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PC-OC (2017)07

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

73rd meeting
Strasbourg, 20 –22 November 2017
Palais de l'Europe, Room 10

Draft Annotated Agenda

NOTE:

On 20 November at 1pm a group picture of the PC-OC will be taken in the Palais de l'Europe.
 On 22 November at 9.30 the ceremony for the opening for signature of the amending Protocol to the Additional Protocol to the Convention on the Transfer of Sentenced Persons will take place in front of the Hemicycle, Palais de l'Europe, followed by a coffee in the Bar of the Parliamentary Assembly.

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 Background documents: List of decisions of the 72nd meeting of the CDPC [CDPC(2017)08] List of decisions of the Bureau of the CDPC [CDPC-BU (2017)04]
b.	Co-operation with the HELP Programme The PC-OC will be informed about the finalisation of the online course on international co-operation in criminal matters (ICCM) with a special emphasis on Human Rights. The course was developed with the co-operation of experts recommended by the PC-OC from Poland, Portugal, Romania and the Russian Federation and of the European Judicial Training Network. The Chairman of the PC-OC, Mr Erik Verbert, assisted the HELP Secretariat in its finalisation.
c.	Co-operation with the Pompidou Group on controlled deliveries

	Ms Gabriela Bláhová (Czech Republic) will inform the PC-OC on the co-operation with the Pompidou Group in view of the preparation of a handbook on controlled delivery.
d.	Activities of the Cybercrime Committee (T-CY) The PC-OC will receive information about the latest activities of the T-CY.
e.	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.
f.	Recent signatures and ratifications
g.	Other
3.	Presentation and content of the PC-OC website
a.	Country information and contact persons <u>The PC-OC is invited to take note of the latest updates of country information and contact details.</u> Document : PC-OC(2012)09 Rev.18 Bil
b.	Update of the index and summaries of relevant case law of the ECtHR <u>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 as proposed by Mr Miroslav Kubicek (Czech Republic) and approved by the PC-OC Mod. Experts are furthermore invited to mention any other relevant case to be included.</u> Document: PC-OC(2011)21rev.11 (on the PC-OC homepage)
4.	Implementation of the Action Plan on Combating Transnational Organised Crime (TOC) On 20 November at 4pm Mr Brano Bohacik, Chairman of the Conference of the Parties to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198, COP 198), will have an exchange of views with the PC-OC on common issues related to the implementation of the Action Plan. <u>Background document:</u> Action Plan on Transnational organised crime [CDPC(2015)17]
a.	Presentation of the work of the PC-OC working groups to identify declarations or reservations to Council of Europe treaties within the remit of the PC-OC that are out-dated or create obstacles for co-operation in the fight against TOC. The co-ordinators of the working groups A, B and C will inform the PC-OC on the progress made in their work. Consideration of the draft letter to PC-OC experts to invite their authorities to consider updating or withdrawing such declarations or reservations. At its 24th meeting, the PC-OC Mod discussed the working methods to adopt for this review exercise and considered that, with the help of the co-ordinators of each group, the working groups should aim at producing, in respect of each State Party, an agreed list of reservations and/ or declarations identified as potentially outdated and/or creating obstacles for efficient co-operation in the treaty concerned. These lists would be appended to a letter, addressed to the PC-OC expert of each country, inviting the expert concerned to ask the appropriate authority of the Party concerned to reconsider the reservations and declarations made in respect to the treaties in question, in view of their possible update or withdrawal. The letter would explain the background of the review exercise and draw particular attention to the list identified by the working groups. The letters would be signed by the Chair of the PC-OC and, in respect of the country of origin of the Chair, by the vice-Chair.

