

Strasbourg, 6 October 2017

CDPC-BU (2017) 4

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

List of decisions

Bureau meeting

Venice, 2 – 3 October 2017

The Bureau, meeting in Venice, Italy, on 2 and 3 October 2017, under the Chairmanship of Mr Hans-Holger Herrfeld (Germany), decided:

1. Opening of the meeting

- to take note of the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC, on the most recent developments in Council of Europe (hereafter, CoE) activities related to CDPC work and in particular that as a result of the decision by a member State to suspend payment of the outstanding balance of its contributions to the budget of the Organisation for 2017, certain activities had to be reported. As for the CDPC work is concerned some activities relating to the implementation of the Action Plan on TOC, the promotion of new Convention on Cultural Property and the training on MEDRICRIME will be realised only in 2018. Also that the Terms of Reference of the CDPC for 2018-19 has been approved by the GR-J and will be finally adopted by the Committee of Ministers in November;

2. Adoption of the draft agenda

- to adopt the agenda without any amendments;

Activities related to transnational organised crime: Action plan

- to take note of the information provided by Mr Jesper Hjortenber, CDPC co-ordinator on Transnational Organised Crime (hereafter, TOC), and Mr Oscar Alarcón-Jiménez, Secretariat, on the most recent developments in the implementation of the Action Plan on TOC, in particular:

a. Review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators

- to thank Ms Lorena Bachmaier-Winter and Mr Iwan Waltenburg, scientific experts, for preparing the preliminary draft interim report assessing the replies to the questionnaire on the review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators of justice;
- to have an exchange of views with Mr Iwan Waltenburg on these replies. Mr Waltenburg highlighted that respondents stated that the CoE's recommendation is largely used by member States as well as some third countries for implementing the different witness protection programmes. He also observed that the main challenges in the witness protection field are the difficulties for the person to integrate other countries' language, culture and social structures, differences in legal rules between the sending and the receiving country, and the criminal background of the witnesses;
- to note with satisfaction that the replies indicate that the rules contained in the above-mentioned recommendation are still relevant but also that some up-to-date concerns (biometrics, social media, the internet) should be addressed and/or reviewed;
- to invite both experts, Ms Bachmaier-Winter and Mr Waltenburg, to present the final interim report at the next Plenary meeting;
- to propose that the CDPC makes an update/review of the recommendation and ask the Secretariat to draft Terms of Reference for a drafting group to be mandated to review/update Recommendation Rec(2005)9;

b. Status of implementation of the Action Plan on TOC

- as for the implementation of other parts of the Action Plan, to take note of the updated Matrix of the Action Plan on TOC, identifying the different activities implemented so far, and the following activities currently underway:

1) Key area 1 (Enhancing international co-operation through networks):

- Action A2 ("Discuss the setting up and use of secure communications for international co-operation"):
 - to take note that Mr Per Hedvall (prosecutor, Sweden, former Chair of the PC-OC) has been appointed as an expert and asked to prepare a report on existing initiatives concerning secure communications used by Interpol (e-extradition) and the EU (E-codex);
- Action A3 ("Build-up the connection of judicial networks"):
 - to take note that Ms Esther George (Solicitor, former Crown Prosecutor, United Kingdom) has drafted a working paper identifying a list of international judicial networks of relevance for the fight against TOC, describing their functions and working methods and that a meeting between the representatives of each network will be organised in 2018 to discuss possible options for the interconnection and/or co-operation of networks;
- Action A4 ("Establish a mechanism to address judicial co-operation problems");
 - to note that the PC-OC considered the Action Plan's proposal to increase judicial co-operation and to reduce issues arising with non-co-operative States. Taking into account the replies

received to a short questionnaire on this issue, the PC-OC agreed that even in the absence of a confirmation of receipt, co-operation was usually smooth and consultation rarely refused. In order to improve international co-operation and to reduce the risk of a request being refused, delayed or unanswered, the PC-OC recommended that:

