

PC-ES

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THE COMMITTEE OF EXPERTS ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND ABUSE (PC-ES)

1st Meeting

Strasbourg, 22-24 May 2006

Meeting Report for the attention of the CDPC

Brief Foreword

The PC-ES reviewed in detail the implementation of the existing international instruments on the protection of children against sexual exploitation and abuse including instruments on legal cooperation (see part B below and the list of documents in Appendix I).

The PC-ES agreed that there are many lacunae in the implementation of the provisions on the protection of children against sexual exploitation and abuse of children contained in the existing international instruments (see paragraph 14).

The PC-ES evaluated the need for an additional instrument and noted in particular the lacunae existing in six different areas (see part C).

The PC-ES concluded that there are strong arguments in favour of a new instrument in this field and a great majority of delegations were in favour of a binding instrument (see part D and paragraph 31).

The PC-ES invited the CDPC to allow the PC-ES to draft a new instrument on the protection of children against sexual exploitation and abuse taking into account the limits of the existing international instruments due to their non-binding nature (see paragraph 33).

A. Opening of the meeting

1. The meeting was opened by Mrs Maud DE BOER-BUQUICCHIO, Deputy Secretary General of the Council of Europe. She highlighted that the Council of Europe has been working hard for more than 15 years to assist its member States in preventing and fighting sexual exploitation and abuse of children. She also underlined the need to establish common standards and definitions and to harmonise criminal law and other relevant legal provisions across Europe.
2. The agenda as set out in Appendix I was adopted by the PC-ES. Appendix II contains the list of participants.
3. The PC-ES took note of the information from the Secretariat, in particular regarding the programme “Building a Europe for and with Children”, which will operate from 2006-2008.
4. The PC-ES elected Mr Eric RUELLE (France) as chair of the Committee and Ms Ksenija TURKOVIĆ (Croatia) as vice-chair.
5. The PC-ES examined the terms of reference as adopted by the Committee of Ministers.
6. The French Minister for Justice, Mr Pascal Clément, who had been at the Council of Europe on the opening day of the PC-ES meeting, met the Committee and expressed his support for its work.

B. Review of the implementation of the existing instruments

7. The Committee decided to review the implementation and the provisions of the following instruments:
 - The UN Convention on the Rights of the Child;
 - The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography;
 - ILO Convention 182 on the Elimination of the worst forms of child labour;
 - The European Social Charter (revised);
 - The Convention on Cybercrime;
 - The Council of Europe Convention on Action against Trafficking in Human Beings;
 - The Council of the European Union Framework decision on combating the sexual exploitation of children and child pornography;
 - The Council of the European Union Framework decision on the standing of victims in criminal procedures (EU 2);
 - The Stockholm Declaration and Agenda for Action (SDAA);
 - The Yokohama Global Commitment;
 - The Budapest Commitment and Plan of Action;
 - Recommendation Rec (2001)16 on the protection of children against sexual exploitation of children.

8. Professor Gudmundur ALFREDSSON delivered a presentation, based on his report “International instruments for the protection of children against sexual exploitation and abuse” (PC-ES (2006) 4). He highlighted the most significant existing instruments in this field.
9. The Secretariat presented the questionnaire “REACT on sexual exploitation and abuse of children” (PC-S-ES (2003)13) and the analysis of the replies to it (PC-S-ES (2005)5) produced by the Group of Specialists on the Protection of Children against Sexual Exploitation (PC-S-ES). The PC-ES agreed with the analysis and its recommendations and concluded that it provided a good and fair picture of the implementation in the Council of Europe member States which had replied to the questionnaire of the specified instruments¹.
10. The PC-ES took note of a statement from the representative of UNICEF (on behalf of UNICEF and the UN Committee of the Rights of the Child) on the implementation and review process of the Convention on the Rights of the Child (CRC) and its Optional Protocol on the sale of children, child prostitution and child pornography. The presentation focused mainly on the implementation of the CRC, since the Committee on the Rights of the Child has just recently started to review the implementation of the Optional Protocol. It was clear from the presentation that all States still have work to do to comply fully with the provisions in the CRC.
11. The representative of the CDPC, also representing the Committee of Experts in the Operation of European Conventions in the Penal Field (PC-OC), made a statement focusing on the existence of legal instruments regarding international judicial co-operation and the importance of taking these instruments into account when discussing a new instrument in the field of protection of children against sexual exploitation and abuse. Reference was made to a proposal to include a general clause on international co-operation in a possible future instrument, referring to the existing instruments. Should the PC-ES identify any specific lacunae as regards international co-operation, it could invite the PC-OC to address these issues, or at least draft specific provisions in close collaboration with the PC-OC.
12. An independent expert, Professor Olivier DE SCHUTTER, presented the instruments adopted by the European Union as regards the protection of children against sexual exploitation and abuse. He focused his presentation on the three framework decisions of the Council of the European Union on, respectively, Combating the sexual exploitation of children and child pornography, the Standing of victims in criminal proceedings and the European arrest warrant.
13. Mrs Josiane BIGOT made a presentation based on her report "Study on the feasibility of an international legal instrument on the sexual exploitation and abuse of children" (CDPC (2005)13). She focused on issues which could be

