



Strasbourg, 25 February 2016  
[PC-OC/PC-OC Mod/Docs PC-OC Mod 2016/ PC-OC Mod (2016)04E]  
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PC-OC Mod (2016)04

**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 21st 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 Astrid Offner (Switzerland)  
23-25 February 2016**

**1. Opening of the meeting and adoption of the agenda**

After the opening of the meeting by the Chair, the agenda was adopted as reflected in document PC-OC Mod (2016) OJ1.

**2. Points for information of relevance to the work of the PC-OC**

The PC-OC Mod took note of the information provided by Carlo Chiaromonte, Secretary to the CDPC on the latest developments of the work of the Steering Committee and in particular the decision to approve:

- the Draft guidelines for prison and probation services regarding radicalisation and violent extremism and to submit them to the Committee of Ministers for adoption;
- the draft terms of reference for a committee of experts tasked with the drafting of a new Council of Europe Convention on offences relating to cultural property and to submit them to the Committee of Ministers for adoption;
- the Action Plan to ensure the follow-up to the key recommendations contained in the White Paper on Transnational Organised Crime, and to submit them to the Committee of Ministers for adoption;
- the “model provisions” to be used as guidelines by expert groups that may be mandated to negotiate future criminal law conventions of the Council of Europe and to submit them to the Committee of Ministers for information.

Mr Chiaromonte furthermore informed the PC-OC about the request by Bulgaria to the CDPC to initiate a friendly settlement procedure with Serbia as regards the need to comply with Article 18, paragraph 1 of the European Convention on Extradition.

The PC-OC Mod also took note of the latest signatures and ratifications of the different treaties within the remit of the PC-OC and was pleased to be informed that India had requested to join the Convention on the Transfer of Sentenced Persons.

### **3. Presentation and content of the PC-OC website**

The PC-OC Mod was pleased to note that the new website, presented by Ms Lucy Ancelin (Secretariat), was well advanced and adequately designed and would be launched after the finalisation of the French version. The PC-OC Mod expressed its gratitude to Ms Ancelin for her excellent work, made several suggestions for improvement and decided to instruct the Secretariat to take these suggestions into account.

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

The PC-OC Mod considered the need to update the index and summaries of relevant case law of the European Court of Human Rights (document PC-OC(2011)21rev8), and decided to further update the index and summaries by written consultation.

#### **b. Assessment of country information available on the website**

The PC-OC Mod assessed the country information available on the website on the basis of the inventory of country specific information available on the PC-OC website [Doc PC-OC (2009) Rev 12] as well as the assessment made by the Secretariat [Doc PC-OC Mod (2016)02] and underlined that it is important for practitioners that the PC-OC website contains the most relevant and recent information. Against this background it agreed that:

- the contact details of officials involved in the practical application of the relevant conventions as well as the network of single points of contact, both on the restricted website, were in need of an update;
- the revised templates for country information on extradition, mutual legal assistance and transfer of sentenced persons contained updated information on issues previously covered by mostly outdated information contained in documents which were no longer relevant as tools for implementation: PC-OC INF 4(Guide to procedures on ETS No. 24), PC-OC INF 7 (National requirements in respect of languages in requests), PC-OC INF 71 (Provisional arrest and detention pending extradition, time limits applicable in each country), PC-OC INF 9 (Manual on MLA), PC-OC INF5Rev4 (Guide to procedures on ETS No. 112);
- an “archive” entrance should be created under each Convention on the new website where the above documents could be stored.

The PC-OC Mod furthermore agreed that certain other documents published under “tools for implementation” should also be moved to the “archives” because they are redundant or outdated. This concerns: PC-OC INF 21 (Explanatory notes to the Convention on Extradition), PC-OC (2000)16 (Note on Provisional arrest-reservations and declarations by member States); PC-OC (1998)7 (Note on Trial in Absentia), PC-OC (1999)9 (Art 11, temporary transfer, question by the Netherlands), PC-OC (2001)20rev (Discussion paper on Police vs judicial co-operation) and PC-OC (2005)7 rev (Art 22 exchange of information, national replies to questionnaire).

Pending its work on the transfer of sentenced persons, the PC-OC Mod wished to preserve the documents contained under “tools for implementation” but proposed to merge all comments related to “undue delays in transfer procedures” in an appendix to the report on this issue (Doc PC-OC(2000)22).

The PC-OC Mod furthermore underlined the value of having a recent list of bilateral treaties of member States in the fields of extradition, MLA in the largest sense – to be explained by a footnote, transfer of sentenced persons and illicit traffic in drugs, and proposed to update Doc PC-OC INF 8 to this effect, also inviting countries to provide links to the texts of bilateral treaties.

The PC-OC Mod decided to:

- inform the plenary of their findings;
- instruct the Secretariat to add links to the relevant documents of the PACE on the website under the relevant conventions and to add links to relevant documents of the G20 and G7/8 to the website under “links” “other organisations”.

#### **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 had an exchange of views on issues related to the double criminality principle and ways to avoid impunity (aut dedere aut iudicare, grounds for refusal) and decided to ask Mr Erik Verbert (Belgium), rapporteur on extradition, to take these issues into account when preparing his reflection paper to be discussed at the next plenary and to submit his paper to the PC-OC Mod for comments in due time before the plenary.

