During the discussions that followed, delegations raised a number of questions relating to the relationship between asylum and extradition procedures. These included, notably, the possible ways in which different States regulate this relationship (through legal texts or administrative practice), the effect on the extradition procedure of the revocation of

refugee status previously granted, questions involving third States (requests by third States or granting of refugee status by a third State), the possibility of executing a request for provisional arrest in the framework of asylum procedures, lapse of time issues, the question of diplomatic guarantees, as well as the case-law of the European Court of Human Rights.

23. The PC-OC Mod considered the relationship between asylum procedures and extradition procedures to be a very important issue of common concern. Given the great number of issues involved, and in order to respond to the instruction of the CDPC to take stock of the situation in member States, it decided to proceed with the examination of this item on the basis of a questionnaire to be adopted by the PC-OC plenary. To this end, it requested delegations to send draft questions to the Secretariat, who will compile them into a questionnaire, to be adopted at the 54<sup>th</sup> plenary meeting.

**5. OPINION OF THE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE) ON  
“WAYS OF IMPROVING INTERNATIONAL CO-OPERATION IN THE CRIMINAL JUSTICE FIELD”**

24. The PC-OC Mod took note of the information provided by the Secretariat on this document, including the fact that many of the recommendations included in the document were being dealt with in substance by the PC-OC. One delegation pointed out that this document was also meant as recognition of and an additional impulse for the work of the PC-OC, and encouraged the members of the PC-OC to look attentively at this document. The PC-OC Mod decided to present this document to the PC-OC plenary.

**6. INFORMATION CONCERNING THE IMPLEMENTATION OF PRACTICAL MEASURES**

25. The PC-OC Mod took note of the information provided by the Secretariat on the state of play concerning the implementation of practical measures (list of points of contact and national procedures regarding extradition). It welcomed, in particular, the launching of the database on national procedures relating to extradition and the nomination of single points of contact by member States. The Group observed, however, that information from a number of countries was missing. Therefore, it instructed the Secretariat to send reminders to those States who have not yet provided the necessary information in relation with the network of single points of contact and the national procedures relating to extradition.

**7. COMPOSITION OF THE PC-OC MOD**

26. In the light of the decision taken at the 53rd plenary of the PC-OC to examine the composition of PC-OC Mod, the Group had an exchange of views about its future composition. It considered that changing the composition of the Group at this stage would entail a risk of disruption of its work on simplified extradition. Therefore, it proposed to the plenary not to change the current composition of the Group until the 55<sup>th</sup> plenary meeting of the PC-OC, while maintaining the possibility for member States which are not members of the Group to contribute to its work, by participating in its meetings, or if they cannot do so, through written contributions.
27. As regards the possibility of enlarging PC-OC Mod meetings also to observer States and organisations, the Group thought that this was not necessary at this stage.

**8. ANY OTHER BUSINESS**

28. As a general issue, the Group discussed the ways in which more visibility could be afforded to the work of the PC-OC. It took note of the readiness of the Secretariat to organise events on subjects that the PC-OC considers important, if there are States willing to host such events.

**9. DATES OF THE NEXT MEETING**

29. The PC-OC Mod took note of the following provisional dates proposed by the Secretariat for the meetings of the PC-OC in 2008:

- 6<sup>th</sup> enlarged meeting of the restricted Group of Experts: 30 September – 2 October 2008;
- 55<sup>th</sup> meeting of the PC-OC: 4-7 November 2008.

