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 [PC-OC/Documents 2013/ projet OJ1E]  
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PC-OC (2013)07

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

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

**64th meeting**  
**Strasbourg, 28 – 30 May 2013**  
**AGORA, Room G 03**

**Draft Annotated Agenda**

<b>1.</b>	<b>Opening of the meeting and adoption of the agenda</b>  <u>Document</u> PC-OC(2013)0J1
<b>2.</b>	<b>Points for information</b>  <u>The PC-OC is invited to take note of the information provided on the items listed below.</u>
<b>a.</b>	<b>Review of Council of Europe Conventions by the Committee of Ministers</b>  The Secretariat will inform the PC-OC of the review undertaken and possible decisions reached by the Committee of Ministers. Reference is made to document SG/INF (2012)12 and its Addendum included in the background documents to the agenda.
<b>b.</b>	<b>Recent signatures and ratifications</b>  The Secretariat will inform the PC-OC of recent signatures and ratifications of the treaties of relevance to its work.
<b>c.</b>	<b>Upcoming activities of the Ad Hoc Drafting Group on Transnational Organised Crime (PC-GR-COT)</b>  The Secretariat will inform the PC-OC of the activities planned by this new Committee and the participation of the PC-OC.  The terms of reference of the PC-GR-COT are included in the background documents on the agenda.

<b>d.</b>	<p><b>Other</b></p> <p>The Secretariat will also inform the PC-OC of other issues of relevance to its work and in particular:</p> <p>further to requests by the CDPC:</p> <ul style="list-style-type: none"> <li>- the exchange of views held between the PC-CP and the PC-OC Mod at their last meeting regarding cases of use of GPS tracking by the police where a suspect or an offender under electronic monitoring crosses the border, in particular as regards the possible continuation of the tracking, storage and the use of data;</li> <li>- the consideration by the PC-OC Mod of the provisions related to international co-operation in criminal matters of the “preliminary draft convention against manipulation of sports results”, prepared by the European Partial Agreement on Sport (EPAS).</li> </ul> <p><u>Background documents</u></p> <p>List of decisions of the 15th meeting of the PC-OC Mod (Doc PC-OC(2013)03)</p> <p>Preliminary draft convention against manipulation of sports results, prepared by the European Partial Agreement on Sport (EPAS).</p>
<b>3.</b>	<b>Presentation and content of the PC-OC website</b>
<b>a.</b>	<p><b>Proposals to improve country information:</b></p> <p>The PC-OC considered at its 63rd meeting the inventory of country information available on the PC-OC website as contained in document PC-OC(2012)09, recalled the importance that the PC-OC website contains complete and updated country information for the use of practitioners, and decided to:</p> <ul style="list-style-type: none"> <li>- reiterate its call on all members and states parties to the European conventions on international co-operation in criminal matters to submit and when necessary send an update of the required information to the Secretariat as regards, in particular, the list of officials involved in the practical application of the conventions on extradition, mutual legal assistance in criminal matters and transfer of sentenced persons (PC-OC INF 6), the network of single points of contact and the list of competent authorities in respect of the application of Articles 13 and 15 of the European Convention on Mutual Assistance in Criminal Matters;</li> <li>- instruct the Secretariat to amend the inventory of country information as indicated by the PC-OC and keep it updated;</li> <li>- instruct the PC-OC Mod to consider the inventory of country information available and report to the plenary on which information should be maintained and the reasons why.</li> </ul> <p>The PC-OC Mod considered during its 15th meeting in March 2013 the inventory of country information available, analysed its usefulness and decided to:</p> <ul style="list-style-type: none"> <li>- instruct the Secretariat to create a revised template for country information (extradition, transfer and MLA) with new boxes to include any useful information contained in PC-OC INF4, 5, 9 as well as in PC-OC INF7 and 71, and links to other useful country information published on the PC-OC website, which would be submitted for consideration by the plenary;</li> <li>- propose to the plenary that the contents of PC-OC INF 4, 5 and 9 be moved to elsewhere on the site (archives) or be deleted;</li> <li>- instruct the Secretariat to carry out a stocktaking exercise of replies to questionnaires so as to identify those that contain useful country information and can be transformed into PC-OC INF documents.</li> </ul> <p><u>The PC-OC is invited to</u> consider the proposals by the PC-OC Mod to improve the country information available to practitioners and to decide on the follow up. Attention is drawn in particular to the following <u>documents</u>:</p> <ul style="list-style-type: none"> <li>- the updated inventory of country information available as contained in Doc PC-OC (2012)09 rev 2;</li> <li>- the draft revised templates contained in Doc PC-OC (2013)04;</li> <li>- the content of PC-OC INF 4,5,9;</li> <li>- the overview of country information contained in replies to questionnaires contained in</li> </ul>

