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 [PC-OC/DOCS2014/PC-OC(2014)1E Draft Annotated Agenda...]
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PC-OC (2014)01

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

66th meeting
 Strasbourg, 19 – 21 May 2014
 AGORA, Room G 02

Draft Annotated Agenda

1. Opening of the meeting and adoption of the agenda	
	Document PC-OC(2014)OJ1
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 2014-2015	
	Document Terms of Reference of the PC-OC
b. Follow-up to the White Paper prepared by the Ad Hoc Drafting Group on Transnational Organised Crime (PC-GR-COT)	
	Document Draft White Paper on Transnational Organised Crime
c. Co-operation with the HELP Programme	
d. Recent signatures and ratifications	
e. Other	
	<u>The PC-OC is invited</u> in particular to take note of the activities of the CDPC.
	<u>Background documents</u> List of decisions of the 65th meeting of the CDPC [CDPC(2013)17] List of decisions of the meeting of the Bureau of the CDPC [CDPC-BU (2014)02]
3. Review of Council of Europe Conventions within the remit of the PC-OC	
	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, (...)”

	<p>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> <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).</p> <p><u>The PC-OC is invited to</u> take note of the letter and to decide on the reply to be given to the CDPC.</p> <p><u>Document</u> Letter dated 25 March 2014 by the Chair of the CDPC.</p>
	<p>4. Presentation and content of the PC-OC website</p>
	<p>a. Finalisation of the improved template for country information as regards the transfer of sentenced persons</p> <p>At its 65th meeting the PC-OC considered the revised templates, for the publication of country information regarding the implementation of the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons, as proposed by the PC-OC Mod [Doc PC-OC Mod (2013)10] and decided to:</p> <ul style="list-style-type: none"> - approve the template regarding extradition and the one regarding mutual assistance in criminal matters with one amendment [Doc PC-OC Mod (2013)10 rev.] and instruct the Secretariat to post them on the website in replacement of the former templates; - invite all Parties to these conventions to fill in these templates and to send them to the Secretariat by 1 March 2014 for publication on the PC-OC public website; - ask the PC-OC Mod to finalise the template regarding the transfer of sentenced persons in the light of the discussions held in the special session on this subject. <p>At its 17th meeting the PC-OC Mod finalised the template as regards the transfer of sentenced persons and decided to submit the revised template as contained in document PC-OC Mod (2013)10rev2 to the plenary for approval.</p> <p><u>The PC-OC is invited to</u> consider and approve the revised template as proposed by the PC-OC Mod.</p> <p><u>Document</u> PC-OC Mod (2013)10rev2</p> <p><u>Background documents</u> Updated Inventory of country specific information available on the PC-OC websites (PC-OC (2012)09 rev 5)</p>
	<p>b. Case-law of the European Court of Human Rights</p> <p><u>The PC-OC is invited to</u> take note of the recent update of the index and summaries of the case-law of the ECtHR as published on the PC-OC website.</p> <p><u>Background document</u> Index and summaries of the case-law of the ECtHR [PC-OC (2011)21rev8]</p>

5.	Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto
a.	<p>Presentation by the PC-OC Rapporteur on transfer on recent developments and forum discussions</p> <p>During its 61st meeting, the PC-OC adopted Practical measures to facilitate the application of conventions on international cooperation in criminal matters in which the PC-OC agreed "to appoint Rapporteurs and assisting members for the most important conventions and other issues of particular importance related to cooperation in criminal matters to animate the discussions on the forum, to inform the plenary on discussions held and on other developments of importance and to make proposals for follow-up".</p> <p>Ms Barbara Goeth-Flemmich (Austria), rapporteur as regards transfer will inform the plenary accordingly and will make proposals for follow-up.</p> <p><u>The PC-OC is invited to</u> take note of the information provided and to decide on follow-up.</p> <p><u>Background document</u> Practical measures to facilitate the application of conventions on international cooperation in criminal matters [PC-OC (2011) 04Rev3]</p>
b.	<p>Proposals to improve the functioning of transfer procedures as a follow-up to the special session on the Convention on the Transfer of Sentenced Persons and its Additional Protocol during the 65th plenary meeting</p> <p>During its 17th meeting, the PC-OC Mod considered the issues addressed and proposals made during the special session on the Transfer of Sentenced Persons and made proposals for follow-up to the plenary.</p> <p><u>The PC-OC is invited to</u> consider the proposals made by the PC-OC Mod and to decide on follow-up to be proposed to the CDPC.</p> <p><u>Document</u> List of decisions of the 17th meeting of the PC-OC Mod [PC-OC Mod(2014)03]</p> <p><u>Background documents</u> Replies received to the questionnaire regarding implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol [PC-OC(2013)10 Bil.rev] Summary of the replies received to the questionnaire regarding implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol [PC-OC(2013)10 ADD.rev] Presentations made during the special session on the transfer of sentenced persons [PC-OC(2013)15]</p>
6.	European Convention on Extradition and the Additional Protocols thereto
a.	<p>Draft note on criteria to assess whether a judgment in absentia and additional guarantees satisfy the rights of defence (in connection with Article 3 of the Second Additional Protocol)</p> <p>At its 65th meeting the PC-OC considered the opinion of the PC-OC Mod as regards the appropriateness of reaching a common interpretation of Article 3 of the Second Additional Protocol to the European Convention on Extradition regarding judgments in absentia and the possibility of retrial. The Committee agreed with the PC-OC Mod that it is the responsibility of each requested party to assess whether the proceedings leading to the judgment in absentia or the additional guarantees provided by the requesting state satisfy the rights of defence and that an attempt to reach a common opinion on the interpretation of Article 3 would not be helpful. Recognising the importance of assisting parties in assessing this situation it decided to ask Ms Barbara Goeth-Flemmich (Austria) to assist the PC-OC Mod in preparing a summary of the criteria available, based on the sources identified by the PC-OC Mod, for consideration by the plenary and publication on the website as a useful tool.</p>

