

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

70th Plenary Session

Strasbourg, 27 – 30 June 2016

Council of Europe
Main Building, Palais de l'Europe
Room 5

Annotated Agenda

1. Opening of the meeting

The CDPC is invited to take note of the opening remarks by the Director of Information Society and Action against Crime, Mr Jan Kleijssen, on the most recent developments occurred in the Council of Europe since the last CDPC Plenary meeting.

2. Adoption of the draft agenda

The CDPC shall adopt the agenda of the meeting.

3. Future activities and priorities of the CDPC for 2016-2017

The CDPC should take note of the information provided by the Secretary of the CDPC, Mr Carlo Chiaromonte, on the latest Committee of Ministers' decisions related to the CDPC and in particular that on 1 March the GR-J examined the documents submitted by the CDPC following its 69th meeting held in

Strasbourg on 1-4 December 2015 and that:

- delegations welcomed the work done and the documents submitted by the CDPC;
- as for the Guidelines for prison and probation services regarding radicalisation and violent extremism, the Legal Adviser of the Council of Europe explained that given the non-legally binding status of the draft, the imperative form (shall) is used incorrectly in a number of provisions. Six delegations took the floor and indicated their preference for not changing the terminology proposed by the CDPC, whereas one delegation expressed the opposite opinion. The text was approved as it had been presented;
- the terms of reference for a drafting Committee on Offences Relating to Cultural Property (PC-IBC) was adopted;
- concerning the Action Plan on TOC, a discussion on the financing of the Plan took place. Many delegations supported the Action Plan whereas one delegation (FR) raised doubts on its added value;
- concerning the "Model provision" one delegation (RUS) made some comments on the document and requested that the document was sent back to the CDPC.

The following day, at its 1249 meeting, the Committee of Ministers of the Council of Europe adopted the three documents mentioned above (the Guidelines, the terms of reference, the Action Plan).

The Committee is invited to have a discussion on which topics/activities (with the exception of those related to the implementation of the Action Plan on TOC, item 11) it should focus its work on over the next two years, how the work should be prioritised and how the work/tasks should be implemented. Delegations are also invited to present and discuss any possible new future activities the CDPC should deal with in its forthcoming work.

4. Review of Council of Europe legal instruments in criminal matters

With regard to the document "Review of the Council of Europe conventions within the direct responsibility of the CDPC" [CDPC (2016) 14Fin], there are two main differences between this new document and the document which was already examined by the CDPC in June and December last year: a) in the new document the conventions which were reviewed and assessed by the PC-OC have been included; and b) a summary of the replies/information received from other Council of Europe bodies responsible for the monitoring of some conventions (GRECO, TC-Y, Lanzarote Committee, Conference of the Parties to the CETS No. 198 (CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism)) has also been added.

The CDPC is requested to examine this revised and completed document [CDPC (2016) 14Fin], adopt it and instruct the Secretariat to transmit it to the Committee of Ministers, thus completing the exercise of reviewing all the conventions in criminal matters.

Moreover, following the CDPC's Bureau decision in this regard, the CDPC should take note that the Secretariat will appoint a consultant and request her/him to prepare a paper containing elements on a possible update of the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) - taking also into account the existing documents prepare on the issue of compensation of victims - which will be presented as the working document for the discussions at the CDPC Plenary meeting in December 2016.

5. Smuggling of migrants

At the Plenary meeting of the CDPC in June 2015, the Maltese delegation presented its proposal entitled "Criminality and Migration" for a new activity concerning the issue of smuggling of migrants. This proposal was strongly supported by other delegations. On the whole, the Committee welcomed the proposal.

The CDPC decided "to examine the proposal by Malta to include in future CDPC activities the question of the criminal law aspect related to the issue of smuggling of migrants and to add to the terms of reference of the CDPC an activity on this matter". This resulted in the inclusion in its terms of reference

for 2016-2017 of a specific task: “studying where the CDPC can provide added value to a criminal law response to the phenomenon of organised smuggling of migrants”.