	Doc PC-OC(2013)05.
<b>b.</b>	<p><b>Useful links to national websites</b></p> <p>The PC-OC also decided at its 63rd meeting to call on all members and states parties to the European conventions on international co-operation in criminal matters to send links to websites of national central authorities or judicial bodies involved in international co-operation in criminal matters to the Secretariat in view of their publication on the website of the PC-OC.</p> <p>During its 15th meeting, the PC-OC Mod took note that 9 countries had sent links to national websites for publication on the website and decided to instruct the Secretariat to:</p> <ul style="list-style-type: none"> <li>- continue inviting countries to send useful links to their national websites;</li> <li>- remove links from the front page of document PC-OC INF6 and to add those links that are still active to the national links page of the website.</li> </ul> <p><u>The PC-OC is invited to take note of information provided by the Secretariat on developments regarding the online publication of links to national websites.</u></p>
<b>c.</b>	<p><b>Case law of the European Court of Human Rights</b></p> <p>During its 63rd meeting, the PC-OC considered the draft summaries (contained in Document PC-OC (2011)21rev4), thanked Mr Dupraz (France), Ms Goeth-Flemmich (Austria), Mr Kubicek (Czech Republic), and Mr Verbert (Belgium) for their excellent work, discussed possible editorial improvements to the document and decided to:</p> <ul style="list-style-type: none"> <li>- ask the authors, in co-operation with the Secretariat and the Chair, to finalise the document as discussed;</li> <li>- agree on having the names of the authors published on the cover page;</li> <li>- instruct the Secretariat to publish the index and the summaries on the PC-OC website;</li> <li>- invite members of the PC-OC to inform the Secretariat of any further decisions of the ECtHR of relevance for international co-operation in criminal matters;</li> <li>- instruct the PC-OC Mod to ensure the regular updating of the document on case law.</li> </ul> <p><u>The PC-OC is invited to take note of information provided by the Secretariat on developments regarding the online publication of the index and summaries of case law of the ECtHR.</u></p> <p>Referring to the decision taken during the 62nd meeting, PC-OC members are furthermore invited to provide information on new Court decisions of relevance to the PC-OC which might justify an update of the publication.</p> <p><u>Background document</u> Index and summaries of the case law of the ECtHR (PC-OC (2011) 21 REV 5)</p>
<b>4.</b>	<b>Allowing practitioners to submit questions to the PC-OC</b>
<b>a.</b>	<p><b>Translation and dissemination of the information leaflet on the PC-OC</b></p> <p>During its 63rd meeting, the PC-OC welcomed the publication online and in paper form of a coloured leaflet containing information on the PC-OC for distribution to national practitioners involved in international co-operation in criminal matters. The PC-OC had an exchange of views on possible good practices for dissemination at a national level and underlined that it is essential that the leaflet be available also in non-official languages of the Council of Europe. It was decided to:</p> <ul style="list-style-type: none"> <li>- encourage members to translate the text into their national languages and submit it to the Secretariat for publication, subject to applicable Council of Europe publication rules as well as available budgetary resources, as an “unofficial translation”, on the PC-OC website and as a paper version;</li> </ul>

