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

**WORKING METHODS OF CDCJ**

adopted by written procedure on 2 September 2014

and revised by the Bureau, in accordance with the  
decision by CDCJ at its 91<sup>st</sup> plenary meeting (16-18 November 2016),  
at its 102<sup>nd</sup> meeting (Bern, Switzerland, 29-30 June 2017)

## **European Committee on Legal Co-operation (CDCJ) – working methods**

### **Introduction**

1. This statement of the working methods of CDCJ was adopted by CDCJ on 2 September 2014, by written procedure, after consideration of a draft text at its 88<sup>th</sup> plenary meeting (16-18 December 2013) and following the proposals made by its Bureau.

### **I. General**

2. Rules of the Committee of Ministers governing the operation of steering committees are set out in Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.
3. CDCJ is a steering committee with planning and steering functions, directly answerable to the Committee of Ministers.
4. This statement of working methods is intended to facilitate the work of CDCJ within the framework of its terms of reference and Resolution CM/Res(2011)24. The working methods described herein are statements of good practice for the committee and its members to follow. They are not intended to be binding rules.

### **II. Terms of reference**

5. Terms of reference for steering committees coincide with the two-year Programme and Budget of the Council of Europe. In addition to the main tasks of the committee, the terms of reference specify the expected results to be achieved by the committee within the two years. In the Programme and Budget, the expected results are referred to as performance indicators.

### **III. Activities**

6. The activities of CDCJ shall aim to achieve one or more of the expected results set out in its terms of reference. In many cases, these activities will be expressed in terms of expected results. A work plan should be drawn up and agreed by CDCJ giving details for the implementation of the activities foreseen for the next two-year Programme and Budget. The work plan should be finalised by CDCJ in Year N-1.

- ***Promoting and/or implementing standards***

7. Some part of the CDCJ's activities during each two-year cycle should be devoted to promoting and/or implementing existing standards that have been developed by the Committee.

- ***Review of conventions for which CDCJ is the reference committee***

8. The Council of Europe conventions for which CDCJ is the reference committee are listed in the appendix to the Committee's terms of reference. CDCJ will review the operation of these conventions on a thematic basis, taking one theme every two years.

- ***Drafting recommendations and other instruments***

9. As a general rule, preparation of Committee of Ministers recommendations and other instruments shall be undertaken by a drafting group of CDCJ members (whose expenses will be covered by the Council of Europe budget), assisted where necessary by one or more independent experts and the participation of observer organisations. Participation in the meetings of the drafting group will be open to other members of CDCJ.
10. CDCJ members shall be consulted at each stage of the preparation of the draft instrument and their comments taken into account by the drafting group.
11. Where possible, representatives of the target group for the draft instrument will be consulted on the issue. This consultation may take the form of an international conference or surveys at national level.
12. Once finalised by the drafting group, the draft text shall be the object of a formal consultation with CDCJ members at least three months before the plenary meeting at which it is to be examined with a view to its approval and submission to the Committee of Ministers for adoption. Prior to the plenary meeting of the committee, the Bureau should review the draft instrument in light of the comments received and, if appropriate, submit proposals for its revision.
13. In order to organise the plenary debate as effectively as possible, CDCJ delegations will be requested to indicate before a date fixed by the Secretariat prior to the meeting whether or not they wish to speak to the draft recommendation or other instrument and, if so, in respect of which part of the document. Only proposals for redrafting that are submitted in writing and circulated prior to the meeting will be accepted for discussion during the plenary debate. Proposals submitted to the Secretariat should be sent in copy to all other CDCJ delegations in order to give them an opportunity to comment on them in writing before the meeting. Nothing will, however, prevent members from taking the floor whether or not they have previously indicated their wish to do so, and submitting oral and/or written proposals in response to proposed reformulations by other members.

14. Every draft recommendation or other instrument should, in general, be accompanied by an explanatory memorandum. This does not apply to guidelines published under the authority of CDCJ.

- ***Commissioning comparative and feasibility studies***

15. A comparative or feasibility study will generally be the preliminary step for any standard-setting activity. Such a study will provide an opportunity for CDCJ members to provide relevant information on the law, policy and practice in their respective jurisdictions – information that will provide an essential framework of any future legal instrument. Comparative studies may also be undertaken on topics of general interest.
16. Comparative and feasibility studies will be undertaken by independent consultants, commissioned by the Secretary General. Members of CDCJ will be consulted on the choice of possible consultants. CDCJ members will also be invited to designate an expert within their national administration as a contact point for the consultant, and who will be responsible for providing such information on national law, policy and practice as the consultant may require (usually in response to a written questionnaire).

