



Strasbourg, 27 October 2008
[P-OC Mod/PC-OCMod (2008) 07E]
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PC-OC Mod (2008) 07

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 6th meeting of the restricted Group of experts on international co-operation (PC-OC Mod)
enlarged to all PC-OC members

Strasbourg, 30 September – 2 October 2008
AGORA, Room G 01

EXECUTIVE SUMMARY

At its 6th enlarged meeting, the PC-OC Mod:

Simplified Extradition

- amended the draft 3rd Additional Protocol to the European Convention on Extradition and the Draft Explanatory Report thereto and invited delegations to send written drafting proposals on the revised texts;
- invited the PC-OC plenary to examine the revised draft texts in the light of these written proposals and adopt them (see paragraphs 5-16, Appendix IV);

Compensation of persons

- took note of the replies to the questionnaire as well as the summary of replies prepared by the Secretariat;
- considered that other issues concerning the modernisation of the European Convention on Extradition should remain the priority of the PC-OC for the time being;
- invited the plenary to pursue discussions on this item and consider reporting the results of its stock-taking exercise to the CDPC and ask the latter for further guidance as to future action to be taken (see paragraphs 17-19);

Rule of speciality

- discussed the various elements which need to be taken into account for amending the European Convention on Extradition regarding the rule of speciality, on the basis of the contributions of two of its members;
- invited these members to submit a revised proposal to the attention of the next PC-OC plenary;
- invited the PC-OC plenary to examine this proposal with a view to its finalisation (see paragraphs 20-23);

Lapse of time

- discussed the issue of lapse of time on the basis of a background information document prepared by the Secretariat and a concrete proposal submitted by a member of the PC-OC;
- invited the plenary to pursue discussions on this item, as well as other issues covered in this proposal (paragraphs 24-26);

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

- having taken note of the replies by 13 States to the questionnaire PC-OC (2008) 13 Bil, and considering that more replies were needed to have a representative overview of the relevant issues, requested all delegations to reply to this questionnaire by 24 October 2008;
- invited the PC-OC plenary to have a preliminary exchange of views on these replies (see paragraphs 27-29).

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.
2. The Head of the Criminal Law Division and Secretary to the CDPC, Mr Carlo Chiaromonte, informed the PC-OC Mod about the 57th Plenary Session of the CDPC (2-6 June 2008), during which the CDPC approved a draft Recommendation on the European Rules for Juvenile Offenders subject to Sanctions or Measures, as well as new terms of reference for a number of its subordinate Committees, including the PC-OC. The PC-OC Mod was also informed that Romania had made a proposal during the 57th meeting of the CDPC to host a Council of Europe Conference of Ministries of Justice and of the Interior in Bucharest in 2010, on issues relating to international co-operation in criminal matters.
3. Mr Chiaromonte also informed the PC-OC Mod of his participation in a meeting to celebrate the 10th anniversary of the European Judicial Network (EJN) in Madeira, on 13 October 2008. The PC-OC Mod expressed its support for this contact and its wish for increased synergies with the European Judicial Network.

2. ADOPTION OF THE DRAFT AGENDA

4. 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

5. The PC-OC Mod examined the draft 3rd Additional Protocol to the European Convention on Extradition, revised in the light of discussions held during its 5th enlarged meeting and the 54th plenary meeting of the PC-OC. It also examined a draft explanatory report to the draft Protocol, which had been prepared by the Secretariat on the basis of the explanatory report of the Convention on simplified extradition procedure between the Member States of the European Union of 1995 and the previous discussions held within the PC-OC plenary and the PC-OC Mod.
6. The PC-OC Mod discussed the draft texts article by article, notably in the light of the written comments sent by delegations, and amended them. It focussed on the following issues in particular:

Article 2

7. The PC-OC Mod invited the plenary to decide on the title of this Article, which deals with the requirements for initiating the simplified extradition procedure. As regards the question raised by one delegation concerning the need to provide information on the possibility of a retrial where extradition is requested to enforce a judgment rendered in absentia, the PC-OC Mod agreed that the explanatory report should reflect the need for the requesting State to send all relevant information in order to allow the requested State to verify whether the safeguards of the ECHR concerning trials in absentia have been observed.
8. The PC-OC Mod agreed that Article 2, paragraph 3 should read "in case the requested State has received a request for extradition in accordance with Article 12 of the Convention, the present Protocol shall apply *mutatis mutandis*". It agreed to amend the provision dealing with consent given after the deadline of 10 days (Article 10) accordingly.

