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**EUROPEAN COMMITTEE ON LEGAL CO-OPERATION
(CDCJ)**

97th plenary meeting
1- 3 December 2021

(by videoconference)

ANNOTATED AGENDA

CDCJ website: www.coe.int/en/web/cdcj/home

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Document prepared by the Secretariat
Directorate General of Human Rights and Rule of Law - DGI

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1. Opening of the meeting

1. The 97th meeting of the European Committee on Legal Co-operation (CDCJ), to be held by videoconference on 1-3 December 2021, will be opened by Mr João Arsénio de Oliveira (Portugal) in the Chair. It will start at 9.30 (CET) on Wednesday, 1st of December 2021.
2. The draft list of participants will be sent to registered participants prior to the meeting and will be made available on the CDCJ's website after the meeting.

2. Adoption of the agenda

Item for decision

3. The draft agenda and order of business is contained in document [CDCJ\(2021\)OJ2 prov rev.](#) The CDCJ is expected to adopt the draft agenda of the meeting.

3. Statement of the Chair and the Secretariat

Item for information

4. The CDCJ is invited to take note of the information provided by the Chair and the Secretariat.

4. Tour de table: interventions by newly designated members of the CDCJ

Item for information

5. Since the last CDCJ plenary meeting held in May 2021, new members (France, Hungary, Monaco, Montenegro, North Macedonia and Serbia) joined the Committee. The Chair will welcome the new members and invite them to introduce themselves and also to briefly present the main priorities of their countries in the CDCJ's areas of work.

5. Review of progress

Justice

5.1 Implementation of the Sofia Action Plan (CDCJ written contribution to Secretary General's report) – specific task (ii)

Item for information

6. The CDCJ is invited to take note of an oral information by the Secretariat concerning the preparation of the Secretary General's report on the state of implementation of the [Plan of Action Plan of on Strengthening judicial independence and impartiality \("Sofia Action Plan"\)](#). The CDCJ is requested to entrust the Bureau to review the draft report at its next (112th) meeting in 2022 before the launching of the consultation process with all delegations on its content and proposed conclusions and recommendations. It is expected that the CDCJ would consider the final report for approval at its 98th plenary meeting in 2022, prior to its communication to the Secretary General for consideration.

Family law and children's rights

5.2 Rights and best interests of the child in parental separation and in care proceedings (Committee of Experts - CJ/ENF-ISE) (specific task viii)

Item for information

7. The CDCJ is invited to take note of the oral information provided by the Chair of CJ/ENF-ISE on the progress of the work made by its subordinate Committee of Experts in preparation of the new legal instrument(s) as well as on the work envisaged in 2022-2023. The Chair will inform the CDCJ about the completion of the feasibility studies [on the best interest of the child in parental separation situation](#) and [in care proceedings](#) (published in July 2021) which serve as a basis for the preparation of new instrument(s). The Committee is invited to take note of the draft working methods and workplan of CJ/ENF-ISE for 2022-2023 (document [CJ/ENF-ISE\(2021\)09 prov](#)) which will be further refined and discussed by the CJ/ENF at its upcoming meeting from 13-14 December 2021.
8. The CDCJ is also invited to take note of the results of the discussions of the 2nd joint meeting of the CDCJ and CDENF Bureaux on 24 June 2021 (meeting report [CDCJ&CDENF/Bu\(2021\)PV1](#)).
9. The CDCJ is invited to take note of the planned priority areas of the Irish Presidency of the Committee of Ministers (May-November 2022) in the area of the rights of the child, and take note of the presentation by Ms Lara Hynes, Principal Office, Child Care Legislation & Children's Rights Policy Unit, of the Department of Children, Equality, Disability, Integration and Youth. In this framework, the CDCJ is invited to contribute to the event planned to be held in Dublin in October 2022, which is expected to enable exchanges of good practice in establishing family law courts and to be held back-to-back with a meeting of the CJ/ENF-ISE (including a stakeholder consultation process for the preparation of the new legal instrument(s)).