- ***Identifying new activities***

17. The planning cycle for the Programme and Budget is an important period. It usually starts at the beginning of the year preceding the next two-year programme (Year N-1) with agreement between the Secretary General and the Committee of Ministers on the outline priorities for the Organisation. The steering committee should be in a position to propose activities before the beginning of the planning cycle and to modify and make fresh proposals during it up until such time as the Programme for the forthcoming two-year period is adopted by the Committee of Ministers.
18. In order to be able to make an effective contribution to the planning cycle, it is important that CDCJ members advise the Committee of activities that they would like it to undertake. In Year N-2, CDCJ should formally invite its members to submit activity proposals and set up a process for their development and submission to the Secretary General during Year N-1. Where necessary, the Bureau should be delegated the necessary authority to continue this process between plenary meetings, supported by e-mail consultation with other Committee members.

- ***Opinions***

19. At the request of the Committee of Ministers, CDCJ submits opinions to the Committee of Ministers on texts from other organs or bodies of the Council of Europe. Most usually, these are recommendations of the Parliamentary Assembly on which the opinion of CDCJ is requested in order that the Committee of Ministers can submit a reply to the Parliamentary Assembly on the recommendation. The opinion of CDCJ may also be requested on draft instruments prepared by other steering committees. In these cases, the request may come from the Committee of Ministers or directly from the steering committee concerned before finalising the draft recommendation and submitting it to the Committee of Ministers for adoption.

20. In cases where the opinion has to be submitted before the next plenary meeting, the Bureau of CDCJ is authorised to prepare and submit an opinion on behalf of the committee. Where time allows, CDCJ delegations will be invited to comment on a draft opinion and their comments taken into account by the Bureau.

#### **IV. Conferences of Ministers of Justice**

21. CDCJ contributes to the preparation of Council of Europe conferences of ministers of justices, in co-operation with the Steering Committee for Human Rights (CDDH) and the European Committee on Crime Problems (CDPC). The role of CDCJ will depend on the theme(s) of the conference. Proposals for hosting and the theme(s) of the conference can be made by CDCJ delegations. Formal proposals are submitted to the Committee of Ministers by the Permanent Representation of the member state wishing to host the conference in accordance with standing rules of procedure.

#### **V. Technical co-operation activities with member states**

22. CDCJ and its members are available to provide their expertise to member states on draft legislation, as well as policy advice and training.

#### **VI. Synergy and transversal working**

##### **- *Internal co-operation***

23. As a general practice, steering committees may participate in the work of other steering committees that is relevant to their own areas of competence, as is indicated in the terms of reference of each committee. Links are maintained between the respective Secretariats of these committees as well as with the other organs of the Council of Europe, in order to ensure a synergy of action.
24. As appropriate, members of CDCJ are nominated to represent the Committee in the work and meetings of other steering committees and bodies of the Council of Europe. After each meeting or event which they attend, these representatives are requested to prepare a short written report for the benefit of the Committee.

25. Particular attention is given to the jurisprudence of the Court (relevant decisions of which are highlighted on the CDCJ website) and the recommendations and resolutions of the Parliamentary Assembly which can offer important guidance for future activities of the committee. In this context, information is also provided to CDCJ on the work of monitoring bodies and on bilateral or multilateral co-operation projects.
26. From time to time, the Secretary General and/or Committee of Ministers will identify themes of a transversal nature to which steering committees will be invited to contribute.

- ***External co-operation***

27. External co-operation is a key means of ensuring that the work of CDCJ is in line with other actions at international level. The presence of non-member states, the European Union, UN bodies, OSCE, ODHIR, OECD, the Hague Conference on Private International Law and the International Commission on Civil Status in the work and meetings of CDCJ contributes to this coherence. These bodies are listed in the Committee's terms of reference. They are invited to the plenary meetings of CDCJ and receive the working documents for these meetings. As appropriate, one or more of them are invited to take part in the Committee's expert groups.

**VII. Gender equality**

28. Gender equality is a transversal priority of the Organisation. CDCJ, as with the majority of intergovernmental structures, is required to appoint a gender equality rapporteur. The Committee has two gender equality rapporteurs<sup>1</sup>.
29. Essentially, the gender equality rapporteur should watch over the programming process of his or her committee (i.e. the process of identifying priorities, preparing activity proposals, setting up and implementing the activities, and evaluating the results) in order to ensure that a gender perspective is properly integrated. The person appointed as the committee's gender equality rapporteur should not be expected to do this alone. It should be the responsibility of the committee as a whole. In this sense, the appointment of a gender equality rapporteur is a minimum, to ensure that there is at least one member who takes responsibility; but ideally this should be shared by all the members.

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<sup>1</sup> Decision taken by CDCJ at its 91st meeting (16-18 November 2016).