Obligation to inform the person

9. One delegation was of the view that it was not sufficient to clarify in the explanatory report that the term "arrested" also covers measures, other than detention, restricting the liberty of the person. It proposed to insert "in accordance with Article 16 of the Convention or is subject to any other measures of restraint to ensure her/his extradition" after the words "is arrested". Other delegations considered the clarification in the draft explanatory report to be sufficient in this context.

Consent to extradition

10. The PC-OC Mod agreed that, where the requested State allows for the revocation of consent to simplified extradition, it was up to that State to lay down the procedure for the revocation, which does not have to be identical to the procedure for giving consent. It decided that this should be reflected in the explanatory report. It also decided to amend the draft 3rd Additional Protocol with a view to making it explicit that the requested State should immediately inform the requesting State of any revocation.

Notification

11. Concerning the deadline of 20 days following consent for notifying the extradition decision, one delegation expressed its concern regarding the fact that, in accordance with its legislation, a positive decision on extradition was not considered final until the time limit provided in domestic legislation for appealing against it had lapsed. The PC-OC Mod agreed that in such cases, it would be appropriate for the requested State to notify the initial decision which is subject to appeal within the deadline of 20 days, in order to avoid legal uncertainty for the requesting State, in particular where the 40-day limit of Article 16 of the Convention is applicable. Thus, even if the initial positive extradition decision is overturned on appeal, due to the fact that the period between consent and revocation is not taken into account for the purposes of Article 16 and as appeal should be considered as revocation, the requesting State would have enough time to use the ordinary procedure by submitting a request for extradition and the supporting documents in accordance with Article 12 of the Convention.

Means of communication

12. The PC-OC Mod redrafted the provision on means of communication and the corresponding paragraphs in the explanatory report, with a view to making clear that the Protocol, without replacing Article 12, paragraph 1 of the Convention, provides a legal basis for speedy communication, in particular thanks to the use of modern means of communication, while ensuring a written trace.

Surrender

13. The PC-OC Mod agreed that it would be unrealistic to set a mandatory deadline for surrender. It therefore redrafted the provision on surrender so as to reflect the importance of a speedy surrender, indicating that surrender within 10 days of the receipt of the notification of a positive extradition decision would be a reasonable goal in most cases.
14. Taking account of the fact that surrender in simplified and ordinary extradition cases involve identical concerns, The PC-OC Mod also agreed to invite the plenary to consider the possibility of amending Article 18 of the mother Convention.

Transit

15. The PC-OC Mod redrafted the provision concerning transit, so as to allow the State requested to grant transit to ask, if necessary, for additional information to complement the information referred to under Article 2.
16. The PC-OC Mod decided to instruct the Secretariat to send the revised draft 3rd Additional Protocol to the European Convention on Extradition and the draft explanatory report thereto to all PC-OC members. It requested delegations wishing to amend the revised draft 3rd Additional Protocol and its Explanatory Report, to send to the Secretariat concrete, written drafting proposals, accompanied if necessary by a short explanation, by 24 October 2008. The PC-OC Mod invited the PC-OC plenary to examine these revised documents, to amend them as necessary and to adopt them.

3.2. COMPENSATION OF PERSONS

17. The PC-OC Mod examined the replies to the questionnaire on compensation issues (PC-OC (2008) 03 rev 2), as well as of a summary of replies prepared by the Secretariat (PC-OC (2008) 21).
18. The PC-OC Mod considered that other issues concerning the modernisation of the European Convention on Extradition, which are currently on the agenda of the PC-OC, should remain its priority for the time being. It agreed, however, that the compensation of persons remains a very important question, in particular as it concerns all member States and affects Human Rights. The PC-OC Mod was of the view

that this issue deserved further consideration by the PC-OC at a later stage and that the replies to the questionnaire constituted a very positive first step in this respect.