5.3. Right of donor-conceived persons to know their origins

Item for decision

10. At its 95th plenary meeting (4-5 and 23-24 November 2020), the CDCJ adopted terms of reference for one or several consultants (see the meeting report [CDCJ\(2020\)8 – Appendix IV](#)) in order to initiate the elaboration of a comparative study related to the right of donor-conceived persons to know their origins in 2021, as instructed by the Committee of Ministers and as a first step before considering the necessity of elaborating a legal instrument on this topic. The Bureau examined and approved the draft methodology and workplan (document [CDCJ\(2021\)6](#)) of the study at its 110th meeting, on 20-21 April 2021, on the basis of which the draft study was prepared.
11. The CDCJ is invited to take a note of the draft comparative study and preliminary findings (document [CDCJ\(2021\)20 prov](#)), presented by professor Jean-René Binet Council of Europe consultant, and to provide any orientations it considers necessary at this stage, in view of its finalization.
12. In order to complete the study and present to the committee a comprehensive overview of the development of the national legislation and of the case-law of the constitutional courts, the CDCJ is invited to examine and approve the circulation of a draft questionnaire for member States, subject to any further changes it may consider necessary.

13. It is proposed that the questionnaire would be circulated after the plenary meeting with a proposed deadline to be agreed upon (e.g., 31 January 2022). It is expected that the CDCJ would be in a position to resume the discussion on this topic in 2022, with a thematic exchange of views, and with a view to approving the final study, discussing the options ahead and deciding on the feasibility of elaborating a draft recommendation on rights of donor- conceived persons to know their origins (Terms of reference, deliverable 10 by 2025).

Public law

5.4 Statelessness and the right to a nationality: follow-up activities (specific task vii)

Item for information and decision

14. The CDCJ will hear an update from Professor René de Groot, General Rapporteur, on the results of the technical meeting and the international conference on "[Statelessness and the right to a nationality in Europe: progress, challenges and opportunities](#)" organised in co-operation with the United Nations High Commissioner for Refugees (UNHCR), on 23-24 September 2021. The Committee is invited to take note of the results of the technical meeting and international conference, including the updated CDCJ Analysis of current practices and challenges regarding the avoidance and reduction of statelessness in Europe.
15. The Bureau, at its 111th meeting (14-15 October 2021), discussed the Secretariat's proposals for possible follow up activities to these events and agreed to recommend to CDCJ to prioritize and focus on issues relating statelessness of children.
16. The Committee is invited to examine the proposals set out in the document [CDCJ\(2021\)18 prov](#) in the light of its terms of reference, planned deliverables and priority actions and activities of CDCJ for 2022–2025, and take a decision on the activities to be implemented for the period concerned, if any.

Artificial Intelligence

5.5. Draft comparative study on Administration and Artificial Intelligence (specific task iii)

Item for information and decision

17. The CDCJ is invited take note of the oral information on the state of the preparation of the draft comparative study on Administration and Artificial Intelligence, and examine the proposed revised workplan, the study's outline as well as a proposed questionnaire for member States (document [CDCJ-BU\(2021\)11 rev](#)) to collect information, with a view to completing the draft study before submitting it for adoption.

18. The Committee is invited, under agenda item 8 – Terms of reference, to decide to set up a limited CDCJ working group (see document [CDCJ\(2021\)21 prov](#)) to be mandated to finalise the comparative study and update the handbook, with the support of consultants. The CDCJ should examine and approve the draft Terms of reference of this limited working group, and subject to the earlier decision, instruct the Secretariat to issue a call for expressions of interest after the plenary meeting.

Evaluation of recommendations prepared by the CDCJ, including their implementation by the member States (main task iii)

5.6.a. Evaluation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers

Item for decision

19. At its 95th plenary meeting (4-5 and 23-24 November 2020), the CDCJ decided to conduct an evaluation of completed activities and agreed to evaluate [Recommendation CM/Rec\(2014\)7 on the protection of whistleblowers](#). Since the last plenary, Ms Anna Myers, Council of Europe consultant, has been tasked with the preparation of the CDCJ's evaluation report, taking into account the responses received from the member States, as they appear in document [CDCJ\(2021\)16 Mos](#), and any other relevant legal developments.
20. The CDCJ is invited to have an exchange of views on the preliminary findings and the thematic issues set out in document [CDCJ\(2021\)26 prov](#), with the participation of Ms Anna Myers and selected member States' experts. All members are invited to contribute to this discussion and to present any relevant developments or initiatives at domestic level which could serve as best practice examples.
21. The CDCJ is also invited to review the detailed outline, its proposed content, in order to provide any further guidance to the consultant and the Secretariat for the completion of this report, which is scheduled for examination and adoption at its first plenary meeting in 2022.