30. Before starting a new standard-setting activity related to a particular area of law or topic that CDCJ proposes to develop, consideration will be given as to whether or not this area of law or topic impacts de facto on the equality between women and men. If appropriate and necessary, CDCJ will commission a report in order to provide the experts involved in the work with base-line information on the prevailing situation of women and men and against which the experts can measure their policy proposals to ensure that existing gender gaps are filled and not aggravated, or that new gender gaps are not created.
31. The gender equality rapporteurs are not required to make reports. Ideally, given the increasing importance of the Bureau, at least one of the gender equality rapporteurs should be appointed from amongst the members of the Bureau. Although this is not essential, provided the person(s) appointed is/are involved in the Bureau's discussions on the programme of activities.
32. As part of its gender equality policy, CDCJ shall:
  - a. strive towards ensuring a gender balance and gender transparency concerning the composition of its membership and that of its working groups and other subordinate bodies;
  - b. as a matter of good practice, review every two years participation levels of women and men in the work of CDCJ<sup>2</sup> in order to ensure that there has not been any significant negative change over the period. For this purpose the levels of gender representation shall be indicated in the reports of all committee and working/drafting group meetings, as is already the case for the plenary meetings of CDCJ;
  - c. use a non-sexist language in its instruments and publications, identify activities of relevance to both women and men and, so far as possible, subject activity proposals to a gender relevance test.
33. Sharing experience on gender mainstreaming actively pursued in a number of member states by the ministries of justice may be beneficial for both the work of CDCJ as well as for states where this is not the practice. Therefore CDCJ may occasionally organise informal meetings of interested members of CDCJ to exchange good practice and reinforce the knowledge of gender mainstreaming in the justice sector and legal reform within the committee.

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<sup>2</sup> This may be a consequence of the implementation of *Committee of Ministers Recommendation No. R (81) 6 on the participation of women and men in an equitable proportion in committees and other bodies set up in the Council of Europe*.

34. The steps taken by CDCJ in mainstreaming the gender equality perspective in its work shall be reviewed on a regular (biennial) basis to enable the committee to provide the Committee of Ministers and Secretary General with information on its contribution to the Gender Equality Strategy, as well as to take any corrective action it might consider appropriate.

### **VIII. E-mail consultations and decision-making**

35. E-mail (whether by simple message or by a PDF attachment) is the standard form of communication between the Secretariat and members of CDCJ. Information posted on the restricted CDCJ website will, in most cases, also be the object of a notification by e-mail.
36. Between plenary sessions, CDCJ members are to be informed and consulted, as appropriate, by e-mail on the work-in-progress of its working groups and other subordinate bodies, particularly where this concerns the preparation of a draft legal instrument and the subordinate body is not composed of representatives of all member states. Comments and proposals received by the Secretariat will be collated and submitted to the relevant working group.
37. Decision-making by e-mail ('written procedure') entails the following procedure. A draft decision, prepared by the Secretariat, accompanied by, or comprising, a text for comment, is sent to all CDCJ members (Heads of delegation, with other members in copy) with an indication of the date before which all comments should be received by the Secretariat. After this date, the Secretariat shall propose a final decision and/or text to the Chairperson for his or her approval based on the comments received by it. Absence of any comment from a delegation will be taken as their approval (the 'silent' procedure rule). The Chairperson shall resolve any conflicting comments from the delegations. The decision shall carry the date it is finalised by the Chairperson, together with an indication that it has been made by 'written procedure'.
38. Decisions made by written procedure shall be communicated immediately to all members of CDCJ, posted on the CDCJ website (restricted or public, as appropriate) and referred to in the annotated draft agenda of the next plenary meeting of the committee. Recourse to decision-making by e-mail is most commonly had in the case of requests for opinions from the Committee of Ministers, new activity proposals, the terms of reference and composition of working groups, and the adoption of meeting reports.



**IX. Organisation of plenary debates**

39. With only one plenary meeting a year, it is important that each meeting day (currently three) is used as effectively and efficiently as possible. The meeting is an occasion for debate and decision-making. It is also an opportunity to acquire information and establish and strengthen contacts. The order of business and timetable managed by the chairperson need to ensure that these elements are fully respected and balanced in order to contribute to maintaining a dynamic and productive committee.
40. It is recalled that working documents are required to be sent 20 days before the meeting (at least three weeks for documents in relation to which a decision is required).
41. Laying down rigid rules of procedure can risk stifling debate. A constructive debate on relevant issues within defined time-limits should be encouraged, and topics selected that lend themselves to an invigorating debate.
42. The annotated draft agenda prepared by the Secretariat in consultation with the Chairperson, and reflecting the decisions of the Bureau on the organisation of the meeting, is a key document in helping not only the Chairperson manage the order of business but also the participants in preparing for and contributing constructively to the meeting. The annotated draft agenda identifies the decisions or other action to be taken by the Committee in respect of each item of business and provides background information for these decisions and on other matters for which, in principle, discussion is not required.
43. Agenda items in relation to which information has already been circulated in written form prior to the meeting will not be the object of additional oral information unless agreed by the Chairperson, and time so permits.
44. Two-thirds of the members of the Committee need to be present for there to be a quorum (i.e. 32 members, being representatives of different member states). Decision-making requires a quorum. It is, therefore, important that Committee members organise their travel arrangements in order to remain until the end of the meeting.