Following this decision, a group of experts was set up. It met four times together with the Chairman of the CDPC and its Secretary. They drafted a “Discussion Paper on criminality and migration” which was examined by the Bureau of the CDPC in October 2015. The Bureau decided that a questionnaire to all CDPC delegations focusing on the two aspects specifically linked to criminal law matters that were still not entirely covered in the draft Discussion Paper should be sent out: 1) the assessment of possibilities for improving international co-operation in criminal matters between the countries involved and 2) a general analysis of relevant national legislation and its concrete application”. On 16 October, the questionnaire was sent and 27 replies have been received.

At its last Plenary meeting in December 2015, the CDPC decided:

- *on the basis of the presentations made by the two experts, the information provided by the Chairman and the Secretary of the CDPC, and the relevant documents (“Discussion Paper on criminality and migration”, “Replies to the questionnaire”, “Preliminary summary of the replies to the questionnaire concerning smuggling of migrants”), to hold a debate on this item;*
- *to invite those delegations which did not provide their replies to the questionnaire (more than half of the member States) to do so at their earliest convenience;*
- *to invite the experts to complete the “Discussion Paper on criminality and migration” by including a number of measures and concrete proposals for action to ensure a proper follow-up to the question of “Smuggling of migrants” within the CDPC and to submit it to the Bureau and afterwards to the forthcoming CDPC plenary meeting;”.*

As follow-up to these decisions, the group of experts prepared two documents. The first document (“National laws relating to smuggling of migrants in Council of Europe member States” [CDPC (2016)3]) focuses on internal legislation and international co-operation (this new document completes and replaces the previous “Discussion Paper on criminality and migration”). The second document (“Preventing and suppressing the smuggling of migrants in Council of Europe member States – A way forward” [CDPC (2016)4]) presents a certain number of possible actions that the Council of Europe could implement in the future, including the drafting of a legal instrument.

At its last meeting (April 2016), the Bureau discussed at length the issue of smuggling of migrants as it is reported in the minutes of its meeting report (see extract of the CDPC Bureau list of decisions).

At their 126th Session (ministerial conference - Sofia, 18 May 2016), the Committee of Ministers adopted a decision where they “welcomed the preparation before the end of the year of adequate measures to provide member States with concrete tools to prevent and fight people smuggling;”.

The CDPC is invited to hold a discussion on this item on the basis of the new developments which have occurred since the last Plenary in December 2015. It is requested to examine the two new documents (“National laws relating to smuggling of migrants in Council of Europe member States” [CDPC (2016)3] and “Preventing and suppressing the smuggling of migrants in Council of Europe member States – A way forward” [CDPC (2016) 4Rev]) and in particular the proposed actions to be undertaken contained in the latter document.

The CDPC should notably take a decision on the Bureau’s proposal “to consider that rather than drafting a new convention on the subject matter, a recommendation could be a better solution to achieve efficient results in the fight against the smuggling of migrants as a recommendation could urge member States to implement the already existing provisions/texts, in particular the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air by effectively criminalising, investigating and prosecuting acts of smuggling of migrants.”.

6. Council of Europe Convention on Offences relating to Cultural Property

On 2 March 2016 the Committee of Ministers of the Council of Europe adopted the terms of reference of the Committee on Offences Relating to Cultural Property (PC-IBC). This Committee will meet over the

next two years (2016-2017) to draft the new convention that should be ready by the end of 2017 and will replace the 1985 European convention on offences relating to cultural property (known as the “Delphi Convention”).

The new Convention could aim inter alia to criminalize the deliberate destruction and the illicit trafficking of cultural property and foster co-operation between states and, as indicated in the terms of reference of the drafting committee, it could deal with the following issues:

- Definition of cultural property;
- Criminalisation of behaviour which has the potential to harm cultural property;
- Criminalisation of illicit destruction of cultural property;
- Criminalisation of trafficking in cultural property;
- Prevention of offenses relating to cultural property;
- International co-operation.

