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 [PC-OC/DOCS2015/PC-OC(2015)16rev E Draft Annotated Agenda]
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PC-OC (2015)16rev

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

69th meeting
Strasbourg, 3 – 5 November 2015
AGORA, Room G 01

Draft Annotated Agenda

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| 1. | Opening of the meeting and adoption of the agenda Document: PC-OC (2015)OJ2 |
| 2. | Points for information <u>The PC-OC is invited to</u> take note of the information provided on the issues of relevance to its work. |
| a. | Terms of Reference 2016-2017 The Committee of Ministers is expected to adopt at its 1241th (Budget) Meeting, on 24-26 November 2015, the terms of reference of the PC-OC for 2016-2017. <u>Document:</u> Draft terms of reference of the PC-OC |
| b. | Activities of the CDPC and CODEXTER <u>Background documents:</u> List of decisions of the 68th meeting of the CDPC [CDPC(2015)15] List of decisions of the Bureau of the CDPC [CDPC-BU (2015)4] |
| c. | Working Group on the follow up to the White Paper on Transnational Organised Crime An action plan to ensure the follow-up to the key recommendations contained in the White Paper on Transnational Organised Crime will be submitted to the CDPC for adoption during its upcoming plenary meeting in December. A multidisciplinary working group, including Mr Erik Verbert (Belgium) and Mr Stéphane Dupraz (France) on behalf of the PC-OC, met in Paris on 17-18 September to finalise the draft action plan. |

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| | <p><u>Background document</u></p> <p>White Paper on Transnational Organised Crime (on the PC-OC home page)</p> |
| d. | <p>Co-operation with the HELP Programme</p> <p>The Secretariat will inform the PC-OC about 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, Romania and the Russian Federation.</p> |
| e. | <p>Co-operation with the Pompidou Group</p> <p>Ms Gabriela Bláhová (Czech Republic) participated on behalf of the PC-OC in a short meeting organised on 16 June by the Pompidou Group in view of the preparation of a handbook on controlled delivery. A follow-up meeting, hosted by Interpol, is foreseen on 9-10 November in Lyon</p> |
| f. | <p>Activities of the T-CY</p> <p>Mr Pedro Verdelho (Portugal), representative of the T-CY in the PC-OC will inform the Committee on ongoing activities in the T-CY.</p> |
| g. | <p>Recent signatures and ratifications</p> |
| h. | <p>Other:</p> <p>Working Group on prison overcrowding</p> <p>Mrs Barbara Goeth-Flemmich (Austria) and Mrs Imbi Markus (Estonia) participated on behalf of the PC-OC in a Working Group on prison overcrowding. Its last meeting took place on 26-27 October in Paris.</p> <p><u>Background document:</u></p> |
| 3. | <p>Presentation and content of the PC-OC website</p> <p>Due to a change in the platform used by the Council of Europe, the presentation of the PC-OC website will change. The Secretariat will consult the PC-OC on the best possible presentation.</p> |
| a. | <p>Update of the index and summaries of relevant case law of the ECtHR</p> <p>The PC-OC Mod considered during its last meeting the need to update the index and summaries of relevant case law of the ECtHR and decided to ask Mr Erik Verbert (Belgium) to update the case-law in time for the plenary</p> <p><u>Document:</u> PC-OC(2011)21rev.9 (on the PC-OC homepage)</p> |
| b. | <p>Country information</p> <p><u>The PC-OC is invited to take note of the “Inventory of country specific information available on the PC-OC websites” and to make proposals for further improvement or development.</u></p> <p><u>Document:</u> PC-OC (2012) 09 rev.11 Bil</p> |
| 4. | <p>European Convention on Extradition</p> |
| a. | <p>Follow up to the special session on extradition held during the 66th plenary meeting of the PC-OC</p> <p>During its 18th meeting 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</p> |