	<p>The PC-OC Mod decided to ask the Secretariat to prepare a draft letter for consideration by the plenary;</p> <p>The PC-OC is <u>invited to</u> consider and approve the draft letter as contained in Doc PC-OC (2017)X</p>
b.	<p>Consideration of the proposal to prepare a binding instrument as regards international co-operation on the management, the recovery and sharing of assets [in consultation with the COP 198]</p> <p>The PC-OC Mod considered at its last meeting the 11 contributions to the compilation of national legislation, model agreements and practice related to asset sharing as well as the model agreements by the UN and the G8 [Doc PC-OC Mod(2017)08] and agreed that more contributions would be required to allow an assessment of the situation.</p> <p>The experts also had an exchange of views with Mr Gary Balch, Deputy Chief Crown Prosecutor in the UK and representative of the CARIN Network. He indicated that, in his experience, asset sharing was a useful incentive to promote international co-operation for asset recovery since such forms of co-operation were demanding as regards resources. Costs attached to the management of recovered assets needed to be deducted from the asset sharing agreement and dealt with separately. The same applies to proceeds of embezzlement and stolen objects which should be returned to the victim if the victim can be identified. He highlighted that most asset sharing agreements concerned small amounts and that there was a risk in over-engineering model agreements which should preferably be as simple as possible. He furthermore indicated that the authorities involved in asset-sharing agreements were usually different from those involved in MLA requests and, referring to the list of national confiscation regimes published on the CARIN website, suggested that it could be useful to establish a list of these authorities in each Council of Europe member State.</p> <p>The PC-OC Mod discussed the elements advanced by Mr Balch and agreed that while the issue of asset-sharing needed further consideration, international co-operation for recovery itself was still lacking a common legal basis to address important issues such as non-conviction based confiscation, management of assets, return of property to victims and other questions that are not, or not sufficiently, addressed by existing Council of Europe instruments. It concluded that, given the importance of asset recovery, in particular for the fight against transnational organised crime, it would be worthwhile considering the possible development of a new binding instrument regulating these issues, either as an additional protocol to an existing treaty or as a convention.</p> <p>The PC-OC Mod decided to:</p> <ul style="list-style-type: none"> - invite the plenary to consider, in consultation with the COP 198, the possibility of developing a binding instrument addressing international co-operation as regards the management, the recovery and sharing of assets; - invite Mr Vladimir Zimin to produce a paper listing possible issues which such an instrument could address <p>The PC-OC is <u>invited to</u> consider, in consultation with the Secretariat to the COP 198, the possibility to develop a binding instrument on international co-operation as regards the management, the recovery and sharing of assets, taking into account the discussion paper by Mr Zimin, as well as the outcome of the survey on Legislation, model agreement and practice in asset sharing and to decide on the follow up.</p>
c.	<p>Preparation of the meeting to promote the interconnection of existing judicial networks</p> <p>The Secretariat will inform the Committee on the preparation of this meeting. During its last meeting, the PC-OC Mod discussed and approved the proposal by the Secretariat to prepare this meeting by sending out a short letter and questionnaire to the secretariats of the selected networks. The PC-OC Mod approved the letter and questionnaire as contained in Doc PC-OC Mod (2017)07rev.</p> <p>The PC-OC is <u>invited to</u> take note of this information.</p> <p><u>Documents</u> Overview of judicial networks and proposals for their interconnection [CDPC (2017)01rev] Letter to be sent to the secretariats of the networks [PC-OC Mod (2017)07rev]</p>