**APPENDIX I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****ALBANIA / ALBANIE****ANDORRA / ANDORRE****ARMENIA / ARMENIE****AUSTRIA / AUTRICHE**

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**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / « L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE »****TURKEY / TURQUIE****UKRAINE**

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Mr Carlo CHIAROMONTE,  
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**APPENDIX II****Agenda**

1. **Opening of the meeting**
2. **Adoption of the draft agenda**  
Working documents  
Draft agenda PC-OC Mod (2008) OJ 1  
Draft annotated agenda PC-OC Mod (2008) 01
3. **Preparation of normative texts concerning the European Convention on Extradition**  
Working documents  
Report of the 56th CDPC Plenary meeting [CDPC \(2007\) 24](#)  
Summary report of the 53rd meeting of the PC-OC [PC-OC \(2007\) 14](#)  
Summary Report of the CDPC Bureau meeting 16-18 January 2008 [CDPC-BU \(2008\) 07](#)
- a. ***Simplified extradition***  
Working documents  
Revised preliminary draft text relating to simplified extradition [PC-OC \(2007\) 11 Rev](#)  
Comments :Preliminary draft text relating to simplified extradition [PC-OC \(2008\) 02](#)  
(Revised)  
Draft Protocol on simplified extradition PC-OC (2008) 05  
List of changes between the preliminary draft text and the draft PC-OC (2008) 07  
Protocol
- b. ***Compensation of persons***  
Working documents  
Questionnaire on compensation issues [PC-OC \(2007\) 10 Rev](#)  
Replies to the questionnaire on compensation issues PC-OC (2008) 03
- c. ***Rule of speciality***  
Working documents  
Questionnaire on the rule of speciality [PC-OC \(2008\) 01](#)  
Replies to the questionnaire on the rule of speciality PC-OC (2008) 04
- d. ***Lapse of time***  
Working documents  
Background information prepared by the Secretariat PC-OC (2008) 06
4. **Follow-up of the 28<sup>th</sup> Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote) - The relationship between asylum procedures and extradition procedures**  
Working documents  
Resolution No. 1 on access to justice for migrants and asylum seekers [Resolution No. 1](#)  
Summary Report of the CDPC Bureau meeting 16-18 January 2008 [CDPC-BU \(2008\) 07](#)
5. **Opinion of the Consultative Council of European Prosecutors (CCPE) on “Ways of improving international co-operation in the criminal justice field”**  
Working document  
Opinion No. 1 (2007) [CCPE \(2007\) 25](#)
6. **Information concerning the implementation of practical measures**
7. **Composition of the PC-OC Mod**
8. **Any other business**
9. **Dates of the next meeting**

**APPENDIX III****List of decisions adopted at the 5th meeting of the restricted Group of experts on international co-operation (PC-OC Mod) enlarged to all PC-OC members 17-20 March 2008**

The PC-OC Mod decided to:

**1. Preparation of normative texts concerning the European Convention on Extradition*****a) Simplified extradition***

- considering the progress achieved by the Group, instruct the Secretariat to revise the draft 3<sup>rd</sup> Additional Protocol to the European Convention on Extradition in the light of the discussions held during the meeting of the Group and send this document to all PC-OC members as soon as possible;
- request all delegations to submit to the Secretariat written comments on the revised draft by 11 April 2008;
- invite the PC-OC plenary to examine the revised draft, in the light of these written comments, and focusing on the most problematic articles, which will be highlighted in a letter to be sent by the Chair to all PC-OC members;

***b) Compensation of persons***

- having taken note of the replies by 16 States to the questionnaire PC-OC (2007) 10 rev, request all delegations, who have not already done so, to reply to the questionnaire by 10 April 2008;
- invite the PC-OC plenary to consider these replies, as well as a summary of replies to be prepared by the Secretariat, taking into account the view expressed in the Group that this issue is less urgent than other matters relating to the modernisation of the European Convention on Extradition, such as simplified extradition, the rule of speciality or lapse of time;

***c) Rule of speciality***

- consider this issue as a major priority to be dealt with as quickly as possible;
- having taken note of the replies by 23 States to the questionnaire PC-OC (2008) 01 rev, request all delegations, who have not already done so, to reply to the questionnaire by 10 April 2008;
- considering practical problems relating to the rule of speciality brought to its attention by some of its members, requested the PC-OC members to submit a summary of such cases to the PC-OC plenary;
- invite the PC-OC plenary to discuss this question in the light of the replies to the questionnaire, the summary of replies to be prepared by the Secretariat and the practical cases mentioned above, with a view to identifying particular problems relating to the rule of speciality and finding solutions to be reflected in a binding or non-binding instrument;