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| | <p>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.</p> <p><u>The PC-OC is invited to</u> discuss the possible follow up to the special session based on the reflection paper by Mr Erik Verbert (Belgium)</p> <p><u>Document:</u> Reflection paper by Mr Erik Verbert <u>Background document:</u> reports of the workshops of the special session on extradition [Doc PC-OC (2014)07]</p> |
| b. | <p>Assurances required as regards prison standards in extradition procedures in particular with non-European states (<i>discussion foreseen on 5 November</i>)</p> <p>A question was raised during the last plenary meeting by Ms Kristina Speicher (Germany) as regards applicable prison standards to be considered in extradition requests with non-European states. The PC-OC Mod discussed this issue further on the basis of a discussion paper by Mr Erik Verbert and taking into account the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Prison Rules and the UN Standard Minimum Rules for the Treatment of Prisoners. Referring to its considerations reflected in the list of decisions of its last meeting, the PC-OC Mod decided to invite the CPT to participate in the discussion on this topic by the plenary.</p> <p><u>The PC-OC is invited to</u> discuss the question raised by Ms Kristina Speicher with Mr Marc Nève (Belgium) former member of the CPT, taking also into account the findings of the PC-OC Mod.</p> <p><u>Documents:</u> PC-OC Mod (2014)06: question raised by Ms Kristina Speicher PC-OC Mod (2015)07: discussion paper by Mr Erik Verbert PC-OC Mod(2015) 08 List of decisions of the 20th meeting of the PC-OC Mod (see item 4b).</p> <p><u>Background documents:</u> Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Prison Rules the UN Standard Minimum Rules for the Treatment of Prisoners.</p> |
| c. | <p>Application of Article 16 - provisional arrest - by alternative measures to detention</p> <p>The PC-OC Mod further considered the divergent application by Parties of the conditions and time-limits of Article 16 when using alternative measures to detention. The PC-OC Mod agreed that Article 16 applies to urgent cases only and that the time limits imposed for this provisional measure serve to protect the right of the person sought not to be deprived of his or her liberty for an unspecified period. The PC-OC Mod also underlined the duty of the States to present the formal request for extradition with due diligence.</p> <p>The PC-OC Mod reached however no consensus as to the application of the time limits of Article 16 to alternative measures to detention. Most members agreed that house arrest, in particular if associated with electronic monitoring, amounted to a deprivation of liberty close to detention and should therefore be subject to the time limits mentioned in Article 16. Some members were of the opinion that these time limits should also apply to less intrusive measures such as bail, the obligation to report to the police office or the withdrawal of a passport. The latter interpretation was based on considerations such as the fact that these measures should be considered as an alternative to detention, that the text of Article 16 had been drafted at a time where such alternatives were not in use and that the continuation of these obligations would have no legal basis in their national law in the absence of an extradition request after the time limit of 40 days. Other members considered that the time limits mentioned in Article 16 should not apply to measures other than detention as the sanction provided for non-compliance with these time limits is the release of the person sought.</p> <p>The delegation from Israël announced that they would like to make a contribution to a discussion on</p> |

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| | <p>detention measures during provisional arrest and/or extradition proceedings.</p> <p>The PC-OC is invited to</p> <ul style="list-style-type: none"> -take note of the findings of the PC-OC Mod - discuss the application of Article 16 and, taking into account the presentation by Israel, the issue of detention measures during provisional arrest and/or extradition proceedings; -consider solutions to potential problems caused by the difference in interpretation, for example by indicating the national practice with regard to the time limits of Article 16 in the country information sheets. |
| d. | Other |
| 5. | Mutual Assistance in Criminal Matters |
| a. | <p>Draft model request form on MLA and practical guidelines for practitioners</p> <p>The PC-OC had agreed during its 67th meeting that it would be useful to adopt a standard model request form and practical guidelines on MLA for the implementation of Council of Europe instruments in this field. It was therefore decided to ask the PC-OC Mod to develop such a standard model request form and practical guidelines on the basis of the work undertaken within the Project VC 2248 (Doc DG-HL(2010)6) and taking into account existing model request forms and guidelines. During its 68th meeting, the PC-OC carefully considered the draft model request form prepared by the PC-OC Mod as well as the draft guidelines, agreed on a number of amendments and decided to:</p> <ul style="list-style-type: none"> -adopt the draft model request form, with the exception of the items dealing with special investigative techniques; -invite the experts to send comments on this aspect of the model request form and on the draft guidelines by 1 September 2015; - instruct the PC-OC Mod to consider the comments received; -set up a small working group, composed by Ms Marieke van der Burg (Netherlands), Ms Imbi Markus (Estonia), Ms Yael Bitton (Israel) and the Chair, who could meet during a two half-day meeting to be organised in Paris in October, with the task of finalising the form and guidelines for adoption by the plenary at its next meeting <p>During its 20th meeting in September 2015 the PC-OC Mod considered the comments received on the model request form as regards the items dealing with special investigative techniques and decided to deal with the special investigative techniques in an appendix to the draft model request.</p> <p>It furthermore noted that comments had also been made on other parts of the request form which the plenary had already approved.</p> <p>The PC-OC Mod also discussed the guidelines accompanying the model request form and decided to:</p> <ul style="list-style-type: none"> - instruct the working group to consider the comments made; - invite Mr Eugenio Selvaggi, rapporteur on MLA, to complete the draft guidelines with a paragraph devoted to the need for requesting states to observe the principle of proportionality when introducing a request so as to avoid the overburdening of requested states. <p>The PC-OC is invited to consider and approve the draft model request form and guidelines as proposed by the working group who met in Paris on 8-9 October 2015.</p> <p><u>Documents:</u> Draft model request form on MLA [PC-OC Mod (2014)10 rev5] Draft guidelines to the model request on MLA [PC-OC (2015)09 rev2]</p> |