d.	Other
5.	European Convention on Mutual Assistance in Criminal Matters
a.	<p>Examination of the replies to the questionnaire on the application of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters (Follow up to the Special Session held at the 71st meeting of the PC-OC) and proposals for follow up</p> <p>The PC-OC Mod examined at its last meeting the 21 replies received and agreed that more replies would be needed to enable an assessment of the implementation of this instrument.</p> <p>The PC-OC Mod recalled that this Protocol, by broadening the range of situations in which mutual assistance may be requested and by making the provision of assistance easier, quicker and more flexible, is of particular relevance to an efficient co-operation in the fight against transnational organised crime. Considering that a wider ratification of the Protocol would contribute to making MLA more efficient, it noted with satisfaction that Austria is planning to ratify the Protocol</p> <p>As regards the implementation of the Protocol by the Parties who replied, the PC-OC Mod noted that many countries made reservations to the provisions allowing for the use of special investigative techniques (Articles 17,18, and 19) while the experience in joint investigation teams (Article 20) is limited for a majority of Parties who answered .</p> <p>It also noted that some parties indicated that the possibility for direct communication between judicial authorities (Article 16) was hampered by the absence of an Atlas for non EU Parties to the Protocol and proposed that this issue that could be addressed in the future meeting on the interconnection of judicial networks.</p> <p>The PC-OC Mod agreed that further discussion on the holding of video conferences (Article 9) would be useful, and proposed to make an update of the inquiry conducted in 2012 on legal and technical aspects of the use of video conferences in mutual legal assistance in criminal matters information [PC-OC (2012)01 Rev2].</p> <p>The PC-OC is <u>invited</u> to consider the replies received to the questionnaire, to draw conclusions on the application of the Second Additional Protocol and to decide on the follow up to be given, taking into account the proposals by the PC-OC Mod</p> <p><u>Documents:</u> Replies to the questionnaire on the application of the Second Additional Protocol [PC-OC Mod(2017) 04rev] Summary of replies [PC-OC Mod(2017)04Add rev]</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 question raised in discussion papers submitted by Mr Vladimir Zimin (Russian Federation, Doc PC-OC Mod (2014)08) and Mr Eugenio Selvaggi (Italy, Doc PC-OC (2017)01) on whether the existing Council of Europe instruments on MLA provide a sufficient basis for the satisfactory execution of MLA requests for the purpose of proceedings against legal entities, the PC-OC had decided to invite experts to report on their experience in this regard so as to prepare a survey.</p> <p>The PC-OC Mod examined the 11 contributions received to the survey (Doc PC-OC Mod (2017) 05), which didn't indicate any problem or clarification with regard to the issues raised in the discussion papers and decided to:</p> <ul style="list-style-type: none"> - reiterate the invitation to experts to report on their experience as regards the execution of MLA requests for the purpose of proceedings against legal entities, both as requesting and requested state, taking into account the discussion papers mentioned above; - address the issue further once a sufficient number of contributions have been received.

	<p>The PC-OC is <u>invited</u> to further consider the questions raised in the discussion papers by Mr. Zimin and Mr Selvaggi, taking into account the contributions received to the survey.</p> <p><u>Documents:</u> Survey on MLA requests for the purpose of proceedings against legal entities [PC-OC Mod (2017)05 rev] 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 [PC-OC Mod(2014)08] Mutual legal assistance in criminal matters and liability of legal entities, Discussion paper by Mr Eugenio Selvaggi [PC-OC (2017)01]</p>
c.	Other
6.	Convention on the Transfer of Sentenced Persons
a.	<p>Discussion on possibilities to draft new guidelines on the transfer of sentenced persons, including an update of existing recommendations and proposals for follow up</p> <p>Further to the decision taken by the PC-OC not to update the Convention on the Transfer of Sentenced Persons, due to a lack of consensus, the PC-OC Mod considered the content of Recommendations R 88 (13) and R (92) 18 by the Committee of Ministers on the practical application of the Convention on the Transfer of Sentenced Persons as well as Recommendation R(84) 11 concerning information about this Convention.</p> <p>The PC-OC Mod considered two options: either to draft a new recommendation to update and complement the existing ones, or to draft a comprehensive recommendation to replace them. In any case, the recommendation would also cover the practical application of the additional Protocol as amended, as well as other subjects such as nationality issues, mentally-ill prisoners and the application of the so-called “Dutch clause” in extradition proceedings. Previous proposals made to improve the functioning of the Convention could also be taken into account.</p> <p>The PC-OC is <u>invited to</u> consider the proposals made by the PC-OC Mod and to decide on the follow up to be given.</p> <p><u>Documents:</u> Rec N° (84)11 of the Committee of Ministers to member States concerning information about the Convention on the Transfer of Sentenced Persons Rec N° (88)13 of the Committee of Ministers to member States concerning the practical application of the Convention on the Transfer of Sentenced Persons Rec N° (92)18 of the Committee of Ministers to member States concerning the practical application of the Convention on the Transfer of Sentenced Persons</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] Overview of possible binding and non-binding measures to improve the functioning of the Convention on the transfer of sentenced persons and its additional Protocol. Note by the Secretariat [PC-OC (2014)10]</p>
b.	<p>Discussion on the possible establishment of an E-transfer tool, taking into account projects by Interpol and Iberred related to electronic transmission of requests and proposals for follow-up.</p> <p>At its last plenary meeting, the PC-OC had an exchange of views on the legal opinion on the development of an e-transfer tool from the Directorate of Legal Advice and Public International Law and noted that the large majority of the replies received to the questionnaire were positive to the idea of developing an e-tool so as to speed up transfer procedures and increase their transparency, sharing the view that secure electronic communication will become usual practice in the future. The Committee noted with interest the information by Ms Gabriela Gonzalez (Chile) on the development of an Iberamerican treaty on electronic communications. The Committee agreed however that further inquiries would be necessary to ensure that countries would be willing to accept e-communication by finding appropriate answers to questions related to security, data protection and costs concerning the e-transfer tool and decided to ask the PC-OC Mod to continue discussions on the basis of the replies received and to invite a representative of Iberred to participate in the meeting of the PC-OC Mod and in the next plenary to share</p>