***d) Lapse of time***

- take note of the background information document prepared by the Secretariat;
- considering that the opinions expressed within the Group were divided, invite the PC-OC plenary to discuss this issue further in the light of the Group's discussions, which will be recorded in detail in the meeting report;

## **2. Follow-up of the 28<sup>th</sup> Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote) : the relationship between asylum procedures and extradition procedures**

- in order to respond to the instruction of the CDPC to take stock of the situation in member States, request PC-OC members to submit to the Secretariat questions on this issue that they consider to be of relevance;
- instruct the Secretariat to draft a questionnaire on the basis of these questions;
- invite the PC-OC plenary to examine this draft questionnaire, to adopt it and to instruct the Secretariat to send it to all delegations for replies;

## **3. Opinion of the Consultative Council of European Prosecutors (CCPE) on “Ways of improving international co-operation in the criminal justice field”**

- take note of the Opinion of the Consultative Council of European Prosecutors and to present it to the PC-OC plenary;

## **4. Information concerning the implementation of practical measures**

- take note of the information provided by the Secretariat on the current state of implementation of practical measures (list of single points of contact and database on national procedures regarding extradition);
- instruct the Secretariat to think of further ways of improving the exchange of information;
- call on the members of the PC-OC to complete information concerning their country, if they have not already done so, and instruct the Secretariat to send reminders to that effect;

## **5. Composition of the PC-OC Mod**

- considering the risk of disruption of its work on simplified extradition, propose to the plenary not to change the current composition of the Group until the 55<sup>th</sup> plenary meeting of the PC-OC, while maintaining the possibility for member States which are not members of the Group to contribute to its work, by participating in its meetings or through written contributions;

## **6. Dates of the next meeting**

- take note of the following provisional dates proposed by the Secretariat for the meetings of the PC-OC in 2008:
  - o 6<sup>th</sup> enlarged meeting of the restricted Group of Experts: 30 September – 2 October 2008;
  - o 55<sup>th</sup> meeting of the PC-OC: 4-7 November 2008.

**Appendix IV****Draft 3<sup>rd</sup> Additional Protocol  
to the European Convention on Extradition****as amended at the 5<sup>th</sup> meeting of the PC-OC Mod  
17-20 March 2008**

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

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

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

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

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

Have agreed as follows

**Article 1 - Obligation to extradite under simplified procedures<sup>1</sup>**

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

**Article 2 - Request for extradition and information to be provided**

1. When the person sought is the subject of a request for provisional arrest in accordance with Article 16 of the Convention, the extradition referred to in Article 1 shall not be subject to the submission of a request for extradition or the documents required by Article 12 of the Convention.<sup>2</sup> The following information provided by the requesting Party shall be regarded as adequate by the requested Party for the purpose of applying Articles 4 to 6 of this Protocol and for taking its final decision on extradition under simplified procedures:

- (a) the identity of the person sought, including her/his nationality or nationalities<sup>3</sup> when available;
- (b) the authority requesting the arrest;
- (c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;

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<sup>1</sup> The PC-OC Mod decided that this Article should concern the principle of applying simplified extradition procedures in general, without distinguishing between the two main hypotheses for their use (presence or absence of a request for provisional arrest).

<sup>2</sup> The majority of delegations stated that they would accept to proceed on the basis of a request for provisional arrest only, without an official request for extradition. The PC-OC Mod agreed that those States who cannot do so should have the possibility of making a reservation to this paragraph (also see footnote 5).

<sup>3</sup> Following the proposal from two delegations, the PC-OC Mod agreed to include a reference to the person's nationality in the Protocol, as opposed to mentioning it only in the explanatory report.