- requesting authorities should make use of the model request forms and guidelines;
- individual judges should consult the central authorities where a request for co-operation remains unanswered;
- the list of contact points on the PC-OC website should be regularly updated and developed, including, where appropriate, with a list of experts in TOC;

• Action B1 (“Review provisions on international co-operation in CoE conventions and relevant reservations/declarations to them/these conventions”):

- to take note that the PC-OC has prepared the list of reservations made to the Conventions on Extradition, MLA, Transfer of Sentenced Persons and Transfer of Proceedings, Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and an assessment of these reservations;
- to take into consideration that with a view to identifying those reservations and declarations that create obstacles to efficient co-operation, including as regards the fight against TOC, the PC-OC created 3 working groups, each devoted to a group of treaties, which : a) would share their work in written consultation under the guidance of a co-ordinator, b) would be tasked with identifying such reservations or declarations and c) will contact the Parties concerned to see whether any update or withdrawal of these reservations or declarations would be possible;
- to bear in mind that the 3 working groups should aim at producing, in respect of each State Party, an agreed list of reservations and/or declarations identified as potentially out-dated 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.
- to observe that the PC-OC Mod will assess the first results of this exercise;

• Action B3 (“Development/elaboration and support of model request forms”):

- to note that the PC-OC considered the possibility of developing a model request form for extradition requests;

3) **Key area 5** (Recovery of assets):

• Action B1 (“Enhancing the implementation of the existing legal network on the management and disposal of criminal assets”):

- to take note that the PC-OC Mod considered the 11 contributions to the survey on national legislation, model agreements and practice related to asset sharing and had an exchange of views on this issue with a representative of the CARIN Network. The PC-OC Mod 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;
- to take note that the PC-OC Mod decided to 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;

4) **Key area 4** (Administrative synergies and co-operation with the private sector) **and Key area 5** (Recovery of assets):

- to identify possibly priority actions to be implemented in the near future in these two areas;

3. Activities and priorities of the CDPC for 2018-2019

- to discuss how the different items/issues should be dealt with in its future work and to identify priorities in this respect;

4. Council for Penological Co-operation (PC-CP)

- to take note of the information provided by Mr Vivian Geiran, PC-CP Chair, and of the meeting report of the last PC-CP Working Group meeting, which took place on 20-22 September 2017;
- to take note of the conclusions of the last Conference of Directors of Prison and Probation Services entitled "Staff Recruitment, Training and Development" (held in June 2017, Norway) and in particular of indents 3 and 4 of the operative part;
- to invite the CDPC Plenary to consider what follow-up should be given to the issue of training of staff in prison and in particular the possibly to instruct the PC-CP to draft guidelines on this topic to be included in curricula of training centres for prison staff in member States ;

a. Restorative justice

- to consider documents PC-CP (2017) 6 rev 3 (draft recommendation) and PC-CP (2017) 12 (commentary) and to make a number of comments and suggestions related to the draft recommendation;
- to ask the Chair and the Secretary of the PC-CP for them to be introduced into a revised version of the draft recommendation before its submission to the Plenary of the PC-CP (6-8 November); this revised draft recommendation should be then forwarded to the CDPC delegations who should also be informed that this draft recommendation could change again following the examination and debates at the PC-CP's Plenary meeting in November. The possible changes made by the PC-CP Plenary in November to the draft recommendation will appear in track changes so that the CDPC Plenary (28 November- 1 December) will be able to identify them;

b. Children of imprisoned parents

- to provide some comments and suggestions related to the draft recommendation;
- to ask the Chair and the Secretary of the PC-CP to follow the same procedure as in the case of the recommendation on restorative justice in view of the CDPC Plenary meeting;

c. Revision of the commentary to the European Prison Rules

- to instruct the PC-CP to proceed with the modifications of the commentary on the European Prison Rules;
- as for the work on possible updating of the rules themselves, to request that the expert is invited to the Plenary and presents the rules that would need to be updated and the reasons for this;