	<p>their experience in the field of e-communications.</p> <p>During the last meeting of the PC-OC Mod, the experts heard a presentation by Ms Andrea Murillo, representative of Iberred, as regards the preparation of a treaty on electronic transmission of international co-operation requests between central authorities. The treaty is almost finalised and will lead to the creation of a new secure platform (Iber@) allowing for the recognition of the validity of requests via electronic transmission between central authorities. It will apply to all treaties involving central authorities and will be open to accession by third states. The treaty foresees that data protection will be regulated by the law applicable to the State of the seat of the Iberred Secretariat, in this case Spain, and therefore EU norms on data protection will apply. The cost of the new platform will be shared among the States parties to the new treaty and is expected to be moderate. The new working methods are expected to ensure transmission of requests in a way that is quicker, safer and allows for a better management of the requests.</p> <p>The PC-OC Mod considered this initiative to be very interesting and agreed that it should be followed closely. Attention was also drawn to similar initiatives by Interpol as regards e-extradition and e-MLA.</p> <p><u>The PC-OC is invited to further consider the possible establishment of an e-transfer tool and to decide on future steps, taking into account the replies received to the questionnaire, the legal opinion as well as the developments concerning electronic transmission of requests for co-operation at the level of Iberred.</u></p> <p><u>Documents:</u> Replies to the questionnaire on an e-transfer tool [PC-OC Mod (2017) 02rev2] Legal opinion on the establishment of an e-transfer tool [Doc PC-OC(2017)03] Proposal by Israel to establish an e-transfer tool [Doc PC-OC Mod (2014)04] Powerpoint presentation by Iberred</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>At its last meeting, the PC-OC Mod continued its discussion on the issue of alternatives to detention pending extradition, taking into account the replies to a question posed by Mr Zimin (Russian Federation). The experts agreed that given the increasing length of extradition proceedings, the use of alternatives to detention is becoming more important and that a combination of measures of restriction is probably the most efficient way to avoid escape. In this respect, the PC-OC Mod underlined that, pending the decision on extradition but also once the decision to extradite has been taken, national legislation should allow for the application of adequate measures to avoid escape of the person sought and to ensure his/her surrender. The PC-OC Mod also considered that this issue could be addressed in case the elaboration of a fifth additional protocol to the Convention will be discussed.</p> <p>Given the interest in sharing information on the use of alternatives to detention, the PC-OC Mod decided:</p> <ul style="list-style-type: none"> - to invite PC-OC experts who did not yet reply to Mr Zimin's question to do so by 1 November 2017; - to propose to the plenary that the replies be published on the PC-OC website as a useful tool. <p><u>The PC-OC is invited to discuss the issues raised by the use of alternatives to detention pending extradition, taking into account the replies received, the views of the PC-OC Mod and to decide on the follow up.</u></p> <p><u>Document:</u> Measures of restriction in extradition cases, replies to a question asked by Mr Vladimir Zimin.[PC-OC(2015)15rev4]</p>
b.	<p>Possible consequences of the Petruhhin and related judgments of the CJEU</p> <p>The PC-OC Mod further discussed the consequences of the Petruhhin judgment, which could affect the swift and efficient execution of extradition requests. It concluded that there were still various, unanswered, questions attached to its practical application, as well as other related judgments by the CJEU, such as the decision rendered on 6 September 2017 in the case Schotthöfer C473/15.</p>