- (d) the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment, including whether any part of the judgment has already been enforced;
- (e) information concerning lapse of time and its interruption;
- (f) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
- (g) in so far as possible, the consequences of the offence;
- (h) In cases where enforcement of a final judgment is requested, whether the judgment was rendered *in absentia*.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the requested Party to give agreement to the extradition.

3. In case the requested State has received a request for extradition in accordance with Article 12 of the Convention, [it may avail itself, *mutatis mutandis*, of the simplified procedure as provided for in this Protocol] / [the present Protocol applies *mutatis mutandis*]<sup>4</sup>.

### **[Article 3 – [...]]<sup>5</sup>**

1. Where a State Party applies simplified extradition procedures only after a request for extradition has been received, it shall declare upon deposit of its instrument of ratification, acceptance, approval or accession that in all cases a request for extradition shall be provided.

2. In cases, where the State Party availed itself of the opportunity provided in paragraph 1, this Protocol shall apply *mutatis mutandis*.]

### **Article 4 - Obligation to inform the person<sup>6</sup>**

Where a person sought for the purpose of extradition is arrested<sup>7</sup> on the territory of another State Party, the competent authority of the requested Party shall inform that person, in accordance with its law and without undue delay, of the request relating to her/him and of the possibility of applying simplified extradition procedures [based on her/his consent]<sup>8</sup> in accordance with this Protocol.

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<sup>4</sup> Two delegations expressed support for the first option, whereas three delegations preferred the second option.

<sup>5</sup> Wording proposed by one delegation. The PC-OC Mod decided to put this Article in square brackets as there was little support for having a separate article specifying in detail what is in essence a reservation to Article 2, paragraph 1. Most delegations agreed that the same objective could be reached by allowing States to make a reservation in accordance with Article 17, paragraph 2. The Secretariat will consult the Treaty Office about the preferred legal method of making reservations to the Protocol.

<sup>6</sup> The PC-OC Mod decided that the explanatory report should contain an explanation of the differences between this article and the following article. It agreed that the purpose of this Article was to inform the person of the reasons of her/his arrest and the possibility of consenting. One delegation stated that this information did not necessarily imply the intervention of a judicial authority, and could be provided by the police at the moment of arrest.

<sup>7</sup> Some delegations were of the view that the term “arrested” could be too restrictive, and that measures restricting the liberty of the person other than detention should also be covered by this Article. Other delegations were of the view that “arrest” should be understood in this wider sense and did not necessarily mean detention. The explanatory report should make this point more explicit.

<sup>8</sup> The PC-OC Mod decided to leave the inclusion of the wording in the square brackets to the discretion of the plenary.

**Article 5 (ex-Article 6) - Consent to simplified extradition**

1. The consent of the person sought and, if appropriate, her/his express renunciation of entitlement to the rule of speciality, shall be given before the competent judicial authority<sup>9</sup> of the requested Party in accordance with the law of that Party.

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

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

4. Subject to paragraph 5, consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked.<sup>10</sup>

5. Any State Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that consent and, where appropriate, renunciation of entitlement to the rule of speciality, may be revoked, in accordance with the rules applicable under its law [until the requested Party takes its final decision on extradition under simplified procedures]<sup>11</sup>. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16 (4) of the Convention.

**Article 6 (ex-Article 5) - Renunciation of entitlement to the rule of speciality<sup>12</sup>**

Each State Party may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the Convention do not apply where the person, in accordance with Article 6 of the present Protocol:

(a) consents to simplified extradition; or

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

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<sup>9</sup> The PC-OC Mod agreed that "competent judicial authority" included the Office of the Public Prosecutor, in accordance with Article 1 of the Convention and its explanatory report.

<sup>10</sup> The PC-OC Mod agreed that consent should be irrevocable in principle, subject to the possibility of making a reservation in accordance with the following paragraph.