19. The PC-OC Mod invited the plenary to pursue discussions on this item and to consider reporting the results of its stocktaking exercise to the CDPC, asking the latter for further guidance as to future action to be taken.

3.3. RULE OF SPECIALITY

20. At its 54th plenary meeting, the PC-OC had examined the replies to the questionnaire on the rule of speciality (PC-OC (2008) 04), the summary of replies prepared by the Secretariat (PC-OC (2008) 12) and example cases submitted by some delegations illustrating problems that can arise from the application of the rule of speciality. In the light of this examination, the PC-OC had identified a number of issues that needed to be addressed in a future binding instrument.
21. The PC-OC Mod examined an initial proposal by Mr Per Hedvall (Sweden) and elements for consideration submitted by Mr Branislav Boháčik (Slovakia). The key modifications proposed to Article 14 of the Convention concerned the inclusion of a time limit for the requested State to give its consent for waiving the benefit of the rule of speciality and the possibility for the requesting State of restricting the personal freedom of the person concerned awaiting this consent.
22. The PC-OC Mod had a preliminary discussion on this proposal. Several delegations were in favour of using it as a basis for including a new exception to the rule of speciality awaiting the consent of the requested State. As to whether this possibility should apply only in exceptional cases, some delegations voiced their concern about the difficulty of defining what would constitute an exceptional case or a "serious offence". One delegation considered that the PC-OC should also review the period of 45 days following final discharge in Article 14, paragraph 1(b), which it considered too long. The PC-OC Mod agreed that the modernisation of the rule of speciality should also take into account the responsibility of the requesting State, for example as regards the need for sending a complete extradition request from the outset.
23. The PC-OC Mod welcomed the fact that Mr Hedvall and Mr Boháčik accepted to submit revised proposals to the PC-OC plenary in the light of these discussions, and invited the plenary to examine these proposals and decide on the follow-up to be given to them.

3.4. LAPSE OF TIME

24. At its 54th plenary meeting, the PC-OC had examined the issue of lapse of time on the basis of a background information document prepared by the Secretariat (PC-OC (2008) 06). It had decided to pursue discussions on this item on the basis of a text to be proposed by Mr Vladimir Zimin (Russian Federation).
25. The PC-OC Mod examined the proposal of Mr Zimin concerning lapse of time (PC-OC (2008) 19, Article 13) and invited the plenary to pursue the examination of this proposal, while taking account of Article 8 of the EU Convention on Extradition, which a number of delegations considered relevant in this respect.
26. The proposals of Mr Zimin also concern a number of other issues relating to the modernisation of the European Convention on Extradition. The PC-OC Mod invited the PC-OC to have an exchange of views also on these other proposals, while concentrating on those issues for which the CDPC has already mandated the PC-OC, which include channels and means of communication.

4. 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

27. 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".
28. The Bureau of the CDPC had decided to submit this part of the Resolution to the PC-OC, instructing it to take stock of the situation in different member States and to reflect on possible responses to common

challenges. In order to respond to this instruction, the PC-OC had addressed a questionnaire on this issue (PC-OC (2008) 13 Rev Bil) to all delegations, inviting them to reply by 1 September 2008.

29. The PC-OC Mod took note of the fact that 13 member States had replied to this questionnaire and considered that the number of replies was insufficient to have a representative overview of the situation in Europe with respect to the relationship between asylum procedures and extradition procedures. It requested all delegations who had not already done so to reply to this questionnaire by 24 October 2008 and invited the plenary to have a preliminary discussion on these replies.

