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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

ACTION PLAN ON TRANSNATIONAL ORGANISED CRIME Work Plan (2016 – 2017)

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

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I. Introduction

The aim of this document is to provide information to the members of the CDPC about both the implementation of the activities related to Transnational Organised Crime (TOC) since the last plenary meeting of the CDPC held on 27-30 June 2016 and the activities to be implemented in 2017.

II. Level of implementation of the first preliminary Work Plan

Following the support given by the CDPC to the first preliminary work plan of activities to be implemented in 2016¹, the Secretariat began its work to put in place the different activities of the Action Plan. Given the involvement of the PC-OC in the drafting of the White Paper on TOC and its Action Plan, some actions were taken on board by the PC-OC as its major priorities in its future work. This fact considerably helped to begin with a rapid implementation of the Action Plan following its delayed adoption by the Committee of Ministers.

This being so, the concrete actions of the Action Plan developed so far belong to the following key areas:

- Component 1: Enhancing International co-operation through networks
- Component 2: Special Investigative Techniques

a) Build up the connection of judicial networks (Component 1, Action = A3)

Level of implementation

The restricted Group of experts on international co-operation (PC-OC Mod)² considered the document prepared by the Secretariat³ presenting an overview of judicial networks and asked for some additional networks to be included. It also discussed the possibility of organising a meeting between the Secretariats and/or members of these judicial networks to discuss options to strengthen co-operation. The possibility of appointing an expert to produce a reflexion paper on this issue was also mentioned.

Action

The PC-OC Mod decided:

- to instruct the Secretariat to update the document (catalogue) in line of the discussions held and to present it to the plenary for further discussion.

b) Review provisions on international co-operation, CoE conventions and relevant reservations/declarations to them/these conventions (Component 1, Action = B1)

Level of implementation

The PC-OC Mod examined :

- a) the catalogue of reservations⁴ made to:
 - the European Convention on Extradition and the Additional Protocols thereto,
 - the European Convention on Mutual Assistance in Criminal Matters and the Additional

¹ First preliminary work plan of the Action Plan on Transnational Organised Crime (TOC), [CDPC \(2016\) 10](#).

² The restricted Group of experts on international co-operation (PC-OC Mod) gathered on 27-29 September 2016.

³ Examination of the draft overview of existing judicial networks and proposals to promote their interconnection, [Doc PC-OC Mod (2016)06]

⁴ Catalogue of reservations to Council of Europe treaties within the remit of the PC-OC and of relevance to the fight against transnational organised crime, PC-OC Mod (2016)05rev.

- Protocols thereto,
- the European Convention on the Transfer of Proceedings in Criminal Matters,
 - the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

b) the overview of these reservations prepared by the Secretariat⁵.

The PC-OC Mod agreed that as far as the fight against TOC is concerned not all treaties falling within the remit of the PC-OC are relevant. However, it was felt that the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto are important in this regard.

As regards the reservations made to the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, the PC-OC Mod agreed that the reservations made to this Convention should be analysed together with those made to the more recent Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Action

The PC-OC Mod decided to:

- instruct the Secretariat to complete the catalogue of reservations and the overview of these reservations with the reservations made to the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto;
- instruct the Secretariat to liaise with the Secretariat of the Conference of Parties COP 198 in order to explore possibilities for co-operation between the PC-OC and COP 198 so as to issue joint conclusions in this particular field;
- propose that the PC-OC invite Parties to the Conventions listed in the catalogue to check whether the catalogue accurately reflects the reservations made by them.

c) Establishing a practitioners' forum on TOC (Component 1, Action= B7)

Level of implementation

The PC-OC Mod considered the above question and was of the opinion that its list of single points of contact could constitute a basis for such a network.

Action

The PC-OC Mod decided to:

- inform the PC-OC plenary of its proposal to invite experts to consider the persons mentioned in the list of single points of contact and to add, where necessary, a different contact point for issues related to TOC.

⁵ Overview of reservations made to Council of Europe treaties within the remit of the PC-OC and of relevance to the fight against transnational organised crime, PC-OC Mod (2016)05Add.

d) Assessment on the functioning of the Second Additional Protocol on MLA (Component 2, Action= B1)

Level of implementation

As part of the implementation of the Action Plan, the PC-OC Mod discussed the organisation of the special session. It agreed to organise workshops focusing on the two major innovations introduced by this instrument, namely:

- the scope and methods of exchange of information;
- the new methods related to the gathering of evidence.

Action

The PC-OC Mod decided to:

- adopt the programme of the special session⁶;
- propose, as a follow-up to the special session, that the plenary ask the PC-OC Mod to develop a questionnaire on the application of the Second Additional Protocol taking into account the issues raised in the workshops.

III. Forthcoming activities

The Secretariat will mainly concentrate its future efforts on the subjects of Special Investigative Techniques (Component 2 of the Action Plan) and Witness protection and incentives for co-operation (Component 3 of the Action Plan). In addition, the Secretariat will continue its meetings with the different monitoring bodies with a view to both raising awareness of the White Paper and its Action Plan on TOC and providing answers to their different requests⁷.

- Component 2: Special Investigative Techniques (SITs)

e) Assessment on the functioning of the Second Additional Protocol on MLA (Component 2, Action= B1)

Promotion of the practical standardisation of the use of SITs and the conditions for the MLA (Component 2, Action= B2)

Description

The Second Additional Protocol to the European Convention on Mutual legal Assistance in Criminal Matters provides specifically for rules regarding international co-operation in executing certain SITs (covert investigations, Joint Investigation Teams, controlled deliveries).