<sup>11</sup> In view of the practical difficulties that an untimely revocation of consent would imply for the extradition procedure, the majority of delegations were in favour of introducing a time limit until which consent may be revoked. Another proposal for a deadline for revocation was the date of the first hearing in the requesting State. Two delegations expressed reservations regarding such a limitation and stated that it might be necessary to differentiate between consent to simplified extradition and renunciation to the speciality rule, if such a time limit is introduced. One delegation pointed out that there could be a contradiction between the rules applicable under national law and this time limit. Due to the divergent views, the PC-OC Mod decided to leave it to the plenary to decide on this issue.

In case no time limit for revocation is introduced and it is left to the discretion of States Parties to indicate how they conceive the possibility of revocation by way of a declaration, the PC-OC Mod agreed that at least the explanatory report should contain clear guidance on the legal and practical difficulties which could arise in connection with revocation and the kind of declaration that would be acceptable in this context.

<sup>12</sup> One delegation was of the view that the current wording of this Article could create difficulties in the requesting State and might cause the release of the person. This delegation will submit a note for the attention of the plenary.



**Article 7 – Notification<sup>13</sup>**

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

**[Article 7bis – Notification in case of provisional arrest<sup>14</sup>**

1. So that the requesting Party may submit, where applicable, a request for extradition in accordance with Article 12 of the Convention, the requested Party shall notify it, no later than [10/14] days after provisional arrest, whether or not the person has given her/his consent.

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

**Article 8 – Channels and means of communication<sup>15</sup>**

For the purpose of the present Protocol, communications may be forwarded through any electronic or other means of communication, as well as through the International Criminal Police Organisation (Interpol), provided that the requesting Party is prepared, upon request, to produce at any time a written record and the original. However, any State may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.

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<sup>13</sup> The PC-OC Mod decided not to include a deadline on the notification of the consent of the person sought and to foresee a deadline for the notification of the final decision on simplified extradition that would apply regardless of the presence or absence of a request for provisional arrest.

<sup>14</sup> The PC-OC Mod suggested deleting these provisions, but decided to leave it to the plenary to take the final decision. The deletion of this Article would imply that, following the notification of provisional arrest under Article 16, paragraph 3, the requesting State should in all cases proceed with the preparation of a request for extradition and the supporting documents required by Article 12 of the Convention, regardless of whether the person sought has consented.

<sup>15</sup> The PC-OC Mod agreed that the question of the definition of competent authorities goes beyond the scope of this Protocol and should be addressed in the framework of the modernisation of the Convention in general. The present wording is based on Article 4, paragraph 9 of the 2<sup>nd</sup> Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, with the addition of the Interpol channel.

**Article 9 - Deadline for surrender<sup>16</sup>**

Surrender shall take place in accordance with Article 18, paragraphs 3 to 5 of the Convention. If the requested Party agrees to simplified extradition, the period between the notification of the extradition decision referred to under Article 7 of this Protocol and the date of surrender referred to under Article 18, paragraph 3 of the Convention shall not exceed [20] days.

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[The requested and requesting Parties shall agree on a date of surrender pursuant to Article 18, paragraph 3 of the Convention within the [20/30] days following the notification of the extradition decision pursuant to Article 7. The period between the notification and the date of surrender shall not exceed [60] days.]<sup>17</sup>

**[Article 10 - Consent given after expiry of the deadline laid down in Article 7<sup>18</sup>**

1. Where a person sought has given her/his consent after expiry of the deadline of 10 days laid down in Article 7, paragraph 1, the requested Party:

(a) shall implement the simplified procedure as provided for in this Protocol if a request for extradition within the meaning of Article 12 of the Convention has not yet been received by it,

(b) may use this simplified procedure if a request for extradition within the meaning of Article 12 of the Convention has reached it in the meantime.

2. Upon deposit of its instrument of ratification, acceptance, approval or accession, each State accepting to apply paragraph 1, sub-paragraph b shall declare under what conditions it intends to do so.]

