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PC-OC (2016)01

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

70th meeting
Strasbourg, 2 – 4 May 2016
AGORA, Room G 03

Draft Annotated Agenda

1.	Opening of the meeting and adoption of the agenda Document: PC-OC (2016)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.	Activities of the CDPC and CODEXTER <u>Background documents:</u> List of decisions of the 69th meeting of the CDPC [CDPC(2015)26] List of decisions of the Bureau of the CDPC [CDPC-BU (2016)]
b.	Co-operation with the HELP Programme 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.
c.	Drafting Committee on Prison Overcrowding 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 21- 22 of April. .
d.	Co-operation with the Pompidou Group Ms Gabriela Bláhová (Czech Republic) participated on behalf of the PC-OC in a meeting organised on 9-10 November 2015 in Lyon in view of the preparation of a handbook on controlled delivery. Follow-up

	meetings are foreseen on 26-27 May in Brussels and on 20-21 October in Vienna.
e.	Activities of the T-CY Mr Pedro Verdelho (Portugal), representative of the T-CY in the PC-OC will inform the Committee on ongoing activities in the T-CY.
f.	Recent signatures and ratifications
g.	Other
3.	Implementation of the Action Plan on Transnational Organised Crime Further to the adoption of the Action Plan by the Committee of Ministers, the Chair of the PC-OC, the co-ordinator of the Action Plan and the Secretariat met in Paris on 19 April to develop a draft workplan of activities to implement the Action Plan. The <u>PC-OC is invited to</u> consider and adopt the draft work plan in respect of the PC-OC activities <u>Document:</u> Draft work plan for the implementation of the Action Plan on Transnational Organised Crime <u>Background Documents:</u> Action Plan on Transnational Organised Crime (on the PC-OC homepage) Terms of Reference 2016-2017 of the PC-OC
4.	Presentation and content of the PC-OC website Due to a change in the platform used by the Council of Europe, the presentation of the PC-OC website will soon change. The Secretariat will show the future website to the PC-OC. The <u>PC-OC is invited to</u> comment on the new presentation
a.	Update of the index and summaries of relevant case law of the ECtHR 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 finalise the update by written consultation. <u>Document:</u> PC-OC(2011)21rev.9 (on the PC-OC homepage)
b.	Assessment of information available on the website <u>The PC-OC is invited to</u> 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>Document:</u> PC-OC (2012) 09 rev.11 Bil
5.	European Convention on Extradition
a.	Follow up to the special session on extradition held during the 66th plenary meeting of the PC-OC During its recent meetings 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. <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><u>Document</u>: Reflection paper by Mr Erik Verbert [PC-OC(2016)]</p> <p><u>Background document</u>: reports of the workshops of the special session on extradition [Doc PC-OC (2014)07]</p>
b.	<p>Bilateral Treaties</p> <p>During its 21st meeting, the PC-OC Mod mentioned the need for experts to receive more information on bilateral treaties in the fields within its remit 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 proposes to add a point 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.</p> <p>The PC-OC is invited to consider the proposal by the PC-OC Mod</p>
c.	<p>Other</p>
6.	<p>Mutual Assistance in Criminal Matters</p>
a.	<p>Presentation of the model request form on MLA and practical guidelines for practitioners</p> <p>At its 69th plenary meeting, the PC-OC adopted a standard model request form and guidelines for practitioners on MLA and decided to invite experts to have these instruments widely distributed and translated in their national language and to send them to the Secretariat for publication on the PC-OC website.</p> <p>The PC-OC furthermore instructed the Secretariat to produce a user-friendly version of the model request form, including links to the corresponding parts of the guidelines. The PC-OC Mod appreciated the user-friendly version presented by the Secretariat and decided to instruct the Secretariat to explore ways to ensure that the model request form is also print-friendly.</p> <p>The PC-OC Mod noted that this version would be made available after the PC-OC website has moved to its new platform.</p> <p>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.</p> <p>The PC-OC is invited to consider the user-friendly version of the model request form and guidelines proposed by the Secretariat and to discuss ways to promote its use and dissemination</p> <p><u>Background documents (on the PC-OC homepage)</u>: Model request form on MLA [PC-OC Mod (2014)10 rev6] Guidelines to the model request on MLA [PC-OC (2015)09 rev3]</p>
b.	<p>Finalisation of the Draft template for country information on national procedures as regards the application of ETS N°141</p> <p>During its 21st meeting, 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.</p> <p>The PC-OC is invited to consider and adopt the draft template as proposed by the PC-OC Mod</p> <p><u>Document</u>: PC-OC Mod (2016)01rev</p>
c.	<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>During its previous meeting, the PC-OC, considering the 25 replies received at that moment, had agreed</p>