5. DATES OF THE NEXT MEETING

30. The PC-OC Mod confirmed the dates of the 55th meeting of the PC-OC as 4-7 November 2008.

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

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

AZERBAIJAN / AZERBAÏDJAN**BELGIUM / BELGIQUE**

M. Erik VERBERT, Deputy Legal Adviser, Central Authority, DG Legislation, Ministry Federal Public Service
Justice, BRUSSELS

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**BULGARIA / BULGARIE****CROATIA / CROATIE****CYPRUS / CHYPRE****CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Mr Miroslav KUBICEK, Legal Officer, International Criminal Law Unit, International Department for Criminal
Matters, Ministry of Justice, PRAGUE

DENMARK / DANEMARK

Ms Louise HALLESKOV STORGAARD, Head of Section, Criminal Office, Ministry of Justice,
COPENHAGEN

ESTONIA / ESTONIE

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

FINLAND / FINLANDE

Ms Ann-Sofie HOGSTROM, Legal Adviser, International Affairs, Ministry of Justice, HELSINKI

FRANCE

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

GEORGIA / GEORGIE**GERMANY / ALLEMAGNE**

Ms Pamela Sue KNAUSS, Desk Officer, Criminal Law Cooperation Department, Ministry of Justice, BERLIN

GREECE / GRECE

Apologised / Excusé

HUNGARY / HONGRIE

ICELAND / ISLANDE**IRELAND / IRLANDE****ITALY / ITALIE**

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

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

LATVIA / LETTONIE**LIECHTENSTEIN****LITHUANIA / LITUANIE****LUXEMBOURG****MALTA / MALTE****MOLDOVA****MONACO****MONTENEGRO****NETHERLANDS / PAYS-BAS**

Ms Wietske DIJKSTRA, Senior Legal Policy Officer, Department of International Legal Assistance in Criminal Matters, Ministry of Justice, THE HAGUE

NORWAY / NORVEGE

Ms Vibeke GJØSLIEN, Adviser, Ministry of Justice and the Police, OSLO

POLAND / POLOGNE

Mr Miłosz AUGUSTYNIAK, Senior Specialist, Ministry of Justice, Department of International Cooperation and European Law, VARSOVIE

PORTUGAL

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

ROMANIA / ROUMANIE**RUSSIA / RUSSIE**

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

Ms Tatiana M. SUTYAGINA, Senior Prosecutor, Main Department International Legal Co-operation Office of the Prosecutor General, MOSCOW

SAN MARINO / SAINT-MARIN**SERBIA / SERBIE****SLOVAKIA / SLOVAQUIE**

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

SLOVENIA / SLOVENIE

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

SPAIN / ESPAGNE**SWEDEN / SUEDE**

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

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

SWITZERLAND / SUISSE

Mme Astrid OFFNER, Cheffe suppléante des Traités internationaux, Office Fédéral de la Justice,
Ministère de la Justice et Police, BERNE
Apologised / Excusée

M. Erwin JENNI, Chef de la "section extraditions" près l'Office fédéral de la justice, Office fédéral de la
justice, section extradition, Ministère de la Justice et Police, BERNE

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" /
« L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE »****TURKEY / TURQUIE****UKRAINE****UNITED KINGDOM / ROYAUME-UNI****SECRETARIAT****DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS / DIRECTION GÉNÉRALE DES
DROITS DE L'HOMME ET DES AFFAIRES JURIDIQUES (DG-HL)**

Mr Jan KLEIJSSSEN	Director of Standard-Setting / Directeur des Activités Normatives
M. Carlo CHIAROMONTE	Head of the Criminal Law Division / <u>Secretary to the CDPC</u> Chef de la Division du droit pénal / <u>Secrétaire du CDPC</u>
Mr Hasan BERMEK	Secretary to the Committee / Secrétaire du Comité
Ms Marose BALA-LEUNG	Assistant / Assistante