	<p>- resume the discussion on dissemination at future meetings so as to exchange information on experiences and best practices.</p> <p><u>The PC-OC is invited:</u></p> <ul style="list-style-type: none"> <li>- to take note of the different language versions available;</li> <li>- to discuss best practices for dissemination of the leaflet to practitioners and which allow them to submit questions to the PC-OC</li> </ul>
<b>b.</b>	<p><b>Use of the forum</b></p> <p>The PC-OC, noting the usefulness of the forum for raising issues of common interest, decided at its 62nd meeting to:</p> <ul style="list-style-type: none"> <li>- encourage all delegations to make regular use of the forum.</li> </ul> <p><u>The PC-OC is invited to</u> discuss the use made of the forum and possible difficulties met.</p>
<b>5.</b>	<p><b>Practical problems and concrete cases concerning the implementation of the European Convention on Extradition</b></p>
<b>a.</b>	<p><b>Presentation by the PC-OC Rapporteur on extradition on recent developments and forum discussions</b></p> <p>During its 61st meeting, the PC-OC adopted Practical measures to facilitate the application of conventions on international cooperation in criminal matters in which the PC-OC agreed "to appoint Rapporteurs and assisting members for the most important conventions and other issues of particular importance related to cooperation in criminal matters to animate the discussions on the forum, to inform the plenary on discussions held and on other developments of importance and to make proposals for follow-up".</p> <p>Mr Erik Verbert (Belgium), rapporteur as regards extradition will inform the plenary accordingly and will make proposals for follow-up.</p> <p><u>The PC-OC is invited to</u> take note of the information provided and consider possible follow-up.</p> <p><u>Background document</u> Practical measures to facilitate the application of conventions on international cooperation in criminal matters (Document PC-OC (2011) 04Rev3)</p>
<b>b.</b>	<p><b>Consideration of the replies received to the questionnaire on "in absentia cases" in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition and follow-up.</b></p> <p>The PC-OC adopted, at its last meeting, the draft questionnaire as proposed by the PC-OC Mod (document PC-OC(2011)22rev5), and decided to:</p> <ul style="list-style-type: none"> <li>- instruct the Secretariat to send it out to all PC-OC members and parties to the European Convention on Extradition and make a summary of the answers received;</li> <li>- instruct the PC-OC Mod to consider the replies received and make proposals for follow-up.</li> </ul> <p>The PC-OC Mod considered at its 15th meeting the 26 replies received to the questionnaire on "in absentia cases" as well as possible follow up and decided to:</p> <ul style="list-style-type: none"> <li>- propose to the plenary that the replies be published on the PC-OC website as useful information for practitioners;</li> <li>- noting the divergence in the interpretation of Article 3 of the Second Additional Protocol by the Parties, propose that the PC-OC instruct the PC-OC Mod to study the possibility of finding a practical solution to problems this divergence might create, for example by</li> </ul>