	<p>that that although most States can, in principle, co-operate in the field of seizure and confiscation of proceeds of crime on the basis of existing conventions, and in particular the more specialised conventions, such as the Convention on Laundering, Search and Confiscation of Proceeds of Crime (ETS No. 141), there was still room for improvement as regards the effective use made of this form of co-operation. Specific concerns were raised as regard specific forms of requests for co-operation, such as non-conviction based confiscation, confiscation for the purpose of returning assets to victims and asset sharing. The PC-OC furthermore agreed that mutual assistance requests frequently take too much time to successfully address requests for freezing or seizure of assets deposited on bank accounts.</p> <p>The Committee supported the view of the PC-OC Mod 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 (COP 198) to discuss ways to improve international co-operation in this particular field.</p> <p>The PC-OC Mod considered during its 21st meeting the 28 replies received to the questionnaire, agreed that the replies received confirmed the findings of the plenary and decided to:</p> <ul style="list-style-type: none"> - ask the Secretariat to post the table and replies received 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. <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)06rev3</p>
d.	Other
7.	Convention on the Transfer of Sentenced Persons and its Additional Protocol
a.	<p>Finalisation of the draft protocol to amend the Additional Protocol to the Convention and its explanatory report</p> <p>In its last meeting the PC-OC agreed, with an amendment to the drafting of Article 1, on the substantial articles contained in the draft. As to the final and transitional provisions, contained in Articles 3 to 7, the PC-OC agreed on adopting option B proposed by the Treaty Office, with some alternatives to be decided at the next meeting[Doc PC-OC Mod (2015)1rev4]. The PC-OC decided to:</p> <ul style="list-style-type: none"> - instruct the Secretariat to finalise the update of the explanatory report in consultation with Ms Barbara Goeth-Flemmich, rapporteur on transfer of sentenced persons; - ask the PC-OC Mod to consider the draft explanatory report; - finalise the draft amended Protocol and explanatory report at its next plenary meeting. <p>The PC-OC Mod considered at its 21st meeting 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].</p> <p>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].</p> <p>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.</p> <p><u>The PC-OC is invited to</u> consider and finalise the draft protocol to amend the Additional Protocol to the Convention and the draft revised explanatory report and to submit it to the CDPC.</p> <p><u>Documents:</u></p>

PC-OC Mod (2015)01rev6 (Draft Protocol)
 PC-OC(2015)02rev2 (Draft revised explanatory report)

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

The PC-OC considered in its last meeting the two proposals by the Netherlands to amend Article 17 of the Convention (contained in Doc PC-OC (2015)05) by limiting the translation required from the sentencing state and by shifting the obligation to finance the transfer from the administering state to the sentencing state. The PC-OC furthermore considered the proposal by the PC-OC Mod to introduce a provision allowing the transfer of the sentence in cases where the sentenced person was living in, or had returned to his or her country of origin.

Considering that more time was needed to come to a common position on possible amendments to the Convention, the PC-OC decided to ask the PC-OC Mod to look into these possibilities further, taking also into account the proposals previously made by the PC-OC and those discussed in the special session on the transfer of sentenced persons.

At its last meeting, the PC-OC Mod further discussed:

- the proposals by the Netherlands to amend Article 17 of the Convention contained in Doc PC-OC (2015)05 and elaborated 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 to other possible amendments:

- 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 to Article 17 contained in Doc PC-OC Mod (2016)03 and, if possible, to provide comments in time for the plenary meeting.

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.

Documents:

PC-OC Mod (2016)03 (English only)
 PC-OC (2015)05 (English only)

Background documents

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)

	PC-OC(2014)02 list of decisions of the 66 th meeting of the PC-OC.
c.	<p>E-transfer proposal by Israel and discussion on follow up</p> <p>During its last plenary meeting, the PC-OC gave further consideration to the proposal by Israel to develop an electronic tool to facilitate transfer procedures (e-transfer, contained in Doc PC-OC Mod (2014)04). The discussion revealed that, while there was considerable interest for the proposal, there were also important concerns, in particular as regards procedural requirements in national legislation, aspects of security, data protection, system management and costs.</p> <p>The PC-OC decided to:</p> <ul style="list-style-type: none"> -instruct the Secretariat to inquire about possibilities to address these concerns, before resuming examination of the proposal at its next meeting. <p>Further to the information to be provided by the Secretariat, <u>the PC-OC is invited to decide</u> on the follow up to be given to the e-transfer proposal.</p> <p><u>Documents:</u> PC-OC Mod (2014)04 (E-transfer proposal) PC-OC Mod (2015)5 rev2 (comments received)</p>
d.	Other
8.	<p>Election of 1 member of the PC-OC Mod and 1 or 2 substitutes</p> <p>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.</p> <p><u>The PC-OC is invited to elect</u> 1 member of the PC-OC Mod and 1 or 2 substitutes.</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.	Any other business