5.6.b. Evaluation of Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation

Item for decision

22. At its 95th plenary meeting (4-5 and 23-24 November 2021), the CDCJ decided to conduct an evaluation of completed activities and agreed to assess [Recommendation CM/Rec\(2015\)4 on preventing and resolving disputes on child relocation](#) and its implementation by the member States. Professor Cristina González Beilfuss, Council of Europe consultant, has prepared the draft report (document [CDCJ\(2021\)27 prov](#)) which contains a preliminary evaluation, including an analysis of the replies received from member States (document [CDCJ\(2021\)17 Mos](#)).
23. The CDCJ is invited to have an exchange of views with Ms Cristina González Beilfuss on her findings. The CDCJ is invited to provide any further comments and guidance for the finalization of the draft report and instruct the Bureau to review the final report, before its circulation for adoption by written procedure, and discuss any further follow-up actions where necessary.

Examination of conventions under the CDCJ's responsibility (main task xii)**5.7.a. European Convention on Information on Foreign Law – ETS No. 62 and Additional Protocol - ETS No. 97**Item for decision

24. At its 95th plenary meeting (4-5 and 23-24 November 2020), the Committee agreed to carry out a review of selected conventions which fall under its responsibility, among which the [European Convention on Information on Foreign Law \(ETS No. 62\)](#) and its [Additional Protocol \(ETS No. 97\)](#). It entrusted the Bureau to make appropriate decisions in this regard for a possible future update, if necessary, or their further promotion.
25. At its 109th and 110th meetings, the Bureau discussed this issue and agreed that further work should be done with regard to ETS Nos. 62 and 97 to support their promotion at national level, not only among legal practitioners but also among the competent authorities. In this spirit, it approved the orientations set out in the concept paper on possible activities for promoting and implementing European Convention on Information on Foreign Law (ETS No. 62) (document CDCJ(2021)8).
26. The CDCJ is invited to examine the concept paper (document [CDCJ\(2021\)8 rev1](#)) as updated by the Secretariat in order to take into account the priorities of the programming and the activity workplan of the CDCJ in 2022- 2025. It is called upon to review, and subject to any further changes it may consider necessary, to approve the concept paper and proposed activities (i.e., circulation of a short questionnaire, organisation of dedicated workshops or webinars, elaboration of a dedicated working group, development of a specific webpage). Finally, the Committee should instruct the Bureau, with the support of the Secretariat, to prepare a questionnaire for consideration at its next meeting and develop any other follow-up actions, including the terms of reference of a dedicated working group, in order to facilitate the start of the work on the promotion of these legal instruments in 2022.

5.7.b. Agreement on the Transfer of Corpses - ETS No. 80: possible revisionItem for decision

27. At its 95th plenary meeting (4-5 and 23-24 November 2020), the CDCJ took into account the additional information received and agreed to discuss this issue at its next meeting if need be, on the basis of additional information to be provided by France. The CDCJ was also informed of the procedures available for the CDCJ and which would be applicable in the case of a possible revision of the [Agreement on the Transfer of Corpses – ETS No. 080](#) (i.e., an amending Protocol or a revised convention), as well as the advantages and disadvantages of each option (CDCJ(2021)28).
28. In the light of the additional information for a revision of Agreement ETS No. 80 provided by France in their [Memorandum](#) dated 12 February 2021, which includes detailed information and specific proposals for amendments (in particular with respect to articles 5, 6 and 7 of ETS No. 80), the Bureau agreed to include the proposal on this issue in the future workplan of the CDCJ for its examination. This proposal was endorsed by the CDCJ at its 96th plenary meeting (17 May 2021).