##### **b. Other**

The need for experts to receive more information on bilateral treaties in the fields within its remit was also discussed as well as the possibility to propose model bilateral treaties, in particular in the field of extradition. Some experts felt that this issue could be further explored in the future. The PC-OC Mod decided to propose that a point should be added on the agenda of each plenary meeting where countries could inform each other on the negotiation and conclusion of bilateral treaties of relevance to the Committee's work.

#### **5. Mutual Assistance in Criminal Matters**

##### **a. Presentation of the model request form on MLA and practical guidelines for practitioners**

The PC-OC Mod appreciated the user-friendly version of the model request form and guidelines on MLA presented by the Secretariat and took note of the information that this version would be made available after the PC-OC website has moved to its new platform.

The PC-OC Mod underlined the importance of ensuring the widest possible use and publicity of this model request form, in particular by gathering as many language versions as possible, including the guidelines.

It decided to instruct the Secretariat to explore ways to ensure that the model request form is also print-friendly.

##### **b. 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**

The PC-OC Mod considered the 28 replies received to the questionnaire, agreed that the replies received confirmed the findings of the plenary and decided to:

- ask the Secretariat to post the table and replies contained in Doc PC-OC Mod (2015)06rev2 on the website as a useful tool for the implementation of international co-operation in the field of seizure and confiscation of proceeds of crime.
- c. Preparation of a draft template for country information on national procedures as regards the application of ETS No.141**

The PC-OC Mod considered the draft template as prepared by the Secretariat in co-operation with Ms Wietske Dijkstra (Netherlands, rapporteur in respect of ETS No. 141), and in consultation with the MONEYVAL Secretariat, made a few amendments and decided to present this draft to the plenary for adoption.

## **6. Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto**

### **a. Consideration of the draft explanatory report to the draft protocol to amend the Additional Protocol to the Convention (ETS No. 167)**

The PC-OC Mod considered the draft explanatory report to the draft amending protocol and decided to present the draft explanatory report, with some amendments, to the plenary for adoption [Doc PC-OC(2015)02rev2].

The PC-OC Mod also considered the last version of the draft protocol as suggested by the Treaty Office [Doc PC-OC Mod (2015)1rev5], and proposed some linguistic changes so as to stay closer to the wording of the Protocol in force and to take account of gender aspects [Doc PC-OC Mod(2015)1rev6].

The PC-OC Mod expressed its concern that the proposed entry into force of the amending protocol would require the ratification or acceptance of all Parties to the Additional Protocol ETS No. 167 and decided to instruct the Secretariat to verify with the Treaty Office whether it would be possible to allow the entry into force after ratification by a limited number of Parties and whether previous experiences with provisional application have been satisfactory.

### **b. Discussion on possible amendments to the Convention (ETS No. 112) in a Second Additional Protocol**

The PC-OC Mod further discussed proposals on possible amendments to the Convention on the Transfer of Sentenced persons and in particular:

- the proposals by the Netherlands to amend Article 17 of the Convention contained in Doc PC-OC (2015)05. At the conclusion of the discussions, the PC-OC-Mod proposed an alternative drafting of Article 17, reflected in Doc PC-OC Mod (2016)03;
- the items mentioned by the PC-OC in the list of decisions of the 66th meeting [PC-OC(2014)02].

The PC-OC Mod concluded as regards:

- *the possibility to introduce time limits*, that a large majority of its members supported the proposal to introduce time limits for the revocation of consent by the sentenced person, a majority supported the proposal to also introduce time limits for the decision-making procedure, although requests for additional delays should be foreseen. The idea to introduce time limits for the actual transfer was not supported;
- *the widening of the scope of the Convention to persons who returned voluntarily to their country of origin before having served their sentence*, that there was some support for this proposal within the PC-OC Mod but that further discussion would be necessary;
- *the non-payment of fines or compensation of victims*, that this issue could not be addressed by a binding instrument but that a proposal could be made to address this issue by a non-binding instrument, for example by updating Recommendation R (92)18 by the Committee of Ministers which also addresses the issue of fines;

- *the provision of information on the execution of the sentence by the administering state*, that Article 15 of the Convention contains an obligation for the administering State to provide some information. If an amendment is to be envisaged, further discussions are necessary, in particular as regards the wording of 15a, which could be more precise, as well as regards the possibility to introduce time limits for the provision of information.

The PC-OC Mod decided to:

- inform the plenary of its findings, inviting experts to consider the proposals contained in Doc PC-OC Mod (2016)03 and, if possible, to provide comments in time for the plenary meeting.

**c. Consideration of the E-transfer proposal by Israel and proposals for follow up**

The Secretariat informed the PC-OC Mod of the provisional findings as regards the questions raised with regard to security aspects, data protection, system management and costs of the development of an e-transfer tool by the Council of Europe. While confirmation was received, after two meetings with the Directorate of Information Technology, that from a technical viewpoint it should be possible to address these concerns in an adequate way, the Secretariat will have to ask a specialised consultant for a detailed analysis and presentation of the different possibilities and costs involved.

The PC-OC Mod decided to take note of this information and to ask the Secretariat to present the outcome of the inquiry to the plenary at its upcoming meeting.

**7. Any other business**

The PC-OC Mod, noting that Ms Imbi Markus (Estonia) and Mr Stéphane Dupraz (France) will no longer be available, decided to propose to elect one new member for the PC-OC Mod and one or two substitutes at the next plenary meeting.