5. Prison overcrowding

- to take note of the information provided by the Chair of the CDPC sub-group on prison overcrowding, Ms Marjorie Bonn, and of the executive summary of the second meeting of this sub-group held on 7 June 2017 in The Hague;
- to welcome the work of the sub-group and endorse the idea of organising a high-level CoE Conference in 2019 on the issue, involving all relevant actors such as ministries of justice and the interior, police, prison and probation services, judges and prosecutors;
- to encourage the sub-group to study in more detail a multi-disciplinary approach for this possible conference and to prepare relevant working document and a draft agenda;

6. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC)

- to take note of the list of decisions of the 24th meeting of the PC-OC Mod held on 26- 28 September 2017 and of the 72nd meeting of the PC-OC, held on 22-24 May 2017. New developments concern in particular:
 1. online course on international co-operation in criminal matters and human rights:
 - to take note of the finalisation and publication of the online course by the HELP programme in close co-operation with the PC-OC and the EJTN;
 2. case-law of the ECtHR:
 - to take note of the update of the index and summaries of relevant case-law of the ECtHR;
 3. Action Plan:
 - to take note of the implementation of the Action Plan on TOC by the PC-OC (see the different actions under the relevant item);
 4. the Convention on the Transfer of Sentenced Persons:
 - to observe the proposal by the PC-OC Mod to draft a new recommendation to update and/or replace the existing ones. The new recommendation could cover the practical application of the additional Protocol as amended, as well as previous proposals made to improve the functioning of the Convention.
 5. the Convention on Mutual Assistance in Criminal Matters:
 - to take note of the preliminary assessment by the PC-OC Mod of the replies received to the questionnaire on the application of the Second Additional Protocol to this Convention and that the discussion on MLA for the purpose of proceedings against legal entities will continue.
 6. the Convention on Extradition:
 - to take note of the proposal to the PC-OC to organise, at the occasion of the 60th anniversary of the Convention, a special session devoted to extradition and to invite a judge from the European Court of Human Rights to speak about the development of case law in this field;

7. Revision of the model provisions; issues of administrative sanctions

- to propose to the CDPC Plenary that the Model provisions documents are to be considered

“living documents” that may be modified according to changes in the standard setting practices in criminal law field;

- to examine the proposed amendments to the Model provisions documents (appearing in track changes) mainly related to the question of how and when Parties to a convention should apply criminal and/or may apply administrative sanctions and under which circumstances;
- to send the revised document for information to the CDPC Plenary and acknowledge those changes made to the Model provisions;
- on a more general point, to invite the CDPC to consider the general issue of the use of administrative sanctions in criminal law conventions;
- to appoint two experts to make a study and prepare documents providing a clearer picture of the situation in member States and in international context;

8. The role of victims within the criminal justice system

- to examine the outcome of the replies to the questionnaire, adopted by the CDPC at its last Plenary and sent to all CDPC delegations in March 2017, and in particular the replies to questions 20 and 21 related to the possible update of the Convention on the Compensation of Victims of Violent Crimes convention or the development of a recommendation with guidelines;
- to ask the expert to prepare a complete document explaining what the CDPC could do as a follow-up to the replies to the questionnaire; in case that the development of a legal instrument (a recommendation) would be the most likely solution as a follow-up, to identify the main topics that should be considered;

9. Links between Organised Crime and Terrorism

- to express its gratitude to the Spanish Minister of Justice for having addressed all the participants at the Conference on Terrorism and Organised Crime (Malaga, September 2017) as well as to thank the co-organisers (the City Hall and the University of Málaga) for their valuable support;
- to take note of the conclusions of the Malaga Conference and congratulate all involved in its successful organisation;
- to welcome the possibility of setting-up joint working groups (CDPC-CODEXTER) aimed at discussing future common topics and actions for both committees to ensure a valuable follow-up to the Malaga conclusions;

10. Terrorism

- to take note of the information provided by the Secretariat on the most recent activities carried out in the field of counter-terrorism, including on the work done with regard to the elaboration of the new recommendation on “Terrorists acting alone”;
- to take note of the final version of Recommendation CM/Rec(2017)6 on “special investigation techniques” in relation to serious crimes including acts of terrorism and its explanatory report, adopted by the Committee of Ministers on 5 July 2017;