¹ Stockholm Declaration and Agenda for Action, Yokohama Global Commitment, Budapest Commitment and Plan of Action, Youth Statement from the Yokohama Congress, Recommendation Rec (2001)16 on the protection of children against sexual exploitation and the Convention on Cybercrime.

included in a new instrument, including the need for a strong and efficient monitoring mechanism.

14. The PC-ES agreed that there are many lacunae in the implementation of the provisions on the protection of children against sexual exploitation and abuse of children contained in the existing international instruments which were reviewed.

C. Added value

15. Following the review of the above mentioned instruments, the PC-ES found that, although these instruments cover many aspects related to the prevention and the fight against various forms of sexual exploitation and abuse of children, they do not do so in a coherent and comprehensive manner. In addition several issues remain inadequately addressed such as: the definition of sexual exploitation and abuse of children, criminal law aspects and other related provisions (e.g. child-friendly judicial procedures), treatment of offenders, protection and treatment of children and their families, appropriate training for professionals who come in contact with children and awareness raising within the medical and social sectors and awareness raising of the general public.

16. Without prejudging on the content of a new instrument, the PC-ES examined the lacunae existing in different instruments dealing with the protection of children against sexual exploitation and sexual abuse in order to determine the added value of its future work, notably with regard to the following issues:

- I. Definitions and offences;
- II. Investigations, sanctions and other measures;
- III. Assistance to, and the rights of, the child;
- IV. Prevention and protection;
- V. Co-operation;
- VI. Monitoring mechanism

I. Definitions and offences:

17. Several issues which would provide an added value were identified:

- certain issues are not comprehensively addressed in the existing instruments (e.g. sexual abuse or child pornography offences without the use of a computer system);
- other issues are addressed in instruments which are not binding to all member States of the Council of Europe (e.g. the Council of the European Union Framework decision (2004/68/JAH) on combating the sexual exploitation of children and child pornography). On this point, a comprehensive instrument by the Council of Europe will provide an added value for the other States. It would also guarantee better co-operation and would allow for setting out common values.

18. The delegations recalled the necessity to avoid incoherencies between the provisions of the existing instruments and those of the future Council of

Europe instrument, in particular with relation to the issue of trafficking in human beings and child pornography when use has been made of a computer system. However, the delegations agreed that the risk of incoherencies would be addressed taking account of the different legal nature of the existing instruments, their respective aims, the international framework in which they were developed, and whether or not a monitoring mechanism exists.

19. Doubts were expressed on the possibility of adopting specific provisions regarding particularly complex issues such as the age of sexual consent and the definition of “victim”.

II. Investigations, sanctions and other measures

20. Several issues which would provide an added value were identified:
 - (a) As regards the adoption of specific investigation measures: to adopt these measures while taking into account the needs of the child and the specific nature of national legislations (e.g. in the field of the right to protection of privacy and hearings with children).
 - (b) Concerning sanctions: if it is not feasible to envisage common threshold, a new instrument could have a real added value at least with regard to: (1) the introduction of possible auxiliary measures (e.g. prohibition to work with children on a professional or voluntarily basis or mandatory treatment), and (2) the obligation to provide for sanctions which are “effective, proportional and dissuasive” on a level which guarantees the possibility for judicial co-operation.
 - (c) As regards judicial competence: the obligation to provide for an extraterritorial competence (e.g. to ensure the repression of “child sexual tourism”²).
 - (d) Concerning limitation period: the principle according to which the limitation period should run beyond the age of majority of the child.
 - (e) As regards child-friendly judicial procedures: to pay special attention to child-friendly judicial procedures with a multidisciplinary approach.

III. Assistance to and the rights of the children

21. Several issues which would provide an added value were identified:
 - ensuring the obligation to compensate for the damage (either by the perpetrator or by the public authorities);
 - definition of rights for the benefit of children, including in the framework of the proceedings, and the obligation to adopt certain protection measures and multidisciplinary assistance (e.g. the immediate proceedings for the benefit of the child, protective measures etc.).
22. The delegations agreed on the need to take a comprehensive approach (for the benefit of the child him/herself, his/her family and his/her relatives), based on the rights and the need of the child and covering both criminal proceedings

² Acts of sexual abuse of children committed abroad.

