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PC-OC (2017)04

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

72nd meeting
Strasbourg, 22 –24 May 2017
AGORA, Room G 03

Draft Annotated Agenda

1.	Opening of the meeting and adoption of the agenda Document: PC-OC (2017)OJ1
2.	Points for information The PC-OC is invited to 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 71 st and 72nd meeting of the CDPC [CDPC(2016)06 and CDPC(2017)08] List of decisions of the Bureau of the CDPC [CDPC-BU (2017)02]
b.	Co-operation with the Pompidou Group Ms Gabriela Bláhová (Czech Republic) will inform the PC-OC on the co-operation with the Pompidou Group. She participated on behalf of the PC-OC in a meeting organised on 11-12 April 2017 in Bucharest in view of the preparation of a handbook on controlled delivery.
c.	Bilateral Treaties Experts are invited to inform the PC-OC on the negotiation and conclusion of bilateral treaties of relevance to the Committee's work.
d.	Presentation by the International Criminal Tribunal for the former Yugoslavia (UN ICTY) Mr. Kevin C. Hughes, Legal Advisor to the Prosecutor of the UN-ICTY, will make a presentation on regional judicial cooperation in war crimes matters in the countries of the former Yugoslavia.

e.	<p>Presentation by the European Organisation of Prison and Correctional Services (EuroPris)</p> <p>At the request of the PC-OC Mod, Mr Fraser Bryans, representative of EuroPris, will inform the Committee about the work of this organisation and the information on their website concerning penitentiary institutions in European countries.</p>
f.	<p>Recent signatures and ratifications</p>
g.	<p>Other</p>
3.	<p>Presentation and content of the PC-OC website</p>
a.	<p>Country information and contact persons</p> <p>The PC-OC is invited to take note of the latest updates of country information and contact details.</p> <p>Document : PC-OC(2012)09 Rev.17 Bil</p>
b.	<p>Update of the index and summaries of relevant case law of the ECtHR</p> <p>The PC-OC is invited to take note of the latest update and improvement of the index and summaries of the case law of the ECtHR by the PC-OC Mod as well as of the fact that Mr Miroslav Kubicek (Czech Republic) has accepted to ensure the future update. Experts are furthermore invited to mention any other relevant case to be included.</p> <p>Document: PC-OC(2011)21rev.10 (on the PC-OC homepage)</p>
c.	<p>Consideration of the possibility to publish global and regional conventions on international co-operation on the website of the PC-OC</p> <p>The PC-OC Mod considered at its 23rd meeting the publication of such conventions on the website of the PCOC, noting that the publication of such conventions would be interesting both from the operational perspective as well as for the purpose of finding sources of inspiration for the development of bilateral and multilateral treaties.</p> <p>The PC-OC Mod decided to propose to the plenary that, departing from the existing information on the website, further links could be introduced to treaties developed by other international organisations such as ASEAN or COMJIB.</p> <p>The PC-OC is invited to consider the possible publication of global and regional conventions, taking into account the proposal by the PC-OC Mod.</p>
4.	<p>Implementation of the Action Plan on Combating Transnational Organised Crime (TOC)</p>
a.	<p>Consideration of actions proposed and identification of priority actions for the PC-OC</p> <p>During its last meeting, The PC-OC Mod considered in detail the actions proposed in Doc PC-OC (2016)05 and presented by Mr Oscar Alarcon Jimenez, member of the Secretariat in charge of following the implementation of the Action Plan on TOC. Reference is made to the list of decisions on this agenda item.</p> <p>Particular attention is drawn to the implementation of Action A4, Key area 1, where the PC-OC Mod agreed that some further information would be required.</p> <p><i>“Action A4: establish a mechanism to address judicial cooperation problems</i></p> <p><i>The PC-OC undertakes an important role in the monitoring of the relevant conventions and also the practical problems encountered in their implementation. Practitioners consider that when they face a non-co-operative State, the single judge or prosecutor is not able to trigger any mechanism to remind the requested authority of their obligations in complying with their international commitments. Member States are not always in the position to follow the diplomatic channel to help the problems detected in the international co-operation be overcome, and if they do, the response may also take much time.</i></p> <p><i>Increase judicial co-operation and reduce issues which arise with non-co-operative states.</i></p>

