



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

**List of decisions taken at the 64th meeting of the PC-OC
Under the Chairmanship of Ms Selma de Groot (Netherlands)**

**Strasbourg
28-30 May 2013**

1 Adoption of the agenda

The PC-OC decided to adopt the agenda as reflected in document PC-OC (2013)OJ1.

2. Presentation and content of the PC-OC website

a. Proposals to improve country information:

The PC-OC took note of the proposals by the PC-OC Mod to improve the country information available to practitioners and considered the updated inventory of country information available as contained in PC-OC (2012)09 rev 2, the draft revised templates as contained in PC-OC (2013)04, the content of PC-OC INF 4, 5, 7 and 9 and the overview of country information shown in the replies to questionnaires contained in PC-OC(2013)05 and decided to:

- invite members to send further observations and/or content to be included in the templates to the Secretariat by 1 September at the latest;
- instruct the PC-OC Mod to finalise the proposals for updated templates and to prepare guidelines to assist in filling them in.

b. Useful links to national websites

The PC-OC welcomed the links on the PC-OC website to useful national websites of 14 states and decided to:

- invite experts who have not yet done so to send links to useful national websites to the Secretariat for publication on the PC-OC website.

c. Case law of the European Court of Human Rights

The PC-OC also welcomed the publication on its website of the index and summaries of case law of the European Court of Human Rights of particular relevance to practitioners in the field of international co-operation in criminal matters. The Committee heard the proposals made by the Secretariat of the Council of Europe's Programme for Human Rights Education for Legal Professionals (the HELP programme) to integrate this work in its activities so as to enhance the capacity of practitioners involved in international co-operation in criminal matters to apply the ECHR in their daily work.

The PC-OC decided to:

- welcome the HELP Secretariat's proposals to integrate international co-operation in criminal matters into the HELP programme by making use of the index and summaries of ECHR case law;
- instruct the Secretariat to keep the PC-OC informed of further developments.

3. Allowing practitioners to submit questions to the PC-OC

The PC-OC welcomed the publication online in 10 languages of the leaflet containing information on the PC-OC for national practitioners involved in international co-operation in criminal matters. The Committee also had an exchange of views on good practices for the dissemination of the leaflet on a national level and for encouraging national practitioners to submit questions. It was decided to:

- reiterate the encouragement to Committee members to translate the text of the leaflet into their national languages and submit it to the Secretariat for publication on the website;
- encourage the publication of the leaflet on relevant national websites, including an e-mail address to which practitioners can send questions;
- encourage Committee members to make use of the PC-OC forum to discuss issues of common interest and/or those raised by national practitioners.

4. Practical problems and concrete cases concerning the implementation of the European Convention on Extradition

a. Replies to the questionnaire on "*in absentia* cases" in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition

The PC-OC considered the summary and compilation of replies received to the above questionnaire (Doc(PC-OC(2013)01rev) as well as the proposals for follow-up made by the PC-OC Mod and decided to:

- invite experts who have not yet replied to do so by 1 July at the latest;
- instruct the Secretariat to publish the summary and compilation of replies on the website as useful information for practitioners.

Noting the divergence in the interpretation of Article 3 of the Second Additional Protocol by the Parties, the PC-OC furthermore decided to:

- instruct the PC-OC Mod to study the possibility of finding a practical solution to problems this divergence might create, for example by proposing guidelines on the interpretation of the notion of "minimum rights of defence", "retrial" and "sufficient guarantees".

b. Discussion on the issue of extradition and asylum

The PC-OC discussed the interaction between extradition and asylum proceedings on the basis of a discussion paper prepared by Mr Erik Verbert (Belgium) and a presentation by Mr Olivier Beer (UNHCR) and decided to:

- take stock of the most important practical problems encountered in this field by inviting experts to send a paper to the Secretariat by 15 September at the latest;
- instruct the PC-OC Mod to reflect on the information gathered and make proposals for possible follow-up.

c. Other issues

The PC-OC discussed the question raised by Ms Joanna Ferreira (Portugal) concerning extradition and the effects of violation of immunity provided by the rule of speciality (PC-OC (2012)12).

The PC-OC also considered some outstanding issues related to the application of the European Convention on Extradition, including the questions raised on:

- the reference moment to be applied when considering double criminality in respect of extradition;
- the interpretation of Article 14, paragraph 1b of the European Convention on Extradition;

The PC-OC decided to:

- instruct the PC-OC Mod to examine these issues and make proposals for follow-up.