(before, during and after trial) and measures after the criminal proceedings have been completed.

IV. Prevention and protection

23. Several issues which would provide an added value were identified, in particular with regard to:

- early identification of children exposed to the risk of sexual exploitation and abuse as well as early identification of children victims of sexual exploitation and abuse (obligation to report);
- training of professionals working in contact with children (social services, health services, teachers, law enforcement and judicial authorities and local governments);
- awareness raising of other professionals involved;
- identification and early treatment of sex offenders, in particular young sex offenders, and dissemination of information on this particular issue;
- awareness raising programs for children (e.g. through sexual education);
- raising media awareness.

24. The delegates also agreed that another element of added value could be identified with respect to the treatment and the follow-up of sex offenders, as well as collecting, storing and sharing of information (e.g. by the possible creation of a data base) and enhancing exchange of information between States in this field.

V. Co-operation

25. Concerning judicial co-operation, the delegations agreed that there could be an added value in promoting the implementation of the existing instruments and, if necessary, identifying the need for specific provisions (e.g. affirmation of the rule of “extradition or judgment”). They mentioned the added value for other provisions in co-operation, e.g., with the private sector (in particular Internet service providers) and other actors of the civil society.

VI. Monitoring mechanism

26. The delegations identified the added value concerning the setting up of a strong and efficient monitoring mechanism, as well as national monitoring mechanisms, which would associate representatives of civil society in the process.

D. Conclusions

27. The PC-ES highlighted the fact that there has been for many years a strong political commitment of the member States of the Council of Europe with regard to the issue of the protection of children against sexual exploitation and abuse and that this commitment was clearly reaffirmed by the Heads of State and Government at the Warsaw Summit in May 2005.

28. The Committee noted that there are numerous regional and international instruments addressing specifically the issue of the protection of children against sexual exploitation and abuse, but that, with the exception of the Optional Protocol on the Rights of the Child, none of them are of a binding nature at a worldwide level. The Committee also noted the existence of a large variety of instruments that are not specifically devoted to this issue but that encompass provisions of direct relevance to it.
29. The PC-ES concluded that a number of existing international instruments are not effectively implemented in member States due, in particular, to the non-binding nature of some of them and to the lack of monitoring tools and available data.
30. The PC-ES therefore concluded that there are strong arguments in favour of a new instrument in this field. This new instrument should provide a comprehensive and exhaustive coverage of the protection of children against sexual exploitation and abuse which consolidates existing standards in this field. It should also aim at filling gaps, in particular as far as possible the identified gaps, to ensure coherency throughout Europe and an equal protection for all children in Europe. The PC-ES expressed the view that a new instrument should take a comprehensive and multidisciplinary approach.
31. A great majority of the delegations recommended that the new instrument should be of a binding nature. Some delegations expressed the opinion that this could be acceptable for them. While recognising that there are some gaps in the existing instruments, a few delegations considered that the added value would depend on the content of such an instrument.
32. The PC-ES decided that such an instrument should be drafted by the Council of Europe, due to its great experience in this field and the coherency between the European countries in the justice systems. Also, the Council of Europe would be in a position to prepare such a new instrument as quickly as possible.
33. The PC-ES invited the European Committee on Crime Problems (CDPC) to allow the PC-ES to draft a new instrument on the protection of children against sexual exploitation and abuse, taking into account the limits of the existing international instruments due to their non-binding nature.
34. Subject to the approval of the CDPC, the PC-ES decided that its next meeting should be held on 11-13 September 2006.

APPENDIX I

AGENDA / ORDRE DU JOUR

1. Opening of the meeting by Mrs Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe / *Ouverture de la réunion par Mme Maud de Boer-Buquicchio, Secrétaire Générale adjointe du Conseil de l'Europe*
2. Information by the Secretariat / *Informations par le Secrétariat*
“Building a Europe for and with Children”
3. Election of the Chair and Vice-Chair / *Election du Président ou de la Présidente et du Vice-Président ou de la Vice-présidente*
PC-ES(2006)2
4. Adoption of the agenda / *Adoption de l'ordre du jour*
PC-ES (2006) OJ 1 bil
5. Examination of the terms of reference of the PC-ES / *Examen du mandat du PC-ES*
Summit Action Plan
6. Examination of the scope and implementation of existing legal international instruments against sexual exploitation and abuse of children / *Examen de la portée et de la mise en oeuvre des instruments juridiques internationaux existants contre l'exploitation et les abus sexuels des enfants.*
PC-ES(2006)3
PC-ES(2006)4
PC-S-ES(2003)13
PC-S-ES(2004)14³
PC-S-ES(2005)5