	<p>1. <i>Establish a rule whereby judicial authorities send a confirmation of receipt of requests.</i> 2. <i>Establish the duty to consult between authorities involved in the international judicial cooperation process.</i> <i>Modifying the relevant conventions accordingly should be considered.”</i></p> <p>In order to enable the PC-OC to address the issues mentioned under this Action, the PC-OC Mod invited delegations to answer the following questions:</p> <p>1. When making a request for mutual assistance relating to TOC, does your country a. experience problems due to the lack of a confirmation of receipt of your request? Does this happen rarely or frequently? b. meet a lack of willingness on the part of the requested authorities to consult when your request remains unexecuted? Does this happen rarely or frequently?</p> <p>2. Could you think of any solution to address the problems mentioned under Action A4?</p> <p>The PC-OC is invited to consider the actions proposed, taking into account the findings of the PC-OC Mod and the replies received to the questions as regards action A4 mentioned above, and to decide on the follow up to be given.</p> <p><u>Documents:</u> Action Plan on TOC: Possible Activities to be implemented by the PC-OC [PC-OC(2016)05]; List of decisions of the 23rd meeting of the PC-OC Mod [PC-OC Mod (2017)03] Replies to the questions asked by the PC-OC Mod as regards Action A4, Key area 1 [.PC-OC(2017)02]</p> <p><u>Background documents:</u> Action Plan on Transnational organised crime [CDPC(2015)17] Terms of reference 2016-2017 of the PC-OC</p>
b.	<p>Discussion on ways to identify reservations to Council of Europe treaties creating obstacles to the fight against TOC and to promote their update or withdrawal where possible</p> <p>During its 23rd meeting, the PC-OC Mod examined the catalogue and overview of reservations to Council of Europe treaties within the remit of the PC-OC and of relevance to the fight against TOC. Experts agreed that it would be important to identify those reservations and declarations that create obstacles to efficient co-operation as regards the fight against TOC. They proposed the creation of several groups of 2 or 3 persons within the PC-OC to identify such reservations or declarations and contact the countries concerned to see whether any update or withdrawal of these reservations would be possible. The PC-OC Mod decided to submit this proposal to the plenary for consideration.</p> <p>The PC-OC is invited to consider this issue and to decide on the follow up, taking into account the proposal of the PC-OC Mod.</p> <p><u>Documents:</u> Catalogue of reservations PC-OC Mod(2016)05 rev.3 Overview of reservations PC-OC Mod (2016)05 rev. 3 Add List of decisions of the 23rd meeting of the PC-OC Mod [PC-OC Mod (2017)03]</p>
c.	<p>Examination of proposals to promote the interconnection of existing judicial networks</p> <p>At its last meeting, the PC-OC Mod had an exchange of views with Ms Esther George (Solicitor, former Crown Prosecutor UK) on her proposals to interconnect the judicial networks identified in her preliminary reflexion paper [Doc PC-OC Mod (2016)06]. Experts shared the opinion that the most realistic options would be to publish and share the catalogue of networks identified and/or to create an online platform for the sharing of information and knowledge.</p> <p>The PC-OC Mod, recalling the suggestion by the PC-OC to organise a meeting between representatives of networks to discuss options for interconnection and/or co-operation of networks and aware of the budgetary limitations regarding the organisation of such a meeting, decided to: - invite the members of the PC-OC Mod to inform the Secretariat of the most relevant networks as regards the fight against TOC to be invited, taking into account geographical distribution;</p>