Interpreters / Interprètes

Mme Isabelle MARCHINI
M. Nicolas GUITTONNEAU
M. Christopher TYCZKA

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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 2](#)
 Draft annotated agenda [PC-OC Mod \(2008\) 04](#)
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 5th enlarged meeting of the PC-OC Mod [PC-OC mod \(2008\) 03](#)
 Summary Report of the 54th meeting of the PC-OC [PC-OC \(2008\) 16](#)
 Summary Report of the CDPC Bureau meeting 16-18 January 2008 [CDPC-BU \(2008\) 07](#)
- 3.1. Simplified extradition**
Working documents
 Revised Draft 3rd Additional Protocol to the European Convention on Extradition [PC-OC \(2008\) 05 rev 2](#)
 Comments on the revised Draft 3rd Additional Protocol [PC-OC \(2008\) 17](#)
 (document in English and French)
 Draft Explanatory Report to the 3rd Additional Protocol [PC-OC \(2008\) 20](#)
- 3.2. Compensation of persons**
Working documents
 Questionnaire on compensation issues [PC-OC \(2007\) 10 Rev](#)
 Replies to the questionnaire on compensation issues [PC-OC \(2008\) 03 Rev 2](#)
 Summary of replies [PC-OC \(2008\) 21](#)
- 3.3. Rule of speciality**
Working documents
 Questionnaire on the rule of speciality [PC-OC \(2008\) 01 Rev](#)
 Replies to the questionnaire on the rule of speciality [PC-OC \(2008\) 04 Rev 2](#)
 Summary of replies [PC-OC \(2008\) 12](#)
 Proposals by Mr Per HEDVALL (Sweden) [PC-OC \(2008\)22](#)
- 3.4. Lapse of time**
Working documents
 Background information prepared by the Secretariat [PC-OC \(2008\) 06](#)
 Proposals by Mr Vladimir ZIMIN (Russian Federation) [PC-OC \(2008\) 19](#)

4. **Follow-up of the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote)** – Preliminary discussion on the replies to the questionnaire on the relationship between asylum procedures and extradition procedures

Working documents

Resolution No. 1 on access to justice for migrants and asylum seekers

[Resolution No. 1](#)

Summary Report of the CDPC Bureau meeting 16-18 January 2008

[CDPC-BU \(2008\) 07](#)

Questionnaire on the relationship between asylum procedures and extradition procedures

[PC-OC \(2008\) 13 Bil](#)

Replies to the Questionnaire on the relationship between asylum procedures and extradition procedures

PC-OC (2008) 18
(document in English and French)

5. **Any other business**

6. **Dates of the next meeting**

APPENDIX III

List of decisions adopted at the 6th meeting of the restricted Group of experts on international co-operation (PC-OC Mod) enlarged to all PC-OC members **30 September – 2 October 2008**

The PC-OC Mod decided to:

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

a) Simplified extradition

- amend the draft 3rd Additional Protocol to the European Convention on Extradition and the Draft Explanatory Report thereto;
- instruct the Secretariat to revise these documents in the light of the discussions held during the meeting of the Group and to send them to all PC-OC members as soon as possible;
- request all delegations wishing to amend the revised draft 3rd Additional Protocol and its Explanatory Report, to send to the Secretariat concrete, written drafting proposals, accompanied if necessary by a short explanation, by 24 October 2008;
- instruct the Secretariat to compile these drafting proposals in a single document in order to facilitate discussions;
- invite the PC-OC plenary to examine these revised documents on this basis and adopt them;

b) Compensation of persons

- have a preliminary discussion on the replies to the questionnaire PC-OC (2007) 10 rev and the summary of replies prepared by the Secretariat (PC-OC (2008) 21) and invite delegations who have not already done so to reply to this questionnaire before the next PC-OC plenary meeting;
- while considering that other issues concerning the modernisation of the European Convention on Extradition should remain the priority of the PC-OC for the time being, agree that compensation of persons is a very important question, in particular as it affects Human Rights, which would deserve further consideration by the PC-OC at a later stage;
- invite the plenary to pursue discussions on this item and consider reporting the results of its stock-taking exercise to the CDPC and ask the latter for further guidance as to future action to be taken;