29. The Committee is invited to examine the proposals included in the document [CDCJ\(2021\)28](#) and to decide whether to entrust the Secretariat to develop a questionnaire addressed to the “competent authority” in each State, building on the issues raised by France and any other issues that States consider relevant at this stage and to request its Bureau to review it before its dissemination. It is expected that the outcome of this consultation would enable the CDCJ to take an informed decision with respect to this possible revision process at its next plenary meeting in 2022.

5.7.c. European Convention on the Legal Status of Children born out of Wedlock - ETS No. 85

Item for decision

30. At its 95th plenary meeting (4-5 and 23-24 November 2020), the Committee agreed to carry out a review of the conventions which fall under its responsibility, among which the [European Convention on the Legal Status of Children born out of Wedlock – ETS No. 85](#)), and entrusted the Bureau to make appropriate decisions in this regard for a possible future update, if necessary, or its further promotion. The Bureau instructed the Secretariat to conduct the review of the Convention, with the assistance of the consultant.
31. It is also recalled that in 2010, the CDCJ, through its former Committee of Experts on Family Law (CJ-FA), was given a mandate to draft one or more legal instrument(s) on the legal status of children and parental responsibilities, as it was recognised that the ETS No. 85 as well as the [Committee of Ministers Recommendation No. R \(84\) 4 on parental responsibilities](#) were in need of revision. In 2010-2012, the CJ-FA elaborated a draft recommendation on the rights and legal status of children and parental responsibilities, which was finally not adopted (document [CDCJ\(2011\)15 - Appendices II and III.](#)). It is also recalled that CDCJ’s opinion on Parliamentary Assembly Recommendation 2156 (2019) – “Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children” (document [CDCJ \(2019\)2](#), particularly paragraphs 4-6) which invited the Committee of Ministers to reopen the examination of the draft Recommendation.
32. The CDCJ is expected to hold an exchange of views with Professor Katarina Trimmings, Council of Europe consultant, on the basis of the elements of her assessment and proposals set out in her draft report (document [CDCJ\(2021\)29 prov](#)), with a view to deciding how to proceed with the question of whether or not to update the Convention and/or to consider the feasibility of a non-binding legal instrument, taking into account the CDCJ programming and activity workplan for 2022 – 2025.
33. The CDCJ is invited to approve the draft report on the review of the implementation of ETS No. 85, and agree to its publication on CDCJ’s website. The Committee is also invited to discuss any further steps and follow-up to the report, and instruct the Bureau and/or the Secretariat accordingly.

6. Transversal issues:

6. a. and b. Mainstreaming equality between women and men in (preparing) new legislation (main task xi); Contribution to the UNSDGs, in particular Goal 16 - Peace, Justice and Strong institutions (main task xiii / specific task xi)

Item for decision

34. The CDCJ decided at its 94th plenary meeting (13-15 November 2019), to prepare proposals for ways to further mainstream gender in its work and for specific activities to be undertaken by CDCJ in 2022-2023 concerning mainstreaming equality between women and men in law reform. This activity contributes to the implementation of the [Council of Europe Gender Equality Strategy 2018-2023](#), and specifically of its 6th priority goal (achieve gender mainstreaming in all policies and measures) as well as to overall commitment of the Organisation to ensure that gender equality is mainstreamed as a transversal approach in all its work. At its 95th plenary meeting, the Committee decided to postpone the discussion on this item to 2021.
35. At its 110th meeting (20-21 April 2021), the Bureau examined and approved the draft activity proposals prepared by the Secretariat (document [CDCJ\(2021\)10](#)), concerning a publication reflecting the experience and best practices of member States on mainstreaming gender equality in (preparing) new legislation serving as a practical toolkit with a view to assist member states in implementing the issue of gender mainstreaming in legislation in practice. The Bureau also agreed to adapt and include a short questionnaire/checklist to be used for a pre-and post-assessment of the gender equality implications for CDCJ activities, drawing inspiration from the practice of Steering Committee for Human Rights (CDDH).
36. At its 111th meeting (14-15 October 2021), the Bureau reviewed and approved a checklist and instructed the Secretariat to submit it for comments before its approval by the CDCJ as part of its working methods. A revised version was prepared by the Secretariat for CDCJ's consideration (document [CDCJ-BU\(2021\)15 rev1](#)), which takes into account the comments received from the Netherlands and Sweden.
37. The CDCJ is invited to adopt the checklist, subject to any further changes discussed, and agree on its subsequent inclusion in the adopted working methods of the CDCJ (see agenda item 7).