	<p>proposing a draft common opinion and/or guidelines on the interpretation of the notion of “minimum rights of defence”, “retrial” and “sufficient guarantees”;</p> <ul style="list-style-type: none"> <li>- instruct the Secretariat to invite those countries that had not yet replied to the questionnaire to do so by 15 April 2013.</li> </ul> <p>The PC-OC is invited to consider the replies, the proposals by the PC-OC Mod and to decide on the follow-up.</p> <p><u>Working documents:</u> Questionnaire concerning judgments in absentia and the possibility of retrial Summary and Compilation of Replies (PC-OC(2013)01rev)</p>
c.	<p><b>Discussion on the issue of extradition and asylum introduced by Mr Erik Verbert (Belgium)</b></p> <p>In the context of a preliminary discussion on possible future activities of the PC-OC (see agenda item 8), the PC-OC Mod recalled that some of the outstanding issues on the agenda of the PC-OC deserve further attention, including the issue concerning the relationship between extradition and asylum proceedings.</p> <p>The PC-OC Mod decided to: ask the rapporteur on extradition matters, Mr Erik Verbert (Belgium), to prepare a discussion paper on the issue of extradition and asylum in time for the next plenary meeting, taking into account the previous discussions and available information within the PC-OC.</p> <p>The PC-OC is invited to discuss the issue and to decide on possible follow-up</p> <p><u>Working document:</u> Discussion paper on the issue of extradition and asylum (PC-OC(2013)08)</p> <p><u>Background documents</u> UNHCR Guidance note on extradition and international refugee protection Replies to the questionnaire on the relationship between asylum procedures and extradition procedures ( PC-OC INF 76) UNHCR reaction to the replies in PC-OC INF 76 Note on the Relationship between extradition and asylum (PC-OC (2012)08 rev 2)</p>
d.	<p><b>Other issues</b></p> <p>It is recalled that at its 62nd meeting, the PC-OC examined recent developments and forum discussions related to extradition and decided to discuss at a future meeting:</p> <ul style="list-style-type: none"> <li>- the question raised on the reference moment to be applied when considering double criminality in respect of extradition;</li> <li>- the question raised with regard to the interpretation of Article 14, paragraph 2b of the European Convention on Extradition.</li> </ul> <p>During its 63rd meeting, the PC-OC decided to discuss at a future meeting a question raised by Ms Joana Ferreira (Portugal) concerning extradition and the effects of violation of immunity provided by the rule of speciality.</p> <p>The PC-OC is invited to decide on possible follow-up to these issues</p> <p><u>Working document:</u> Extradition; effects of the violation of immunity provided by the rule of speciality Discussion paper proposed by Joana Ferreira (Portugal) PC-OC(2012)12</p>

6.	<p><b>Special session on Mutual Assistance in Criminal Matters</b></p> <p>During its 62nd meeting, the PC-OC had a discussion on its relations with the non-European states that are Parties to the European conventions on extradition, on mutual assistance in criminal matters and on the transfer of sentenced persons. The PC-OC, underlining the importance of strengthening these relations for the mutual benefit of all Parties, decided to:</p> <ul style="list-style-type: none"> <li>- invite the states concerned to give the names of persons to be included in the list of officials involved in the application of the conventions on co-operation in penal matters and the network of single points of contact;</li> <li>- invite them also to participate in the forum of the PC-OC collaborative space;</li> <li>- organise at each plenary meeting a session devoted to one of the three main conventions, inviting the Parties that have no permanent observer status to participate.</li> </ul> <p>During its 63rd plenary session the PC-OC had instructed the PC-OC Mod to prepare the special session devoted to Mutual Assistance in Criminal Matters to be held at its 64th meeting. The PC-OC Mod prepared the programme on the basis of proposals sent in by the different national experts.</p> <p><u>The PC-OC is invited to:</u></p> <ul style="list-style-type: none"> <li>- have an exchange of views between Parties to the European Convention on Mutual Assistance in Criminal Matters;</li> <li>- discuss the issues set out in the programme and decide on the follow-up. .</li> </ul> <p><u>Working documents:</u>  Programme of the special session  Project VC 2248 on effective practical tools to facilitate mutual legal assistance (DG-HL (2010)6)  MLA-Service of documents to the defendant under penalty of fine (PC-OC(2012)11)</p>
7.	<p><b>Practical problems and concrete cases concerning the implementation of the Convention on the Transfer of Sentenced persons and its Additional Protocol</b></p>
a.	<p><b>Presentation by the PC-OC Rapporteur on the transfer of sentenced persons on recent developments and forum discussions</b></p> <p>During its 61st meeting the PC-OC adopted Practical measures to facilitate the application of conventions on international co-operation in criminal matters (Document PC-OC (2011) 04Rev3) in which the PC-OC agreed "to appoint Rapporteurs and assisting members for the most important conventions and other issues of particular importance related to cooperation in criminal matters to animate the discussions on the forum, to inform the plenary on discussions held and on other developments of importance and to make proposals for follow-up".</p> <p>Ms Barbara Goeth-Flemmich (Austria), rapporteur as regards transfer of sentenced persons, will provide information to the plenary accordingly and will make proposals for follow-up.</p> <p><u>The PC-OC is invited to</u> take note of the information provided and consider possible follow-up.</p>
b.	<p><b>Consideration of practical problems and legal questions</b></p> <p>The PC-OC held, during its previous plenary meeting, a discussion on a question addressed to it by the CDPC Bureau and raised by two member states concerning the application of Article 12 of the Council of Europe Convention on the Transfer of Sentenced Persons.</p> <p>The PC-OC concluded that it is their common understanding that Article 12 allows both</p>