Report from the Conference “Yokohama Review Combating Sexual Exploitation of Children”/Rapport de la conférence « Bilan des engagements de Yokohama sur la lutte contre l'exploitation sexuelle des enfants »
7. Consideration of a possible new instrument against sexual exploitation and abuse of children to be drafted in the Council of Europe / *Examen d'un éventuel instrument sur l'exploitation et les abus sexuels des enfants à élaborer par le Conseil de l'Europe.*
CDPC(2005) 13
8. Organisation of the future work of the PC-ES/ *Organisation des travaux futurs du PC-ES*
9. Other business / *Divers*
10. Date of next meeting of the PC-ES / *Date de la prochaine réunion du PC-ES*

³ This document will not be available in the meeting room / *Ce document ne sera pas mis à disposition dans la salle de réunion*

APPENDIX II

LIST OF PARTICIPANTS / LISTE DE PARTICIPANTS

A: MEMBERS

ALBANIA / ALBANIE

Ms Raynitchka KOVATCHI-TULLUMAI, Director for Equal Opportunities, Ministry of Labour, Tirana

ANDORRA / ANDORRE

Apologised / Excusé

ARMENIA / ARMENIE

Ms Karine YERINJAKYAN, Inspecteur en Chef aux Commissions Spéciales du Service de Coopération Internationale de la Police d'Arménie

AUSTRIA / AUTRICHE

Ms Carmen PRIOR, Judge, Directorate for Penal Legislation, Ministry of Justice, Vienna

AZERBAIDJAN / AZERBAIJAN

Apologised / Excusé

BELGIUM / BELGIQUE

M. Simon CLAISSE, Service Public Fédéral de la Justice, Bruxelles

Mme Florence MOREAU, Coopération judiciaire internationale, Bruxelles

Mme Christelle DE CRAIM, Attaché auprès du Service de la politique criminelle, Service de la Politique Criminelle, Bruxelles

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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BULGARIA / BULGARIE

Ms Irina BORISOVA, International Cooperation and European Integration, Ministry of Justice, Sofia

CROATIA / CROATIE

Ms Ksenija TURKOVIC **Vice-Chair/Vice-Présidente**
Professor of Criminal Law (Faculty of Law, University of Zagreb)

CYPRUS / CHYPRE

Ms Vicky CHRISTOFOROU, Attorney General Office of the Republic of Cyprus

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Apologised / Excusé

DENMARK / DANEMARK

Mr Anders Herping NIELSEN, Head of Section, Criminal Law Division, Law Department, Ministry of Justice

Ms. Alessandra GIRALDI, Deputy Chief Prosecutor, Director of Public Prosecutions

Ms. Birgitte EIRIKSSON, Prosecutor, Director of Public Prosecutions

ESTONIA / ESTONIE

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FINLAND / FINLANDE

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FRANCE

M. Eric RUELLE

Chair/President

Chargé de Mission pour les Négociations Pénales Internationales, Ministère de la Justice, Direction des Affaires Criminelles et des Grâces, Paris

M. Manuel Luis RUBIO-GULLON, Adjoint au Chef de Bureau de la Législation Pénale Générale, Direction des Affaires Criminelles et des Grâces

GEORGIA / GEORGIE

Mr George KVASHILAVA, Senior specialist of the international co-operation division, Ministry for Internal Affairs

GERMANY / ALLEMAGNE

Mr Martin GROTE, Judge, Amtsgericht, Bundesministerium der Justiz

GREECE / GRÈCE

Ms Kalliopi THEOLOGITOU, Deputy Public Prosecutor, Court of First Instance of Piraeus

HUNGARY / HONGRIE

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Mr Bragi GUDBRANDSSON, General Director, Government Agency for Child Protection, Reykjavík

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LITHUANIA / LITUANIE

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Apologised / Excusé

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RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Alexey VLASOV, Second Secretary of the Department for Humanitarian Cooperation and Human Rights, Ministry for Foreign Affairs, Moscow

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Apologised / Excusé

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EUROPEAN COMMITTEE FOR SOCIAL COHESION (CDCS) / COMITE EUROPEEN POUR LA COHESION SOCIALE (CDCS)

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Apologised / Excusée

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Apologised / Excusé

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