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| b. | <p>Consideration of the replies to the questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime and proposals for follow –up</p> <p>The PC-OC Mod considered during its 20th meeting the 12 replies received to the questionnaire and decided to:</p> <ul style="list-style-type: none"> - invite countries that had not yet replied to do so before 12 October; - inform the plenary that the number of replies received was not yet sufficient to draw any conclusions. <p>The PC-OC Mod also discussed the possible follow-up on this issue, and decided to inform the plenary of its view that the PC-OC would need to co-operate with experts from MONEYVAL and/or the Conference of Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) (COP 198) to discuss ways to improve international co-operation in this particular field.</p> <p><u>The PC-OC is invited to</u> consider the replies to the questionnaire as well as possible follow up.</p> <p><u>Document:</u> PC-OC Mod (2015)06rev</p> |
| c. | <p>Other</p> <p>The Netherlands will make a presentation concerning a new project :” <i>Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes</i>”</p> <p><u>Documents</u> Explanatory note: Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes” List of supporting States</p> |
| 6. | <p>Convention on the transfer of Sentenced Persons and its Additional Protocol</p> |
| a. | <p>Draft protocol to amend the Additional Protocol to the Convention and draft revised explanatory report</p> <p>During its last meeting the PC-OC considered the preliminary draft protocol to amend the Additional Protocol to the Convention as proposed by the PC-OC Mod, While the PC-OC could agree on some minor amendments (as reflected in Doc PC-OC Mod(2015)01rev2) the discussion revealed that a few Parties had difficulties with the most important amendments proposed.</p> <p>The PC-OC decided, therefore, to leave time to the experts of these Parties to propose alternative solutions to the issues raised and to resume discussion of the draft protocol and its explanatory report at its next meeting.</p> <p>The PC-OC Mod considered the draft amending protocol, taking into account the discussions during the last plenary and decided to:</p> <ul style="list-style-type: none"> -instruct the Secretariat to consult the Treaty Office as regards the possibility to propose alternative transitory provisions that would not be based on a tacit acceptance procedure but would contain the possibility for States, by declaration at the moment of ratification, to apply the amended protocol on a provisional basis . <p>The last version of the preliminary draft amending protocol [PC-OC Mod (2015)01rev 3] contains the alternative transitory provisions proposed by the Treaty Office.</p> <p><u>The PC-OC is invited to</u> consider the preliminary draft protocol to amend the Additional Protocol to the Convention and the draft revised explanatory report.</p> <p><u>Documents:</u> PC-OC Mod (2015)01rev3 (Draft Protocol)</p> |

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| | <p>PC-OC (2015)02 (Draft revised explanatory report)</p> <p><u>Background documents</u> PC-OC(2013)15Bil (special session on the transfer of sentenced persons) PC-OC (2013)10 ADD rev2 (Summary of replies received to the questionnaire on the implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol)</p> |
| b. | <p>Discussion on possible amendments to the Convention (ETS No. 112) in a Second Additional Protocol</p> <p>Further to the discussion in the last plenary, the PC-OC Mod discussed the two proposals by the Netherlands to amend Article 17 of the Convention contained in Doc PC-OC (2015)05. The PC-OC-Mod supported the first proposal to limit the translation required from the sentencing state to the parts of the judgment that describe the offences the sentenced person was charged with, the reasoning leading to the conviction, the conviction of the sentenced person including the offences for which the person has been found guilty and the penalties imposed. The PC-OC Mod was however divided as to the second proposal to shift the obligation to finance the transfer from the administering state to the sentencing state. The PC-OC Mod furthermore suggested that the plenary consider the possibility of introducing a provision allowing for the transfer of the sentence in cases where the sentenced person was living in, or had returned to his or her country of origin.</p> <p>The PC-OC is invited to consider the proposals made, taking into account the findings of the PC-OC Mod, and to decide on follow up.</p> <p><u>Documents:</u> Doc PC-OC (2015)05 (proposal by the Netherlands to amend Article 17, ETS 112)</p> <p><u>Background documents</u> PC-OC(2013)15Bil (special session on the transfer of sentenced persons) PC-OC (2013)10 ADD rev2 (Summary of replies received to the questionnaire on the implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol)</p> |
| c. | <p>Consideration of comments received to the E-transfer proposal by Israel and proposals for follow up</p> <p>The PC-OC Mod considered the 9 comments received to the e-transfer proposal (Doc PC-OC Mod (2015)05), took note of the questions and obstacles raised and decided to:</p> <ul style="list-style-type: none"> - invite experts who have not yet done so to comment on the e-transfer proposal by 12 October; - inform the plenary that in its view most obstacles raised could be overcome and that security and cost-effectiveness aspects are very important conditions for the implementation of the e-transfer tool but that these should be considered after an agreement on the e-transfer system has been reached in principle; - invite the plenary to consider starting the e-transfer procedure with a number of pilot countries. <p>The PC-OC is invited to consider the e-transfer proposal and to decide on the follow up to be given.</p> <p><u>Document:</u> PC-OC Mod (2014)04</p> |
| d. | Other |
| 7. | <p>Finalisation of the review of Council of Europe Conventions within the remit of the PC-OC. Follow up to the reply sent to the CDPC</p> <p>Further to the review of Council of Europe Conventions conducted by the Committee of Ministers, the latter decided on 10 April 2013 to "instruct steering and ad hoc committees to carry out, (...) an examination of some or all of the conventions for which they have been given responsibility (...)" The Chair of the CDPC addressed on 25 March 2014 a letter to the Chair of the PC-OC, inviting the Committee to provide concise and written feedback to the CDPC on the implementation/assessment with regard to the conventions for which it is responsible by the end of 2015.</p> |