7. Working methods of CDCJ

Item for information and decision

38. The CDCJ is invited to hear a presentation by the Secretariat on the changes introduced by the Committee of Ministers' Resolution CM/Res(2021)3 and any implications that it may have for its working methods.
39. At its 111th meeting (14-15 October 2021), the Bureau discussed the necessary update of the CDCJ's working methods and any amendments to be introduced in the text, prior to the submission of this working document to the Plenary for prior comments and subsequent adoption. As of 26 November 2021, written comments were received from Austria and the Russian Federation. The CDCJ is invited to examine and adopt the working methods of the Committee ([CDCJ\(2021\)24 prov Rev1](#), including its appendix [CDCJ-BU\(2021\)15 rev1](#)), and instruct the Secretariat to publish the final version on the Committee's webpage.

40. The CDCJ is invited to take note of the update provided by the Secretariat concerning the visibility of the Committee and its work, including on the first Legal Co-operation Newsletter to be issued by the end of 2021.
8. **Terms of reference of the CDCJ and its subordinate bodies for 2022-2025: exchange of views on the future work programme and implementation of tasks**

Item for information and decision

41. The CDCJ is invited to take note of the Terms of Reference of the CDCJ adopted by the Committee of Ministers at its 1418th (Budget) meeting, on 23-25 November 2021, as well as of those of its two subordinate bodies, namely the CDCJ-AV and the CJ/ENF-ISE (document [CDCJ\(2021\)13 rev2](#)).
42. With respect to its subordinate body CJ/ENF-ISE (jointly with CDENF), the terms of reference were adopted without changes. Following the call for nominations (yet to be issued by the Secretariat), the CDCJ will be expected in 2022 to designate 5 representatives out of the 10 representatives composing this committee, while the other 5 will be designated by the CDENF, or otherwise agree with CDENF in a consensual manner on all 10 members of the Committee, following a review and selection process by the Bureaux of nominations received.
43. The CDCJ is invited to hold an exchange of views on its draft workplan of priority actions and activities of the CDCJ for 2022-2023 as they appear in document [CDCJ\(2021\)30 prov](#), and agree on the proposals set out therein, without excluding to the possibility to re-prioritize its activities, as and when necessary.
44. The CDCJ is also invited to approve the proposed draft terms of reference of limited working groups (document [CDCJ\(2021\)21 prov](#)), subject to any further changes it may consider necessary.
45. The CDCJ should instruct the Secretariat to start planning the organisation of the first meetings to be held in 2022, including by issuing as soon as possible the relevant calls for nominations and/or expressions of interest. In case of a large number of nominations, the CDCJ is invited to instruct its Bureau to lead the selection process, taking into account experts' established expertise in the relevant field, and due regard being given to geographical and gender representation.
46. Finally, the Secretariat has received an inquiry from the [University Women of Europe](#) (UWE), (civil society representative with participative status at the INGO Conference of the Council of Europe) seeking to obtain observer status with the CDCJ. UWE indicated being an umbrella organisation of civil society organisations working on issues regarding gender equality and violence against women in Europe. The Committee is invited to instruct the Bureau to obtain any further information on the activities of the UWE, in order to enable the CDCJ to decide on this request for observer status at its next plenary meeting in 2022.

- 9. Evaluation of completed activities / Annual exchange of views to evaluate its activities and to advise the Committee of Ministers on future priorities in its sector, including possible new activities and those that might be discontinued (main task x)**

Item for decision

47. The Committee is invited to take note of the state of implementation of CDCJ's activities for the current biennium (2020-2021), in accordance with its terms of reference, and to approve the overview set out in the document [CDCJ\(2021\)9 REV1](#). The CDCJ is invited, if it considers appropriate, to advise the Committee of Ministers on any future priorities in its sector, including possible new activities and those that might be discontinued.
- 10. Co-operation with other international organisations and civil society, and with other relevant Council of Europe bodies and intergovernmental committees: a. External co-operation; b. Internal co-operation.**