	<p>- ask Ms George to adapt her proposals according to the discussions held; - share the proposal with the plenary.</p> <p><u>The PC-OC is invited to</u> consider the document mentioned below and make proposals for follow up taking into account the findings of the PC-OC Mod.</p> <p><u>Document</u> Overview of judicial networks and proposals for their interconnection [CDPC (2017)01rev]</p>
d.	<p>Discussion with the Secretariat of the COP198 on the implementation of the Action Plan as regards search, seizure and confiscation of proceeds of crime and asset sharing</p> <p><u>The PC-OC is invited to</u> have a discussion with the Secretariat of the Conference of the Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (CETS No.198) on the possibilities for co-operation for the implementation of the Action Plan as regards search, seizure and confiscation of proceeds of crime and asset sharing.</p>
5.	<p>European Convention on Mutual Assistance in Criminal Matters</p>
a.	<p>Adoption of a questionnaire on the application of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters</p> <p>As a follow up to the Special Session on the Second Additional Protocol, held at the 71st meeting of the PC-OC, the Committee had decided to ask the PC-OC Mod to develop a draft questionnaire on the application of this Protocol.</p> <p><u>The PC-OC is invited to</u> consider the draft proposed by the PC-OC Mod in view of its adoption.</p> <p><u>Document:</u> Draft questionnaire on the application of the Second Additional Protocol [PC-OC Mod(2017) 01rev]</p> <p><u>Background document:</u> Special Session on the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters [PC-OC(2016)07]</p>
b.	<p>Discussion on MLA for the purpose of proceedings against legal entities</p> <p>Further to the proposal by the PC-OC Mod, <u>the PC-OC is invited to</u> discuss the paper by Mr Zimin (Russian Federation) related to MLA in criminal, civil and administrative matters related to criminal offences, the liability of legal entities, non-conviction based confiscation as well as the paper by Mr Eugenio Selvaggi (Italy) on Mutual legal assistance in criminal matters and liability of legal entities and to make proposals for follow-up.</p> <p>It is recalled that the discussion of the paper by Mr Zimin had been on the agenda of the 68th meeting of the PC-OC but had been postponed at his request.</p> <p><u>Documents:</u> Legal assistance in criminal, administrative and civil proceedings related to the liability of legal persons and non-conviction based confiscation, Discussion paper.by Mr Vladimir Zimin (Russian Federation) [PC-OC Mod(2014)08] Mutual legal assistance in criminal matters and liability of legal entities, by Mr Eugenio Selvaggi (Italy) [PC-OC (2017)01]</p>
c.	<p>Other</p>
6.	<p>Convention on the Transfer of Sentenced Persons</p>
a.	<p>Discussion on possible amendments to the Convention (ETS n° 112) in a Second Additional Protocol</p> <p>Further to the discussions held in the last plenary, the PC-OC Mod reconsidered the proposals contained</p>

	<p>in Doc PC-OC Mod(2016)03rev and concluded that, for the moment, no consensus could be found, neither for a proposal to modify the Convention as regards translation requirements, nor, taking into account the global nature of this instrument, for a shifting of the costs of the transfer from the administering state to the sentencing state.</p> <p>As regards translation requirements, the PC-OC Mod proposed that efforts should be made to change the practice in this regard by developing a model request form and guidelines so as to streamline and accelerate transfer procedures and avoid unnecessary translation and costs. At a later stage, such a model request form and guidelines could be integrated into a recommendation by the Committee of Ministers, also covering other concerns identified.</p> <p><u>The PC-OC is invited to</u> further discuss possible amendments to the Convention in a Second Additional Protocol, taking into account the findings and proposals made by the PC-OC Mod.</p> <p><u>Documents:</u> Proposals to amend Article 17 of the Convention: [PC-OC Mod (2016)03rev]</p> <p><u>Background documents:</u> Special session on the Transfer of Sentenced Persons [PC-OC(2013)15 Bil] 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(2013)10ADDrev2]</p>
b.	<p>Examination of the replies received to the questionnaire concerning the possible establishment of an E-transfer tool and proposals for follow-up</p> <p>The PC-OC Mod considered the 18 replies received to the questionnaire as reflected in Doc PC-OC Mod (2017)2, noting that this document will be updated when further replies have been received. The PC-OC Mod concluded that many States have concerns related to the legal basis of an e-transfer tool as well as with data protection requirements. In addition, since too few states seem to have facilities allowing access of prisoners to the Internet, consideration should be given to starting the development of an e-transfer tool between central authorities.</p> <p>The PC-OC Mod decided to:</p> <ul style="list-style-type: none"> - instruct the Secretariat to ask for legal advice on the legal basis required to develop an E-transfer tool within the Council of Europe allowing parties to the Convention to use it for the purpose of the transfer procedures contained in it, as well as on data protection requirements; - submit its proposal to the plenary for further discussion; <p><u>The PC-OC is invited to</u> consider the replies received to the questionnaire as well as the legal opinion and to decide on possible future steps.</p> <p><u>Documents:</u> Replies to the questionnaire on an e-transfer tool [PC-OC Mod (2017) 02rev] Legal opinion on the establishment of an e-transfer tool [Doc PC-OC(2017)03]</p> <p><u>Background document:</u> Proposal by Israel to establish an e-transfer tool [Doc PC-OC Mod (2014)04]</p>
c.	Other
7.	European Convention on Extradition
a.	<p>Discussion on Measures of restriction in extradition cases: the use of alternatives to detention</p> <p>The PC-OC Mod further addressed, in the presence of Ms Ilina Taneva, Secretary to the PC-CP, the issue of alternatives to detention pending extradition, taking into account the replies to a question posed by Mr Vladimir Zimin (Russian Federation). The increased use of alternatives to detention, including pending extradition, was noted.</p> <p>Given the interest in sharing information on the use of alternatives to detention, the PC-OC Mod decided to invite experts who have not yet replied to Mr Zimin's question to do so by 30 April 2017, also indicating</p>