**Article 11 - Transit<sup>19</sup>**

In the event of transit under the conditions laid down in Article 21 of the Convention, where extradition under the simplified procedure is concerned, the following provisions shall apply:

(a) an application containing the information required in Article 2, paragraph 1 may be made to the Party requested to grant transit by any method which leaves a written record. The Party requested to grant transit may make its decision known using the same method;

(b) the information referred to in Article 2, paragraph 1 shall be sufficient to enable the competent authority of the Party requested to grant transit to ascertain whether extradition is under the simplified extradition procedure and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

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<sup>16</sup> While most delegations agreed that a time limit for surrender would represent a clear added value for this Protocol, a wide variety of opinions was expressed regarding the precise time limit. The proposals ranged from 10-15 days, up to 90 days. 20 days was considered by the majority of delegations to be a compromise solution. Most delegations agreed that in the vast majority of cases 20 days following the notification of the extradition decision would be sufficient for surrender.

It was stressed during the meeting that, notwithstanding the time limit for the surrender, Article 18 of the Convention would continue to apply in practice. This implies that, in exceptionally difficult cases where 20 days would not be sufficient for surrendering or taking over the person to be extradited, in accordance with paragraph 5 of Article 18 of the Convention, the Parties can arrange a new date of surrender.

<sup>17</sup> Alternative proposal suggested by one delegation.

<sup>18</sup> In the light of the changes made by the PC-OC Mod with regard to the exclusion of a time limit for the notification of consent, the Group decided that this Article was no longer relevant.

<sup>19</sup> The PC-OC Mod agreed that the new means of communication pursuant to Article 8 of the Protocol should apply in case of transit. In principle, the Party granting transit should respect the agreement between the requested and requesting Parties. As for the information required, even those delegations which would not proceed only on the basis of a request for provisional arrest and the information contained under Article 2, paragraph 1 for the purposes of simplified extradition, agreed that this information would be sufficient for the purposes of granting transit.

## **Article 12 - Relationship with the Convention and other international instruments**

1. The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. The provisions of the Convention<sup>20</sup> shall apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of this Protocol.

2. The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3 of the Convention concerning the relations between the Convention and bilateral agreements<sup>21</sup>.

## **Article 13 – Friendly settlement<sup>22</sup>**

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

## **Article 14 - Signature and entry into force**

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

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

3. In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, 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 15 - Accession**

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

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

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

## **Article 16 – Territorial application**

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

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<sup>20</sup> The explanatory report shall make it clear that this covers the Convention as amended by the 1<sup>st</sup> and 2<sup>nd</sup> additional protocols between the Parties concerned.

<sup>21</sup> Declarations of States Parties to the Convention under these provisions (e.g. concerning the European Arrest Warrant) would automatically apply to the 3<sup>rd</sup> additional Protocol. The Secretariat will clarify with the Treaty Office if paragraph 1 of the Convention would be problematic as regards the status of bilateral agreements concluded before the 3<sup>rd</sup> Protocol.

<sup>22</sup> This is a standard provision included in all conventions concerning criminal matters. One delegation stated that it had a reservation vis-à-vis this article.

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

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

#### **Article 17 - Reservations<sup>23</sup>**

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

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

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

4. Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **Article 18 - Denunciation**

1. Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

3. Denunciation of the Convention entails automatically denunciation of this Protocol.

#### **Article 19 - Notifications**

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

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;

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<sup>23</sup> The PC-OC Mod discussed different alternatives for reservations. The possible reservations could be:

- mentioned only under Article 17, paragraph 2; or
- specified explicitly in the text next to the relevant provisions; or
- specified explicitly in the text and summarised under Article 17.

The Secretariat will clarify with the Treaty Office which option would be more preferable.

One delegation suggested introducing an obligatory review clause for reservations (e.g. confirmation of reservations every 5 years). This was considered problematic by another delegation.

- c any date of entry into force of this Protocol in accordance with Articles 14 and 15;
- d any declaration made in accordance with Article 16;
- e any reservation made in accordance with Article 17 and any withdrawal of such a reservation;
- f any notification received in pursuance of the provisions of Article 18 and the date on which denunciation takes effect;
- g any other act, declaration, notification or communication relating to this Protocol.

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

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

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