The Committee on Offences relating to cultural property (PC-IBC) held its 1st meeting in Strasbourg on 31 May to 1 June 2016. It elected unanimously Mr Hans-Holger HERRNFELD as its Chair. The aim of this meeting was to lay down the ground work for the scope of the future convention. In preparation of that meeting, a document (“Discussion Paper on elements to be included in the draft Council of Europe Convention on offences relating to cultural property”) had been drafted which contains elements that will form the basis of the future convention in particular in relation to the issues of “Purpose of the Convention”, “Scope and use of terms” and “Substantive criminal law”. This document was used as the main working document at the first plenary meeting of the PC-IBC.

The CDPC is invited to take note of the information provided by its Chair on the outcome of the 1st meeting of the PC-IBC, examine the document “Summary report and conclusions by the Chair” [PC-IBC (2016) 03] and make any comments it considers appropriate on this preliminary work already carried out.

7. Council for Penological Co-operation (PC-CP) – Exchange of views with the Chair, Mr Vivian Geiran

The CDPC is invited to have an exchange of views with Mr Vivian Geiran, Chair of the PC-CP and to take note of the last meeting reports of the Working Group.

The CDPC is further invited to consider the text of a draft Committee of Ministers Recommendation on the European Rules on community sanctions and measures [PC-CP (2015)4] which is intended to replace Recommendations (92)16 and (2000)22. The PC-CP Working Group worked on this draft at its meetings in September 2015 and in January and May 2016. The text was also presented at the 21st Council of Europe Conference of Directors of Prison and Probation Services and it is expected to be finalised by the end of 2016 for approval by the CDPC at its plenary meeting in December 2016.

The CDPC is invited to examine the draft Recommendation on the European Rules on community sanctions and measures [PC-CP (2015)4] and make any proposals for amendments and additions to the draft text it considers necessary.

a. Radicalisation in Prison

The CDPC is invited to take note that the PC-CP, in conformity with its terms of reference for 2016-2017, in January 2016 started working on a Handbook for prison and probation services regarding radicalisation. The Handbook will build upon and will further develop the set of standards and principles contained in the “Guidelines for prison and probation services regarding radicalization” that were adopted by the Committee of Ministers in March. It will contain practical advice, indicators of radicalisation, examples of possible tools and methods for preventing and dealing with radicalisation leading to violent extremism and some examples of good practices. The Handbook is expected to be finalised next year by the PC-CP in view of the adoption by the CDPC at its plenary meeting in June 2017.

The CDPC is invited to examine the draft Handbook for prison and probation services regarding radicalization [PC-CP (2016) 2] and to make any remarks or proposals for change in relation to it as necessary.

b. 21st Council of Europe Conference of Directors of Prison and Probation Services, 14-15 June 2016, Zaandam, The Netherlands

The CDPC is invited to take note the information provided by the Chair of the PC-CP on the main outcome of the Conference.

8. Prison overcrowding

The CDPC is invited to take note of the information provided by Mr Jesper Hjortenber, General rapporteur within the drafting group who prepared the draft White paper on prison overcrowding [PC-CP (2015) 6 rev 6], and have an exchange of views with him and the Secretariat on this important document.

The CDPC is requested to examine the draft White paper on prison overcrowding make any suggestions/comments/proposals for change regarding the draft text as necessary and regarding the follow-up to be given to the White paper once adopted. The CDPC is requested to eventually approve the draft White paper on prison overcrowding and instruct the Secretariat to submit it to the Committee of Ministers of the Council of Europe for final adoption.

9. Document/guidelines containing “Model provisions” defining a certain number of rules to be duly considered by expert committees in their drafting work as the basis/model to be followed during future negotiations of any possible convention on a criminal law matter

The CDPC is invited to take note of the information provided by the Secretariat on the developments related to “Model provisions”. At its meeting of 1 March 2016, the GR-J “agreed to refer the document on model provisions back to the CDPC together with the comments of one delegation, with a view to clarifying the CDPC’s position”.

The CDPC is requested to examine the comments made by one delegation on the document “Model provisions” [CDPC (2014) 17rev5]. These comments were sent by e-mail to the CDPC members on 14 June 2016.

10. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC) – Exchange of views with the Chair, Mrs Astrid Offner

The CDPC is invited to have an exchange of views with Mrs Astrid Offner, Chair of the PC-OC and to take note of the list of decisions of the 21st meeting of the PC-OC Mod [PC-OC Mod (2016)04], held on 23-25 February 2016, and of the 70th meeting of the PC-OC [PC-OC (2016)03] held on 2-4 May 2016. Attention is drawn to:

- 1) the template for country information on national procedures as regards the application of ETS No. 141 [PC-OC Mod (2016)01rev2];
- 2) 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 [PC-OC Mod(2015)06 rev 4];
- 3) the proposals to amend the Convention on the Transfer of Sentenced Persons in a Second Additional Protocol [PC-OC Mod (2016)03rev];
- 4) the consideration of the E-transfer proposal by Israel, to develop an electronic tool to facilitate transfer procedures [PC-OC Mod (2014) 04];

The CDPC is invited to examine the issues in points 1) to 4) above and make any comments it considers appropriate on the relevant documents.

The CDPC is also requested to examine the text of the Draft protocol to amend the Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 167) and its draft explanatory report [PC-OC Mod (2015) 01rev7 and PC-OC(2015)02rev3], to approve both documents and instruct the Secretariat to submit the Draft protocol to amend the Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 167) to the Committee of Ministers for final adoption.

11. Activities related to transnational organised crime: Action Plan

Following the decisions of the last CDPC Plenary in December 2015 (to “instruct the Secretariat to transmit the Action Plan to the Committee of Ministers for its adoption”, “set up a sub-group responsible for the overseeing of the Action Plan’s progress” and “appoint Ms Fabienne Schaller (France) as the coordinator of this subgroup”), the Action Plan on TOC was adopted by the Committee of Ministers on 2 March 2016.

The CDPC is invited to:

- take note the information provided on the working methodology to be followed for the implementation of the Action Plan, as also described in document CDPC (2016) 5rev;
- examine the document prepared by the Secretariat [CDPC (2016) 8] which contains a first preliminary work plan of activities to be implemented in 2016;
- make any comments/proposals on how the Action Plan should be implemented, starting in 2016, notably to be addressed to the Working Group set up to ensure the overall implementation of the Action Plan.

12. Terrorism

The CDPC is invited to take note of the information provided by the Secretariat on the continuing work by the CODEXTER on counter-terrorism matters and the list of decisions taken by CODEXTER at its last meeting [CODEXTER (2016) 13].

The CDPC is invited to consider the draft text “Updating of Recommendation Rec (2005) 10” of the Committee of Ministers to member States on special investigation techniques in relation to serious crimes including acts of terrorism as prepared by a drafting group of experts set up last year. Two members of the CDPC were appointed to participate in the drafting work of this group but could not attend the meetings for different reasons. The CDPC is invited to have an exchange of view with the Secretariat on the work carried out in this context and make any preliminary comments on the draft text of the updating of the Recommendation.

Since the work of the drafting group of experts was finalised only few days before the CDPC plenary meeting, the CDPC should decide to instruct its Bureau to prepare an opinion on the draft text “Updating of Recommendation Rec (2005) 10” that would be afterwards submitted to the CDPC delegations for their approval following a written procedure. This would allow the CODEXTER to examine at its next plenary meeting (16-17 November 2016) the draft text of the updating of the Recommendation - together with the CDPC opinion on it - in view of its approval.

13. Information provided by the Secretariat

The CDPC is invited to take note of the information provided by the Secretariat on sub-items a. to d. below.

- a. **Medicrime**
- b. **Trafficking in human organs**
- c. **Dangerous Offenders**

d. Cybercrime

14. Any other business

Since Mr Freddy Gazan (Belgium), who was elected as CDPC Gender Equality Rapporteur in December 2014, will be dealing with new tasks and will not be able to follow the CDPC file for at least one year, the CDPC should consider appointing a new CDPC Gender Equality Rapporteur. Any member of the Committee who is interested in this function is invited to inform the Secretariat before or during the Plenary.

15. Dates of the next meetings

The CDPC should decide that its next plenary meeting should take place from 29 November to 2 December 2016.