c) Rule of speciality

- on the basis of the replies to the questionnaire PC-OC (2008) 01 rev, the summary of replies prepared by the Secretariat (PC-OC (2008) 12), a concrete proposal submitted by Mr Per Hedvall (Sweden) and elements submitted by Mr Branislav Boháčik (Slovakia), discuss the various elements which need to be taken into account for amending the European Convention on Extradition regarding the rule of speciality;
- thank Mr Boháčik and Mr Hedvall for their contributions and invite them to submit a revised proposal to the attention of the next PC-OC plenary, in the light of these discussions and possible future comments sent by delegations;
- invite the PC-OC plenary to examine this proposal with a view to its finalisation;

d) Lapse of time

- discuss the issue of lapse of time on the basis of a background information document prepared by the Secretariat and a concrete proposal submitted by Mr Vladimir Zimin (Russian Federation);
- thank Mr Zimin for his contribution;
- invite the plenary to pursue discussions on this item on the basis of a document to be prepared by the Secretariat, which shall include these proposals, as well as the text of Article 8 of the EU Convention on Extradition, which a number of delegations considered relevant in this respect;
- invite the plenary to take note of the fact that Mr Zimin's contribution also concerns issues other than lapse of time and to have an exchange of views also on these other proposals, while concentrating on issues for which the CDPC has already mandated the PC-OC;

2. 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

- having taken note of the replies by 13 States to the questionnaire PC-OC (2008) 13 Bil, and considering that more replies were needed to have a representative overview of the relevant issues, request all delegations, who have not already done so, to reply to this questionnaire by 24 October 2008;
- invite the PC-OC plenary to have a preliminary exchange of views on these replies;

3. Dates of the next meeting

- confirm the dates of the 55th plenary meeting of the PC-OC as 4-7 November 2008.

Appendix IV**Draft 3rd Additional Protocol
to the European Convention on Extradition****as amended at the 6th meeting of the PC-OC Mod
30 September – 2 October 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

Contracting 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 and information to be provided]¹

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

(a) the identity of the person sought, including her/his nationality or nationalities when available;

(b) the authority requesting the arrest;

(c) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;

(d) the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment, including whether any part of the judgment has already been enforced;

(e) information concerning lapse of time and its interruption;

(f) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;

(g) in so far as possible, the consequences of the offence;

¹ The PC-OC Mod invited the plenary to decide on the title of this Article.

(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 grant extradition.

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

Article 3 - Obligation to inform the person

Where a person sought for the purpose of extradition is arrested² 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 in accordance with this Protocol.

Article 4 - Consent to extradition

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

2. Each 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.

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. The consent may be revoked until the requested Party takes its final decision on extradition under simplified procedures. 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. Renunciation of entitlement to the rule of speciality may be revoked until the surrender of the person concerned. Any revocation of the consent to extradition or the renunciation of entitlement to the rule of speciality shall be recorded in accordance with the law of the requested Party and notified to the requesting Party immediately.

Article 5 - Renunciation of entitlement to the rule of speciality

Each State 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 4 of the present Protocol:

(a) consents to extradition; or

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

² At the 6th meeting of the PC-OC Mod, one delegation was of the view that it was not sufficient to clarify in the explanatory report that the term "arrested" also covers measures, other than detention, restricting the liberty of the person. It proposed to insert "in accordance with Article 16 of the Convention or is subject to any other measures of restraint to ensure her/his extradition" after the words "is arrested". Other delegations considered the clarification in the draft explanatory report to be sufficient in this context.

Article 6 – Notification in case of provisional arrest

1. So that the requesting Party may submit, where applicable, a request for extradition in accordance with Article 12 of the Convention, the requested Party shall notify it, no later than 10 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 7 – Notification

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

Article 8 – Means of communication

For the purpose of this Protocol, communications may be forwarded through electronic or any other means affording evidence in writing, as well as through the International Criminal Police Organisation (Interpol), provided that the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents.

Article 9 - Surrender

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

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

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

Article 11 - Transit

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

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

Article 12 - Relationship with the Convention and other international instruments

1. The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. The provisions of the Convention shall apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of this Protocol.
2. The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3 of the Convention concerning the relations between the Convention and bilateral agreements.

Article 13 – Friendly settlement

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

Article 14 - Signature and entry into force

1. This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, 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.
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

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