Referring to the PC-OC's terms of reference, the PC-OC is responsible for the following conventions : ETS No. 24 (Extradition, and Additional Protocols ETS Nos 86, 98, 209 and 212), ETS No. 30 (Mutual assistance in criminal matters and Additional Protocols ETS Nos 99 and 182), ETS No. 51 (Supervision of Conditionally sentenced or Conditionally released Offenders), ETS No.70 (International validity of criminal judgments), ETS No.73 (Transfer of criminal proceedings), ETS No.112 (Transfer of sentenced persons and its Protocol ETS No. 167) as well as ETS No. 141 (Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime).

At its last meeting, the PC-OC assessed the operation of the European Convention on the Supervision of Conditionally sentenced or Conditionally released Offenders ETS No. 51 and agreed that the conclusions to the study conducted in 2003 [Doc PC-OC(2003)07] were still valid. As to the ETS No. 70, the PC-OC was of the opinion that this convention was in need of further assessment.

The Committee furthermore considered the draft review on the conventions within the remit of the PC-OC as contained in Doc PC-OC (2015)06 and decided to:

- invite experts to comment on the draft review by 1 September 2015;

- ask the PC-OC Mod to:

- complete the draft review for consideration and adoption at its next plenary meeting on the basis of the discussions held and comments received;
- make proposals for the assessment of ETS No. 70, for example by means of a questionnaire, and as regards ETS No. 141, to consider the replies to the questionnaire.

The PC-OC Mod considered the draft review prepared by the Secretariat as regards the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 051) and the few comments received, discussed ways to assess the treaties that it has not yet addressed, namely the Convention on International Validity of Criminal Judgments (ETS No. 070) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and decided to:

- approve, with some amendments, the draft proposed by the Secretariat as regards ETS No.51;
- ask Mr Erik Verbert to assist the Secretariat in drafting a review on ETS No 70;
- instruct the Secretariat to draft a review on ETS No. 141, based on the replies received to question 2 of the questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime;
- instruct the Secretariat to send the draft review to the PC-OC for comments in good time before the next plenary meeting.

The PC-OC is invited to:

- adopt the draft review of conventions within the remit of the PC-OC and send it to the CDPC for consideration.

Documents

Letter to the PC-OC

Reply to the CDPC

PC-OC (2015)06rev2 Draft review of conventions within the remit of the PC-OC

Background document:

Summary of Answers to the Questionnaire on the Interrelationship of the Convention on the Transfer of Sentenced Persons (ETS 112) and the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 51), in particular the possible more extensive use of ETS 51 [PC-OC (2003)07rev]

8. Election of the Chair and vice-Chair

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| | <p>According to the PC-OC's terms of reference, the Chair and the vice-Chair are elected for a term of one year. The terms of the Chair and of the vice-Chair are renewable once.</p> <p>Referring to Article 12d of the "Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods", the election of the Chair and vice-Chair shall require a two-thirds majority at the first ballot and a simple majority at the second ballot. In steering committees, the election shall be held by secret ballot, in other committees by a show of hands, unless a member of the committee requests a secret ballot.</p> <p>Considering that the present Chair, Ms Joana Gomes Ferreira (Portugal), will reach the term of her second and last mandate at the end of 2015 and that the vice-Chair, Mr Stéphane Dupraz (France), left the committee due to a change in his functions, <u>the PC-OC is invited to</u> elect a Chair and a vice-Chair among its members for a term of one year, starting in 2016.</p> <p><u>Background documents:</u> Terms of reference of the PC-OC Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods</p> |
| 9. | Meetings in 2016 |
| 10. | Any other business |