In order to promote a more homogeneous practice in the use of SITs, identify the practical relevance of the SIT measures in MLA proceedings and identify best practices as well as practical shortcomings, the action proposed is: to organise a round-table to discuss the practical use of these measures and what specific problems are encountered in communication and execution of the requests, precisely in two of the three SITs (JITs and controlled deliveries).

⁶ Doc PC-OC Mod (2016)09.

⁷ At the 22nd meeting of the restricted Group of experts on international co-operation (hereafter, PC-OC Mod) held in Strasbourg on 27 to 29 September 2016, the Secretariat was instructed to highlight which tasks and activities related to the Action Plan on transnational organised crime were to be implemented by the PC-OC in order to present these for the attention to the plenary. (PC-OC(2016)05)

Action

Given that some of the activities included in every action are inter-related, it is necessary to see them in a transversal way and not individualised. This means that the implementation of this concrete action may be considered either under Action B1 or under Action B2, both within Component 2.

An **international conference on Joint Investigation Teams** will be organised by the Secretariat on this topic. Directed at all 47 CoE member States, the content of this event is still being developed by the Secretariat and will be presented to the CDPC plenary meeting in December 2016 for information. This conference will be organised with the collaboration of EUROJUST.

The provisional dates of this event are 22-23 March 2017 or 28-29 March 2017 (dates TBC with the hosting authority); the provisional venue for this event is the University of the Basque Country.

- Component 3: Witness protection and incentives for co-operation

a) Review Recommendation Rec (2005)9 on the protection of witnesses and collaborators (Component 3, Action = B1)

Description

This review should allow an assessment to be made concerning the extent to which the policy/programme relating to the protection of relatives and other people close to the witness is adequately drafted and implemented in practice. Particular attention should be made to the trafficking in human beings and the smuggling of migrants and witnesses in cases of threats from criminal organisations.

Action

The Bureau of the CDPC decided :

- to present for discussion at the forthcoming Plenary meeting of the CDPC in November 2016 a document containing both the main elements for reviewing the Recommendation Rec (2005)9 on the protection of witnesses and collaborators and the draft ToR of a possible drafting group with the objective of updating the recommendation. Against this background, if the final decision of the CDPC Plenary is to update the above-mentioned recommendation, a reduced drafting Group composed of experts, representatives from member States and the Secretariat should be set up.
- given that the other actions included in this Component entitled "Witness protection and incentives for co-operation activities" are inter-related with the updating of the recommendation, the other concrete actions should be implemented in parallel

Considering that this issue is addressed in Article 23 of the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters, the appointment of a member of the PC-OC to participate in this meeting is highly recommended.

Experts participating in Actions B2, B3 and B4 should also be involved in this activity.

b) Update the CoE book: "Protecting witnesses of serious crime - Training manual for law enforcement and judiciary" (Component 3, Action = B2)

Description

All out-of-date information contained within this book could be updated to provide an adequate tool for practitioners who need to decide on the protection of witnesses and organise, handle, or finance the programmes of witness protection.

Action

An **experienced expert** will be contacted to perform the task of updating this book. First of all, the Secretariat will contact the author involved in the drafting of the book and ask if he/she is available. This expert should also take part in Acton B1.

c) **Develop guidelines on protected witnesses' rights and duties (Component 3, Action = B3)**

Description

As a matter of fact, there is a general reluctance for witnesses and co-defendants to co-operate with the criminal justice system as witnesses given that they fear both for their own security and that of their relatives. When entering into a witness protection programme, witnesses should know what their rights and guarantees are. On the other hand, co-defendants need to commit to and respect their obligations. The needs of these two types of witnesses are to be addressed separately.

Action

Experienced experts will be contacted to perform the task of developing guidelines. These experts should also take part in Acton B1.

d) **Research study on the effective use of witness protection programmes (Component 3, Action = B4)**

Description

An analysis should be made concerning the legal possibility in both domestic and international law for the relocation of protected witnesses to foreign countries and the use of pre-trial testimonies as evidence. The use of video-conferences for hearing protected witnesses should also be considered.

Action

A group of experts should be set up to carry out the **research study** based on empirical data on the number of witness relocated to foreign countries and the problems encountered in the execution of such cross-border witness programmes.

A conference/round-table should be organised to present the results and raise awareness on the need for improvement and more international co-operation in this area.

IV. **Conclusion**

This document details a set of actions where the Secretariat will concentrate its efforts to the effective implementation of the Action Plan on TOC in 2017.

However, the opportunity for the Secretariat to begin with the implementation with other Action Plan activities remains open given its coordination with other relevant bodies, groups and institutions,

V. APPENDIX I

STE n°024	European Convention on Extradition
Additional Protocols thereto	
ETS No. 086	Additional Protocol to the European Convention on Extradition
ETS No. 098	Second Additional Protocol to the European Convention on Extradition
CETS No. 209	Third Additional Protocol to the European Convention on Extradition
CETS No. 212	Fourth Additional Protocol to the European Convention on Extradition
ETS No.030	European Convention on Mutual Assistance in Criminal Matters
Additional Protocols thereto	
ETS No. 099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
ETS No. 182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
ETS No. 141	Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime
ETS No.198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
ETS No.112	Convention on the Transfer of Sentenced Persons
Additional Protocol thereto	
ETS No. 167	Additional Protocol to the Convention on the Transfer of Sentenced Persons
Rec (2005)9	Recommendation on the protection of witnesses and collaborators