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PC-OC Mod (2014)09

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

**List of decisions taken at the 18th meeting of the restricted Group of experts
on international co-operation (PC-OC Mod) enlarged to all PC-OC members
under the Chairmanship of Ms Joana Gomes Ferreira (Portugal)
7-9 October 2014**

1. Opening of the meeting and points for information

After the opening of the meeting by the Chair, the PC-OC Mod took note of:

- the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC, on:
 - the follow-up to the White Paper on Transnational Organised Crime and in particular that an Action Plan to ensure the follow-up to the key recommendations contained in the White Paper will be prepared;
 - the decisions taken by the CDPC Bureau during its recent meeting on 2-3 October and in particular its request to ask the PC-OC to provide written opinions:
 - a. on the model provision as regards international co-operation contained in the model provisions developed by the CDPC for future Council of Europe conventions in the field of criminal law, and
 - b. on the Opinion of the T-CY on the specific recommendation 2.2 (possible update of the European Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 30)) contained in Recommendation 2041 (2014) of the Parliamentary Assembly of the Council of Europe on “improving user protection and security in cyberspace”;
 - the request by the Bureau of the CDPC that the PC-OC considers in its forthcoming work and meetings the question of compatibility between the MLA convention and the Cybercrime convention with regard to the question of international co-operation in matters related to electronic evidence and report back to the CDPC on the outcome of this exercise;

- the setting up of a Council of Europe expert group in charge of drafting a report on prison overcrowding including proposals for a future action plan. The group will have its first meeting on 8-9 December and will be composed of two experts from each of the following Committees: the CDPC, the PC-CP, the PC-OC, the CCPE and the CCJE. In addition the European Court of Human Rights, the Human Rights Commissioner, the Parliamentary Assembly and the CPT will be represented. The PC-OC is invited to designate two experts.
- the information by the Secretary to the PC-OC on the progress made in the joint HELP/PC-OC project for the development of a curriculum and training materials on international co-operation in criminal matters, with a special emphasis on human rights, for distance learning courses for legal professionals in Poland, Portugal and Romania;
- the latest signatures and ratifications of the different treaties within the remit of the PC-OC;
- the information by Mr Vladimir Zimin (Russian Federation) about recent conferences organised in the Russian Federation: the Baikal International Conference of Prosecutors "Combatting Transnational Organised Crime- National Experiences and International Co-operation (Irkutsk, 26-27 August 2014, involving Prosecutors General of Belarus, Hungary, Kazakhstan, Mongolia, Russia, Switzerland, Tajikistan; Deputy Prosecutors General of China and Serbia; as well as the President and the Secretary General of the International Association of Prosecutors G. Jarosch (Austria) and D. Kuipers (the Netherlands), the President of the Consultative Council of European Prosecutors A. Mura (Italy), the Chairman of the Coordination Council of the Prosecutors General of the Commonwealth of Independent States Y. Chayka (Russia), the Chairman of the College of Prosecutors General of the Vyshegrad Group P. Polt (Hungary) and an International Seminar on co-operation of Asian countries in extradition and mutual legal assistance in criminal matters (Vladivostok, 23-25 September 2014, involving representatives from Cambodia, China, Hong Kong, Indonesia, Japan, Mongolia, Russia and Vietnam).

2. Adoption of the agenda

The agenda was adopted as reflected in document PC-OC Mod (2014) OJ2.

3. Presentation and content of the PC-OC website

The PC-OC Mod noted that until now only 9 countries had filled in the revised templates for country information as regards transfer of sentenced persons, and around 30 those on extradition and mutual assistance in criminal matters and decided to:

- call again on the remaining countries to send in their country information by 1 November at the latest.

The PC-OC Mod furthermore agreed that the documents presented during the various special sessions deserve greater visibility and decided to:

- instruct the Secretariat to post these documents on the PC-OC website under the headings of the conventions concerned.

a. Update of the index and summaries of relevant case law of the ECtHR

The PC-OC Mod considered the proposed update of the index and summaries of relevant case law of the European Court of Human Rights (document PC-OC(2011)21rev8), took note with satisfaction that the case law would soon be translated into French, and decided to:

- thank Mr Erik Verbert (Belgium) for his valuable summaries;

- ask Ms Malgorzata Skoczelas (Poland) to update the index in consultation with Mr Erik Verbert and the Secretariat;
- instruct the Secretariat to publish the updated version on the website of the PC-OC;
- propose that the plenary include case law referring to international co-operation as regards search, seizure and confiscation.

b. Proposals to ensure the availability of country information and useful tools for practitioners in languages other than English and French

The PC-OC Mod discussed possibilities to translate country information and useful tools for practitioners into other European languages and agreed that this does not seem to be a priority need for the practitioners who would usually address their questions to the central authorities. The PC-OC Mod recalled however that the experts of the PC-OC should endeavour to give visibility to its work, and in particular by translating the PC-OC information leaflet in their national language and disseminating it, for example by posting it on their national website. It was decided to invite the PC-OC to address this issue again at its next plenary meeting.

c. Proposals to ensure visibility of information on conventions within the remit of the PC-OC (other than ETS No. 24, 30 and 112)

The PC-OC Mod considered the present structure of the PC-OC website and agreed that the website should have headings in the left-hand banner for each of the conventions mentioned in its terms of reference. The PC-OC Mod decided to propose to the plenary that the PC-OC website be developed by adding headings for the European Convention on the Supervision of Conditionally sentenced or Conditionally Released Offenders (ETS No. 51), the European Convention on the International Validity of Criminal Judgments (ETS No. 70), the European Convention on the Transfer of Criminal Proceedings (ETS No. 73) as well as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

4. European Convention on Extradition,

a. Proposals for follow up to the special session on extradition held during the 66th plenary meeting of the PC-OC

The PC-OC Mod discussed the outcome of the special session, which was held during the 66th plenary meeting in May, referring to the reports of the workshops [Doc PC-OC (2014)07] and agreed that diverging approaches to the double criminality principle caused obstacles to extradition requests and that it was important to continue discussions in order to find appropriate solutions and avoid impunity. It was decided to:

- ask Mr Erik Verbert to prepare a reflection paper based on the outcome of the workshops and the replies to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests for consideration at the next plenary meeting.

b. Other

The PC-OC also discussed a question raised by Ms Kristina Speicher (Germany) as regards applicable prison standards to be considered in extradition requests with non-European states [Doc PC-OC Mod (2014) 06]. The PC-OC Mod agreed that this issue would deserve further discussion and decided to address this question at the plenary during its upcoming meeting.