**X. Content and adoption of meeting reports**

45. As a steering committee, the reports of CDCJ plenary meetings should contain 3 elements: (i) an evaluation of completed activities, (ii) a presentation of on-going and planned work, (iii) proposals for future work and identification of activities to be discontinued. Reports of plenary, bureau and expert group meetings set out the decisions taken, together with a text explaining the reasons or context for each decision. General information is also included where this might be relevant to members of CDCJ who have not participated in the meeting or for future reference. Reports of all meetings are circulated to CDCJ members.

46. Meeting reports are sent to the participants for approval by written procedure immediately after the meeting. The draft reports are prepared by the Secretariat and in consultation with the Chairperson if so requested before circulation.
47. An abridged meeting report containing a list of decisions and items discussed is required to be adopted before the end of the meeting. Generally, this abridged report becomes the final meeting report by the procedure described above and it is prepared with this in mind. An oral reading of the abridged meeting report (paragraph by paragraph) at the end of the meeting provides a useful opportunity for the participants to confirm the decisions taken earlier in the meeting and review them if necessary. However, for short meetings and those of expert groups such an exercise is not always possible. In these cases, a summary list of decisions taken and items discussed is provided or given orally by the Secretariat.

## **XI. Video-conferencing and teleconferencing**

48. Where the technical facilities available to CDCJ members and experts so permit, recourse will be had to video-conferencing. This will be on an ad hoc basis. Video-conferencing facilities available in the Council of Europe headquarters can only be extended to a maximum of 5 external sites, in addition to that of the Council of Europe.
49. For the Bureau and small working groups, a short telephone conference between the members may, on appropriate occasions, provide an effective means for discussing and resolving specific issues that may arise during the course of their work.

## **XII. Website**

50. A restricted website, accessible to CDCJ members and observers, contains all the working documents for each plenary meeting, Bureau meeting, and meetings of any CDCJ working group. The site is organised by meeting, with the most recent meeting at the top of the list. Help in accessing the site is available from the Secretariat. The link to the restricted site is via the public site (see below).
51. The purpose of the public CDCJ site is to give visibility to CDCJ and information to the public on its work. Reports of the plenary meetings of CDCJ are posted on the site as soon as they have been examined by the Committee of Ministers. Other meeting reports are not posted on the public site. However, information on the progress of on-going activities will be given.

52. As appropriate, public consultations on draft instruments being prepared by CDCJ or one of its working groups or other subordinate bodies can be made via the public website, where CDCJ or its Bureau so agrees.
53. Participant lists included in documents posted on the public website will only include the following information: Country/organisation, name, job title, department and/or ministry.

### **XIII. The Bureau**

54. The Bureau is composed of the Chairperson, Vice-Chairperson and five members. They are elected in their personal capacity and in accordance with the rules of procedure for Council of Europe committees<sup>3</sup>.

#### **- Functions and tasks**

55. The key functions of the Bureau are:
- Assist the Chair in conducting the committee's business,
  - Supervise the preparation of the meetings of the committee,
  - Ensure continuity between plenary meetings of the committee,
  - Execute other additional specific tasks as delegated by the committee.
56. Its role in preparing plenary meetings of the committee includes, *inter alia*:
- Examining the texts of draft instruments and draft publications completed by working groups before consideration by CDCJ in plenary, and in the light of comments received from CDCJ delegations after formal consultation on the text.
  - Approving the draft agenda of plenary meetings, including the order of business and timetable.
57. Other specific tasks of the Bureau include:
- Reviewing the progress of working groups and of other activities of the Committee
  - Preparing proposals for future activities, in consultation with CDCJ delegations
  - Appoint CDCJ members to represent the Committee in the work of other Council of Europe bodies and committees.

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<sup>3</sup> Appendix 1 to [Resolution CM/Res\(2011\)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods](#), Articles 12 and 13.

- ***Terms of office***

58. The terms of office of the Chairperson, Vice-Chairperson and other members of the Bureau are for whole calendar years, starting from 1 January to 31 December of each year.