the sentencing state and the administering state to grant pardon, amnesty or commutation of the sentence. Several experts underlined that the aim of the Convention is to allow sentenced persons to serve the remainder of their sentence in their own society so as to facilitate their rehabilitation and that the successful application of this Convention requires a climate of mutual trust between parties. A legal question was raised about the possible application of the reciprocity principle to reservations and declarations under this Convention.

The majority of the PC-OC members present decided:

- that expertise on international public law was needed to address this question;
- to instruct the PC-OC Mod to take into account the discussion on the issue raised in the general context of further consideration of problems related to the implementation of the Convention on the Transfer of Sentenced Persons.

During its 15th meeting, the PC-OC Mod considered the question of whether the reciprocity principle can apply to reservations and declarations of Council of Europe conventions, such as the Convention on the Transfer of Sentenced Persons, that have no specific provision in this regard.

The PC-OC Mod took note of the information provided by the Secretariat on the legal opinion received on this question by the Legal Advice Department and Treaty Office.

The PC-OC Mod decided to ask the Secretariat to provide the plenary with the full text of the legal opinion in order to decide on further steps. It was of the opinion that the application of the reciprocity principle to reservations and declarations and its legal effects is a highly complex question of treaty law and that it falls outside the competency of the PC-OC. The PC-OC Mod indicated that this issue is of interest for the application of the conventions on legal co-operation in criminal matters. It was recalled that the Committee of Legal Advisers on Public International Law (CAHDI), in its function as European Observatory of reservations to international treaties, is competent for legal issues regarding reservations and declarations to international treaties.

The PC-OC is invited to consider the legal opinion and to decide on possible follow-up

Working document:

Legal opinion on the Convention on the Transfer of Sentenced Persons and the principle of the reciprocity of reservations (PC-OC (2013)03)

**c. Consideration of the examples of national legislation and procedures with regard to conditional release and follow-up**

During the 63rd plenary meeting of the PC-OC, Ms Goeth-Flemmich proposed that the PC-OC consider the possibility of gathering information on national legislation and procedures with regard to conditional release and to measures involving deprivation of liberty (for example for mentally ill persons, dangerous offenders etc).

The PC-OC decided to:

- instruct the Secretariat to collect information from PC-OC members on national legislation and procedures with regard to conditional release and measures involving deprivation of liberty, in view of the special session foreseen on transfer of sentenced persons;
- instruct the PC-OC Mod to consider the information received and to report back to the plenary.

The PC-OC Mod considered the contributions received from 7 countries (Doc. PC-OC (2013)02) and decided that it would be necessary to provide states with some further indications on the purpose and best format of these contributions. It agreed on a message to be forwarded to the PC-OC members and decided to:

- instruct the Secretariat to send this message indicating a deadline for replies of 1 May 2013 and to collect the information received.