5. Mutual Assistance in Criminal Matters

a. Preparation of a draft model request form on MLA and practical guidelines for practitioners

The PC-OC Mod considered the draft model request form and guidelines including the comments and proposals made in the shared office space, agreed on a number of amendments to the draft model request form and decided to:

- ask the Secretariat to post the latest version of the model request form on the shared office space of the PC-OC Mod;
- invite members of the PC-OC Mod to finalise the form on the shared office space by 1 November;
- present the draft model request form to the plenary for approval;
- postpone discussion on the guidelines until the draft model request form has been approved.

b. Discussion on MLA in criminal, civil and administrative matters related to criminal offenses, the liability of legal entities, non-conviction based confiscation and proposals for follow-up

The PC-OC Mod considered the discussion paper [Doc PC-OC Mod (2014)08] prepared by Mr. Vladimir Zimin (Russian Federation), agreed that the issues raised were important and decided to:

- discuss this issue further and invite the plenary to consider the preparation by the PC-OC Mod of a questionnaire to collect information on national practices as regards MLA requests related to the liability of legal entities for criminal offenses as well as to requests for object-based, value-based and, in particular, non-conviction based confiscation.

c. Preparation of the special session on the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing

The PC-OC Mod discussed the preparation of the special session, taking into account the different proposals made and possible experts to invite and decided to:

- devote a full day of the plenary meeting (19 November) to the special session;
- ask the Chair to prepare a short, general introduction to the session;
- organise the morning session around the following questions to be discussed in the plenary by a panel of four experts, assisted by a moderator: search, seizure and management of assets; confiscation (object-based, value-based and non-conviction based) and sharing of confiscated assets;
- have two parallel workshops in the afternoon, each with two moderators and a rapporteur: one workshop on search, seizure and management of assets and the second one on confiscation and sharing of assets;
- ask the Secretariat to finalise the programme in consultation with the Chair.

6. Convention on the transfer of Sentenced Persons and the Additional Protocol thereto

a. Proposals for updating/improving the Convention on the Transfer of Sentenced Persons and its Additional Protocol, including, where possible, by non-binding measures

The PC-OC Mod reconsidered the proposals made by the plenary in this regard, taking into account the instruction by the CDPC to “carefully consider which issues could be dealt with in (a) new binding instrument(s) or otherwise could be dealt with in ways which could be more effective than the “normative” one, i.e. operational/practical level.” The PC-OC Mod decided to instruct the Secretariat to prepare a note on all existing and proposed non-binding solutions to address the problems related to the implementation of the Convention on the transfer of sentenced persons and its Additional Protocol.

The PC-OC Mod discussed the proposal by Israel to consider the development of an electronic tool to facilitate transfer procedures (e-transfer, contained in Doc PC-OC Mod (2014)04), agreed that it was an interesting proposal and decided to invite the plenary to discuss it at its upcoming meeting.

7. Review of Conventions within the remit of the PC-OC. Draft reply to the CDPC.

The PC-OC Mod discussed the draft reply to the CDPC as regards the review of conventions within the remit of the PC-OC and decided to submit the draft to the PC-OC plenary for consideration and approval.

8. Any other business

At the request of the CDPC, the Chair of the PC-OC participated, on 9 September, in a working group created to develop model provisions for future Council of Europe conventions in criminal matters [Doc CDPC (2014) 07]. Further to this meeting, the PC-OC Mod had been invited to comment on the provisions dealing with international co-operation in criminal matters as reflected in Doc PC-OC Mod (2014)05. The majority of the members in the PC-OC Mod were of the opinion that for model provisions in a future convention on a specific criminal behaviour, the provision on international co-operation should remain short and general and that the proposed wording would be acceptable. The PC-OC Mod decided to inform the PC-OC of this position with a view to further discussions in the plenary.

At the request of the CDPC Bureau the PC-OC Mod considered the Opinion of the T-CY on the specific recommendation 2.2 (possible update of the European Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 30)) contained in Recommendation 2041 (2014) of the Parliamentary Assembly of the Council of Europe on “improving user protection and security in cyberspace”. The PC-OC Mod discussed the Opinion, recalled its terms of reference as regards international co-operation in criminal matters and stressed the importance for the PC-OC to participate in the assessment carried out by the T-CY on the effectiveness of the international co-operation provisions of the Convention on cybercrime and the discussions on a possible update of these provisions. The majority was of the opinion that it would be premature to draw conclusions as to the possible update of any Council of Europe instrument before this assessment is finalised. The PC-OC Mod decided to inform the plenary of its position with a view to further discussions.

The PC-OC Mod also considered the request to appoint two PC-OC experts to participate in the expert group on prison overcrowding and decided to:

- thank Ms Barbara Goeth-Flemmich (Austria) for having accepted to represent the PC-OC in this working group;
- ask the PC-OC experts to inform the Secretariat by 1 November if they wish to participate in this working group.