	<p>The PC-OC Mod decided to propose to the plenary that developments and future decisions by the CJEU in this area be closely followed.</p> <p><u>Documents</u> Petruhhin Judgment Schotthöfer Order</p>
c.	<p>The role of INTERPOL in extradition cases: Exchange of views with representatives from INTERPOL</p> <p>The PC-OC Mod discussed at its 24th meeting the role of Interpol in extradition cases as well as the Resolution and Report by the Parliamentary Assembly on “The abusive recourse to the Interpol system: the need for more stringent legal safeguards”, and decided to invite a representative of INTERPOL to the next plenary meeting for an exchange of views on this issue.</p> <p>The PC-OC is <u>invited to</u> take note of a presentation in relation to INTERPOL’s notices and diffusions system and have an exchange of views with Mr Yaron Gottlieb, Assistant-Director and Ms Maud Olinet, Counsel, Office of Legal Affairs ICPO-INTERPOL</p> <p><u>Documents</u> PACE Resolution 2161(2017) Abusive recourse to the Interpol system: the need for more stringent safeguards PACE Report Doc 14277 Abusive recourse to the Interpol system: the need for more stringent safeguards</p>
d.	<p>The impact of prison conditions on extradition. Information by the Secretariat on actions undertaken to improve prison conditions and reduce overcrowding</p> <p>The PC-OC Mod discussed the important impact of prison conditions on extradition, including overcrowding and the lack of budgetary means to address this issue.</p> <p>Referring to the CDPC Working Group on prison overcrowding, the information contained in the SPACE prison statistics as well as the existence of EU funds to improve prison conditions in third countries, it was decided to <u>invite</u> the Secretariat to provide further information and to take part in an exchange of views with the PC-OC on this subject .</p> <p>The PC-OC is <u>invited to</u> take note of the information on this subject provided by Ms Tanja Rakusic-Hadzic, Head of the Criminal Law Co-operation Unit and have an exchange of views.</p>
e.	<p>Discussion on the proposal to celebrate the 60th anniversary of the Convention with a special session</p> <p>The PC-OC Mod, recalling the 60th anniversary of the European Convention on Extradition, decided to propose to the plenary that a special session on extradition be organised during its first meeting in 2018 and to invite a judge from the European Court of Human Rights to speak about the development of case law in this field.</p> <p>The PC-OC is <u>invited to</u> consider this proposal and decide on its follow-up.</p>
f.	Other
8.	Elections
a.	<p>Election of the Chair and Vice-Chair</p> <p>According to the PC-OC’s terms of reference, the Chair and the vice-Chair are elected for a term of one year. The terms of the Chair and of the vice-Chair are renewable once.</p> <p>Referring to Article 12d of the “Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods”, the election of the Chair and vice-Chair shall require a two-thirds majority at the first ballot and a simple majority at the second ballot. In</p>

	<p>steering committees, the election shall be held by secret ballot, in other committees by a show of hands, unless a member of the committee requests a secret ballot.</p> <p>Considering that the present Chair, Mr Erik Verbert (Belgium), will reach the term of his first mandate at the end of 2017 and that the vice-Chair, Ms Joana Gomes Ferreira (Portugal), will reach the term of her second and last mandate, the PC-OC is <u>invited to</u> elect or re-elect its Chair and to elect a vice-Chair among its members for a term of one year, starting in 2018.</p> <p>Background documents: 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>
b.	<p>Election of a rapporteur in respect of the Convention on Laundering, Search and Confiscation of Proceeds of Crime (ETS No. 141)</p> <p>During its 69th meeting, the PC-OC had decided to appoint Ms Wietske Dijkstra (The Netherlands) as its rapporteur in respect of the ETS 141. Since Ms Dijkstra has left the Committee, the PC-OC is <u>invited to</u> elect a new rapporteur in respect of this convention.</p>
9.	<p>Dates of meetings in 2018</p>
10.	<p>Any other business</p>