11. Smuggling of migrants

- to take note of the of the information provided by Mr Sławomir Buczman, Poland, on the Conference on Smuggling of Migrants, held on 23 June 2017 in the Palais de l’Europe, Strasbourg;

- to ask the Secretariat to prepare a concise paper for the next Plenary meeting presenting a concrete follow-up to the conclusions of the Conference: The exchange of information and the setting up of 2 focused subgroups on prevention measures and on international co-operation composed of practitioners should be encouraged;

12. TC-Y

- to take note of the information provided by the secretariat notably on the plan to draft a protocol to the Cybercrime Convention;

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

- to take note with satisfaction that Slovenia and Ukraine signed the Council of Europe Convention on Offences relating to Cultural Property on 14 July and 11 September respectively;
- to take note that the European Union (hereafter, EU) is working on a regulation on cultural property in the EU;

14. Gender equality

- to observe that a report on gender mainstreaming and the MEDICRIME convention entitled “*A gender perspective on the Counterfeiting/falsification of medical products and similar crimes*” is currently being prepared on the basis of a concept note;
- to invite the CoE Gender Equality advisor to the forthcoming Plenary meeting;

15. Information provided by the Secretariat

- to take note of the information provided by the Secretariat below:

a. MEDICRIME

- to take note with satisfaction that Burkina Faso and Turkey ratified the MEDICRIME Convention on 27 July and on 21 September 2017 respectively;
- to acknowledge that the number of Parties to this treaty has thus increased to 11 and, following Article 23 of the MEDICRIME Convention, the first meeting of the Committee of the Parties shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it (Burkina Faso);
- to ask the Secretariat to draft the rules of procedure of the Committee of the Parties;
- to take into account that a kick-off meeting for a training course on the MEDICRIME Convention for legal professionals (judges and prosecutors) took place in the Spanish National School of Judges. This training course is taking place from June to November 2017;
- to take into consideration the illegal expertise on the compliance of the Armenian criminal code to the MEDICRIME Convention;
- to take note that different activities aimed at promoting the MEDICRIME Convention have been implemented, such as:
 - a high-level seminar on “*Human Rights and Business - Promoting the effective implementation of global and regional instruments*”, held in Strasbourg (June 2017);
 - at the request of the Ministry of Foreign Affairs of Israel, a CoE convention seminar (4-5 July 2017);

- different visits to the Council of Europe: Malaysian Minister of Law, French magistrates to the CoE (26-30 June 2017) and lawyers and law enforcement officers from Puerto Rico (7 July 2017);
- a visit to the Hungarian National Office for the Judiciary (4 July 2017) and a visit to the European Union Agency for Law Enforcement Training (CEPOL), where Ms Aija Kalnaja, acting head of operations department of CEPOL, welcomed the idea of drafting a training curriculum addressed to law-enforcement authorities;
- the translation into Spanish of the Handbook for Parliamentarians;

b. Trafficking in human organs

- to take note with satisfaction that Latvia and Ukraine signed the Santiago de Compostela Convention on 30 March and 11 September 2017 respectively and that Moldova, Norway and the Czech Republic ratified the same convention on 21 June, 12 September and 21 September 2017 respectively;
- to observe that the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade within the Parliament of Australia is inquiring into the topic of trafficking in human organs and has made a request to the CoE to make a submission to the inquiry;
- to take note with satisfaction that Costa Rica submitted its official interest to join the Santiago de Compostela Convention;

16. Any other business

- to thank Mr Lorenzo Salazar, Italy, for all the excellent work provided during his time as Chairman of the CDPC and member of the CDPC Bureau;
- to instruct the Secretariat to inform the CDPC delegations on the future elections to be held at the next CDPC Plenary meeting and invite members of the CDPC who are interested to put forward their candidature;

17. Dates of the next meetings

- to choose the dates of the next meeting of the Plenary in 2018 (the week of 4 June 2018) and consider one of the weeks of 26 to 30 November or 3 to 7 December for the second meeting.