	<p>the maximum duration of detention pending extradition in their national legislation.</p> <p><u>The PC-OC is invited to</u> discuss the issues raised by the use of alternatives to detention pending extradition, taking into account the replies received in this regard, and to decide on the follow up.</p> <p><u>Document:</u> Measures of restriction in extradition cases, replies to a question asked by Mr Vladimir Zimin.[PC-OC(2015)15rev2]</p>
b.	Other
8.	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime
a.	<p>Presentation by a representative from Kazakhstan on national procedures for the application of the Convention</p> <p><u>The PC-OC is invited to</u> take note of the presentation and have an exchange of views with the representative from Kazakhstan</p>
b.	Other
9.	<p>Cybercrime: Discussion with a representative from the T-CY on the follow up to the assessment report on MLA and the report on evidence in the cloud</p> <p>At its last meeting, the PC-OC Mod heard an interesting presentation by Mr Alexander Seger, Secretary to the T-CY, on the above report. Particular attention was drawn to the adoption by the T-CY, on 28 February 2017, of a Guidance Note on Article 18 of the Budapest Convention, concerning domestic production orders for subscriber information. The PC-OC Mod took note that the T-CY would examine the terms of reference for the Committee in order to elaborate an additional Protocol to the Budapest Convention at its next plenary meeting.</p> <p>The PC-OC Mod underlined that close co-operation between the T-CY and the PC-OC will continue to be necessary in particular on the issue of electronic evidence.</p> <p><u>The PC-OC is invited to</u> have an exchange of views with the representative of the T-CY on the follow up given to the assessment report on MLA, the Report on electronic evidence in the cloud and the Guidance note on production orders for subscriber information.</p> <p><u>Documents:</u> Criminal justice access to electronic evidence in the cloud: recommendations for consideration by the T-CY [T-CY(2016)05] T-CY Guidance Note #10, Production orders for subscriber information [T-CY(2015)16]</p>
10.	<p>Election of 1 member of the PC-OC Mod and 1 or 2 substitutes</p> <p>Further to the resignation of Ms Malgorzata Skoczelas(Poland) as a member of the PC-OC Mod, the PC-OC is <u>invited to</u> elect one new member of the PC-OC Mod and one or two substitutes. It is recalled that Ms Céline Guillet (France) was elected as a substitute member during the 70th meeting of the PC-OC.</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>
11.	<p>Any other business</p> <p><u>The PC-OC is invited to</u> discuss its draft terms of reference for 2018-2019.</p> <p><u>Document:</u> Draft terms of reference PC-OC 2018-2019 [PC-OC(2017)05]</p>