	<p><u>The PC-OC is invited to</u> consider the information gathered and to decide on possible follow up</p> <p><u>Working document</u> Examples of national legislation and procedures with regard to conditional release and measures involving deprivation of liberty (PC-OC(2013)02rev)</p>
<b>d.</b>	<p><b>Preparation of the special session on the transfer of sentenced persons</b></p> <p>At its 62nd meeting the PC-OC had agreed to organise during its 65th meeting a special session on the transfer of sentenced persons whereby all Parties to the Convention would be invited.</p> <p>During the last plenary meeting of the PC-OC, Ms Goeth-Flemmich informed the PC-OC of difficulties of implementation encountered in some states Parties to the Additional Protocol to the Convention on the Transfer of Sentenced Persons, in cases where the person concerned did not give his or her consent for the transfer. She proposed that the PC-OC discuss this issue at a future meeting.</p> <p>The PC-OC decided to:</p> <ul style="list-style-type: none"> <li>- invite Parties to the Additional Protocol to the Convention on the Transfer of Sentenced persons to send examples of practical difficulties encountered to Ms Goeth-Flemmich and to the Secretariat;</li> <li>. - instruct the PC-OC Mod to consider the information received and to report back to the plenary.</li> </ul> <p>In view of the special session to be organised in November, the PC-OC Mod considered the practical problems mentioned in the implementation of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (Doc. PC-OC Mod (2013)02) and decided to propose that the plenary consider:</p> <ul style="list-style-type: none"> <li>- the numerous questions related to the application of Article 3 (Sentenced persons subject to an expulsion or deportation order) of the Additional Protocol;</li> <li>- the need to complete the standard text providing information about the Convention (appendix to Recommendation No R (84)11) with a text on the Additional Protocol;</li> <li>- the feasibility and appropriateness of proposing the elaboration of a Second Additional Protocol to deal with problematic issues such as the absence of time limits, the obligation to inform the person concerned of the legal consequences of transfer, the withdrawal of consent and arrangements for transfer;</li> <li>- practical questions related to the application of Article 6 (Supporting documents) of the Convention:</li> <li>- the need to update the model request form appended to Recommendation No R (92) 18;</li> <li>- inviting a representative of the EU to present the EU system as regards transfer of sentenced persons;</li> <li>- inviting an academic to present a keynote address.</li> </ul> <p>The PC-OC Mod underlined that the special session should highlight the 30th anniversary of the Convention and take into account that all 64 Parties to the Convention will be invited.</p> <p><u>The PC-OC is invited to:</u> consider the proposals by the PC-OC Mod in view of the preparation of the special session.</p>
<b>8.</b>	<p><b>Exchange of views on possible future activities of the PC-OC (draft terms of reference for 2014-2015)</b></p> <p>In order to collect ideas for the terms of reference of the PC-OC for the period 2014-2015, the PC-OC Mod had, during its last meeting, an exchange of views on possible</p>



	<p>future activities. In addition to the proposals for future work made in regard of the Convention on the Transfer of Sentenced Persons, the PC-OC Mod recalled that some of the outstanding issues on the agenda of the PC-OC deserve further attention. These issues concern in particular:</p> <ul style="list-style-type: none"> <li>- the relationship between extradition and asylum proceedings;</li> <li>- the application of the "<i>aut dedere aut iudicare</i>" principle;</li> <li>- the use of "guarantees" in international co-operation;</li> <li>- mutual legal assistance for the purpose of criminal, civil or administrative proceedings against legal entities.</li> </ul> <p>The PC-OC Mod decided to:</p> <ul style="list-style-type: none"> <li>- instruct the Secretariat to prepare preliminary draft terms of reference, on the basis of the discussions held, for consideration by the plenary.</li> </ul> <p><u>The PC-OC is invited to</u> consider the preliminary draft terms of reference of the PC-OC for 2014-2015</p> <p><u>Working document</u> Preliminary draft terms of reference of the PC-OC for 2014-2015 (PC-OC(2013)06)</p>
<b>9.</b>	<b>Any other business</b>