At its 17th meeting, the PC-OC Mod considered the criteria reflected in document PC-OC Mod (2014)02 and decided to instruct the Secretariat to further elaborate the above-mentioned paper, in co-operation with Ms Barbara Goeth-Flemmich (Austria), by appending a draft note for the attention of practitioners.

The PC-OC is invited to consider the draft note and to decide on the possible publication of its appendix 2 as a useful tool for practitioners.

Document

Criteria to assess whether proceedings leading to a judgment in absentia or the additional guarantees provided by the requesting state satisfy the rights of defence (in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition)[PC-OC Mod (2014)rev]

Background documents

Summary and compilation of replies to the questionnaire concerning judgments in absentia and the possibility of retrial [PC-OC(2013)01rev3]

List of decisions of the 17th meeting of the PC-OC Mod [PC-OC Mod (2014)03]

b. Interaction between extradition and asylum proceedings; practical problems encountered and examples of good practice

The PC-OC considered, at its 65th meeting, the practical problems reported by member states in this field [Doc PC-OC Mod (2013)06rev.] as well as the proposal for follow up by the PC-OC Mod. It was recalled however that the CDPC had discussed this issue during its 58th plenary session in 2009 and had concluded that the question was “of great importance to the Council of Europe” but had noted “the absence of a specialised intergovernmental committee dealing with issues to asylum seekers” [Doc CDPC(2009)22 meeting report]. The PC-OC agreed that the issue was of importance to its work and in need of further discussion and decided to:

- invite all experts to send examples of good practice in this area as well as obstacles encountered to the Secretariat by 15 February 2014;
- instruct the PC-OC Mod to consider this issue further in preparation of the special session on extradition to be held during its 66th meeting.

At its 17th meeting, the PC-OC Mod considered the practical problems and examples of good practice by member states as regards the interaction between extradition and asylum procedures (document PC-OC Mod (2013)06rev2), and concluded that the contributions received as regards good practices did not allow for additional comments or recommendations to be made on this subject. The PC-OC Mod decided to:

- inform the plenary that it wished to reiterate the conclusions reached at its 16th meeting, namely that problems encountered by member states as regards the interaction between extradition and asylum procedures could be diminished by enhancing the exchange of information and communication between the different authorities concerned at national level but also at international level;
- suggest that the plenary decide on the usefulness of continuing the debate and of repeating its request to experts to send in further examples of good practice.

The PC-OC is invited to consider the findings of the PC-OC Mod and to decide on the usefulness of continuing the debate.

Document

Information received from states on practical problems encountered and good practice as regards the interaction between extradition and asylum procedures [PC-OC Mod(2013)06 rev2]

Background documents

Discussion on the issue of extradition and asylum introduced by Mr Erik Verbert (Belgium) [PC-OC (2013)08]

UNHCR Guidance Note on Extradition

PC-OC questionnaire on the relationship between asylum procedures and extradition procedures [PC-OC INF 76 Bil.]