Item for information

48. Representatives of international organisations and civil society are invited to inform the CDCJ on any relevant developments falling within the scope of work of the CDCJ and opportunities for further co-operation and synergies.
49. The Secretariat will provide an oral information on the co-operation with other international organisations and civil society, as well as internal co-ordination within the Council of Europe and with relevant Council of Europe bodies and intergovernmental committees, including where relevant regarding participation by CDCJ representatives to their meetings and contributions made. The CDCJ will also be informed about any co-operation projects and activities in the CDCJ's areas of expertise, implemented by the Department for the implementation of Human Rights, Justice and Legal Co-operation Standards. The CDCJ will also hear an update on recent legal instruments adopted by other Council of Europe bodies and committees.
- 11. Elections and appointments: a. Elections (Chair, Vice-Chair and Bureau members); b. Appointments (CDCJ Representatives and Rapporteurs).**

Item for decision

50. In line with [Resolution CM/Res\(2011\)24](#), the CDCJ is requested **to elect** the Chair (for a term of office of one year), the Vice-chair (for a term of office of one year), and 5 Bureau members (for a term of office of two years, including at least one of them for a term of office of one year to ensure partial replacement each year). All mandates will start as of 1st January 2022 (see document [CDCJ\(2021\)INF02](#)). The elections will take place on Thursday 2 December 2021.
51. In accordance with its Terms of reference for 2022-2025, which provide for the nomination of up to five Rapporteurs on mainstreamed perspectives, the Committee is requested **to appoint** amongst its members one (two if possible) Gender Equality Rapporteur(s) (GER), one Rapporteur on Children's Rights and one Rapporteur on the rights of persons with disabilities. Furthermore, the CDCJ is invited to confirm its current representatives, substitutes and rapporteurs or make new appointments as necessary during its plenary meeting, unless it chooses to delegate this task to the Bureau, taking into account the elements set out in the document [CDCJ\(2021\)31 prov](#).

12. CDCJ opinions

Item for decision

52. At its 1416th meeting (3 November 2021), the Committee of Ministers' Deputies agreed to communicate [Recommendation 2213 \(2021\)](#) of the Parliamentary Assembly on "Addressing issues of criminal and civil liability in the context of climate change" to the Steering Committee for Human Rights (CDDH), to the European Committee on Crime Problems (CDPC) and to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 15 January 2022.
53. At its 111th meeting, the Bureau discussed the issues contained therein which fall within the CDCJ's mandate, in particular the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150) and provided orientations on possible comments that the CDCJ could make in this respect, which were reflected in the draft opinion prepared by the Secretariat and circulated for written comments. As of 29 November 2021, comments were received from the United Kingdom and the Russian Federation, which were taken into consideration by the Secretariat when preparing the updated version of the draft opinion.
54. The CDCJ is invited to take note of the [report](#) prepared by Mr Ziya Altunyaliz, the rapporteur of the Parliamentary Assembly, and the [Final Declaration by the Georgian Presidency of the Committee of Ministers on Environmental Protection and Human Rights](#), which *inter alia*, also called on review of 1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment in order to provide more effective protection.
55. The Committee is invited to review and adopt the draft opinion (document [CDCJ\(2021\)32 provRev1](#)), in light of the discussion and any further revisions proposed by members, and instruct the Secretariat to transmit this text to the Committee of Ministers within the set timeframe.

13. Any other business

56. Delegations are invited to present any other issues.

14. Date and place of next meeting

57. The Committee shall agree on the dates of the 2022 meetings of the CDCJ, on the basis of the proposals made by the Secretariat and the Bureau included in the calendar of CDCJ meetings and other events for 2022 (document [CDCJ\(2021\)4 Rev2 prov](#)).

15. Approval of the abridged meeting report

58. Subject to the pace of the meeting and time available, the CDCJ is invited to approve the abridged meeting report during the plenary meeting or otherwise to approve both the abridged report and the full meeting report by written procedure shortly after. The CDCJ should also instruct the Secretariat to transmit its decisions to the Committee of Ministers within one month from the plenary meeting.