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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

MODEL PROVISIONS PROJECT
– DRAFT OUTLINE OF PROJECT

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The project serves to implement one of the mandates given to the CDPC in the current ToR:

“Drafting a CDPC document/guidelines containing “Model provisions” clearly defining a certain number of rules to be duly considered by the expert committees in their drafting work as the base to be followed during future negotiations of any possible convention in a criminal law matter with a view to avoiding long discussions in the ad hoc drafting committees with regard to standard provisions covering general issues such as jurisdiction, corporate liability, sanctions and measures, aggravating circumstances, international co-operation”;

The idea behind this project is to go a bit further than what has already been done in 2010 when the document on “Model Provisions in Council of Europe Conventions in the Field of Criminal Law – Examples and Guidelines for Drafters” (CDPC-BU (2010) 21 rev) was prepared by the Secretariat. The 2010 text is a paper presenting the different solutions found in different criminal law conventions on issues of a general nature such as jurisdiction, international cooperation, sanctions etc. and giving some guidance to future drafters on model texts, which they may consider when drafting a new convention.

The objective of the new project is to draft

- a model text of a criminal law convention with the exception of the provisions on substantive criminal law. The text thus should cover all other “standard” language of CoE criminal law conventions. In many cases, such as sanctions, international cooperation, monitoring mechanisms, final clauses, the text should be drafted with the aim of being universally applicable to all future CoE criminal law conventions. In other areas, such as jurisdiction, aggravating circumstances, aiding or abetting and attempt, the text should include standard language, however, offering certain alternatives / choices to be made, such as e.g. on whether jurisdiction should also include the passive nationality principle. And the text could include certain standard provisions, such as on prevention, which may be supplemented by more specific ones depending on the scope and purpose of a future criminal law convention.
- a model of an explanatory report in respect of these model provisions

- guidelines for drafters of a criminal law convention, addressing topics such as a typical structure of a CoE criminal law convention, use of certain terminology etc.

The draft “model text(s)” could be negotiated and approved by the CDPC and eventually adopted by the Committee of Ministers as a Recommendation with the following aims:

- The mandate (ToR) for future *ad hoc* expert groups working under the CDPC could be restricted to draft those provisions which are the core and specific object of the criminal law convention (in particular substantive criminal law) whereas for the rest of the draft convention, they would be instructed to use the “standard provisions” of the model convention text. They would be invited to negotiate and find an agreement in respect of those provisions where the model text specifically offers alternative solutions.
- The *ad hoc* expert group would be requested to deliver a final product only within the scope of its mandate (substantive criminal law provisions) for further review and approval by the CDPC. The *ad hoc* expert may recommend to the CDPC to also make certain adjustments/deviations from the standard text. However, in this respect the *ad hoc* group would not be expected to reach a consensus. It could thus save considerable time and effort by refraining from discussing “horizontal matters”, which would better be dealt with on the CDPC level in the course of the final negotiations on the draft convention.
- These model texts would also serve as guidance for the negotiations in the CDPC. However, the CDPC would not be strictly bound by these guidelines but could decide to deviate from the standard texts if there is a specific reason to do so.
- These model texts could also be referred to in any mandate given by the Committee of Ministers to drafting groups that are not working under the authority of the CDPC but are mandated to draft a convention which also includes criminal law provisions. I