UNHCR reaction to the replies in PC-OC INF 76

	<p>Note on the Relationship between extradition and deportation/ expulsion[PC-OC (2012)08 rev 2]</p>
c.	<p>Reference moment to be applied when considering double criminality and interpretation in abstracto or in concreto</p> <p>At its 65th meeting, the PC-OC considered the replies to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests [Doc PC-OC (2013) 12], underlined the importance of this question as well as the divergence in views and decided to:</p> <ul style="list-style-type: none"> - discuss this issue further, including the question on interpretation in abstracto or in concreto, at the special session on extradition; - ask Mr Erik Verbert to prepare a discussion paper on this question. <p>The PC-OC Mod also discussed the replies received to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests and decided to instruct the Secretariat to prepare a table summarising the replies received for the next plenary meeting.</p> <p>The PC-OC is invited to consider the replies received to the questionnaire on the reference moment applied and to decide on follow-up.</p> <p><u>Documents</u> Compilation of replies to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests [PC-OC (2013) 12 rev2] Secretariat note on dual criminality, in concreto or in abstracto [PC-OC (2012) 02 Final] Discussion paper on the reference moment to be applied when considering double criminality and interpretation in abstracto or in concreto by Mr Erik Verbert (Belgium) [PC-OC(2014)02]</p>
d.	<p>Other issues</p>
7.	<p>Special session on extradition</p> <p>See Programme</p> <p><u>Documents</u> Secretariat note on dual criminality, in concreto or in abstracto [PC-OC (2012) 02 Final] Discussion paper on the reference moment to be applied when considering double criminality and interpretation in abstracto or in concreto by Mr Erik Verbert (Belgium) [PC-OC(2014)02] Compilation of replies to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests [PC-OC (2013) 12BIL rev2] Forum discussions as regards extradition [PC-OC(2014)03]</p>
8.	<p>Mutual Assistance in Criminal Matters</p>
a.	<p>Presentation by the PC-OC Rapporteur on MLA on recent developments and forum discussions</p> <p>In line with the “Practical measures to facilitate the application of conventions on international cooperation in criminal matters” adopted by the PC-OC, Mr Eugenio Selvaggi (Italy), rapporteur as regards mutual legal assistance will inform the plenary on recent developments and forum discussions and will make proposals for follow-up.</p> <p>The PC-OC is invited to take note of the information provided and to decide on follow-up.</p> <p><u>Background document</u> Practical measures to facilitate the application of conventions on international cooperation in criminal matters [PC-OC (2011) 04Rev3]</p>
b.	<p>Follow up to the project VC 2248 on effective tools to facilitate MLA: practical guidelines and model request forms</p> <p>In line with the decision taken by the PC-OC during its previous meeting, the PC-OC Mod</p>

considered the possible follow-up to the above-mentioned project, taking into account existing national and international guidelines and model request forms as compiled in document PC-OC Mod (2014)01 as well as the activities undertaken in this field by the Polish authorities within a project of the Eastern Partnership Judiciary Panel (document PC-OC Mod (2013)08) funded by the European Commission.

The PC-OC Mod considered 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 decided to propose that the plenary instructs 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 the existing model request forms and guidelines mentioned above.

The PC-OC is invited to consider this proposal and to decide on follow-up.

Documents

Project VC 2248 on effective tools to facilitate MLA [DG-HL (2010)6]

Compilation of model request forms and/or practical guidelines as regards mutual legal assistance in criminal matters [PC-OC Mod (2014) 01 Bil.]

Background document

Activities undertaken within the PL project of the Eastern Partnership Judiciary Panel- facilitation of the mutual legal assistance in criminal matters through common model request forms[PC-OC Mod (2013)08]

c. Ways to deal with the increase of MLA requests: development of guidelines for practitioners of requesting states on good practices of self-restraint

At its previous meeting, the PC-OC considered the proposal by the PC-OC Mod to develop guidelines for practitioners of requesting states on good practices of self-restraint in order to avoid the submission of requests when this is possible. The Committee decided to instruct the PC-OC Mod to develop its proposal, taking into account the requirements of the convention as well as the possibility for requesting states to consider the principle of proportionality.

In line with the instructions received, the PC-OC Mod further discussed the possibility of developing guidelines as proposed. Recalling that the Convention does not foresee any grounds of refusal for so called “de minimis cases”, the PC-OC Mod considered that the overload could also be addressed by improving the case management system in requested states. It was decided to:

- propose to the plenary to address these issues in general practical guidelines to facilitate MLA.

The PC-OC is invited to consider this proposal and to decide on follow up.

Background document

ROMA-LYON GROUP: Addressing Requests for Mutual Legal Assistance in De Minimis Cases, 2013

d. Liability of legal entities

During its 65th meeting, the PC-OC discussed the liability of legal entities on the basis of the discussion paper presented by Mr Selvaggi [Doc PC-OC(2013)13] and decided to:

- resume consideration of this important question at a future meeting;
- invite Mr Vladimir Zimin (Russian Federation) to present further proposals on this issue.

The PC-OC is invited to resume consideration of this question and to decide on follow-up.

Document

Discussion paper on MLA and the liability of legal entities by Mr Eugenio Selvaggi (Italy) [PC-OC (2013)13]

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

At its previous meeting, the PC-OC decided to devote a special session to this issue during its

second meeting in 2014, in co-operation with other Council of Europe committees or bodies such as MONEYVAL and the CDPC for whom this question is of particular relevance.

The PC-OC is invited to have an exchange of views on the programme and contents of this special session and to decide on its follow up.

f. Other issues

9. Any other business