5. Special session on Mutual Assistance in Criminal Matters

On 29 May the PC-OC held a special session on mutual legal assistance (MLA) to which all Parties to the European Convention on Mutual Assistance in Criminal Matters were invited.

The session opened with a keynote speech by its rapporteur Mr Eugenio Selvaggi (Italy). This was followed by discussions on proposals to address the possibility of mutual legal assistance with regard to legal entities, the possible application of the principle of proportionality to avoid an excessive burden on the authorities involved in mutual legal assistance and international co-operation as regards non conviction based confiscation.

The PC-OC also heard presentations by Ms Gabriela Gonzalez Cofré (Chile) and Mr Jooyeon Jo (Korea) on the MLA systems of Chile and Korea respectively, which were followed by an exchange of views.

The PC-OC held a discussion on practical problems concerning seizure and confiscation of the proceeds from crime which was introduced by guest speaker Mr Evert van der Steeg (Netherlands).

The PC-OC continued by discussing the possible development of model request forms for MLA as a follow-up to the project VC 2248 on effective tools to facilitate mutual legal assistance (Doc DG-HL (2010)06).

As a follow-up to the session, the PC-OC decided to:

- continue, at a future meeting, the discussions on mutual legal assistance in relation to the liability of legal entities, on ways to deal with the increase of MLA requests and on the seizure

- and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing;
- instruct the PC-OC Mod to further reflect on these issues and make proposals for follow-up;
- resume its work on the development of practical guidelines and model request forms for MLA, as a follow-up to the project mentioned above;
- instruct the PC-OC Mod to examine the possible follow-up to the project and make a proposal to the plenary;
- post the presentations made during the special session on the PC-OC website.

6. Practical problems and concrete cases concerning the implementation of the Convention on the Transfer of Sentenced persons and its Additional Protocol

a. Recent developments and forum discussions related to the transfer of sentenced persons

The PC-OC took note of the recent developments presented by its Rapporteur on the transfer of sentenced persons, Ms Barbara Goeth-Flemmich (Austria). In particular, it noted issues with regard to the slowness of transfer procedures and the possible need to install time limits, either by developing practical guidelines or by provisions in a second additional protocol to the Convention on the Transfer of Sentenced Persons. Several issues were raised concerning the application of the Additional Protocol to the Convention.

b. Practical problems and legal questions

Further to the decisions adopted at its 63rd meeting with regard to the application of Article 12 of the Council of Europe Convention on the Transfer of Sentenced Persons, the PC-OC considered the legal opinion provided by the Legal Advice Department of the Council of Europe (PC-OC (2013)03) and the findings by the PC-OC Mod on the question of whether the reciprocity principle can apply to reservations and declarations to Council of Europe conventions that have no specific provision in this regard, such as the Convention on the Transfer of Sentenced Persons.

The PC-OC decided to inform the CDPC that the application of the reciprocity principle to reservations and declarations and its legal effects is a highly complex question of treaty law and that it falls outside the competency of the PC-OC. It was recalled that the Committee of Legal Advisers on Public International Law (CAHDI), in its function as European Observatory of reservations to international treaties, is competent for legal issues regarding reservations and declarations to international treaties.

c. Examples of national legislation and procedures with regard to conditional release and follow-up

The PC-OC considered the examples of national legislation and procedures with regard to conditional release provided by 16 countries (PC-OC(2013)02rev) and decided to:

- invite those experts who have not yet provided information to do so by 1 September.

d. Preparation of the special session on the transfer of sentenced persons

The PC-OC discussed the proposals made by the PC-OC Mod for the preparation of the special session on the transfer of sentenced persons to be held at its 65th plenary meeting on 26-28 November 2013. Taking into account that the event should be attractive to all 64 Parties to the Convention and that it should highlight the 30th anniversary of its adoption, several proposals were discussed, including the possibility of extending the 65th meeting by one extra day devoted to the special session. It was decided to:

- invite all experts to send proposals for the draft programme discussion items before 1 July;
- instruct the Secretariat to prepare a preliminary draft programme in consultation with the Chair and Ms Barbara Goeth-Flemmich (Austria) and send it to all experts requesting that their comments be sent by 5 September at the latest;
- instruct the PC-OC Mod to finalise the programme on the basis of the comments received;
- instruct the Secretariat to post the programme on the website.

7. Exchange of views on possible future activities of the PC-OC (draft terms of reference for 2014-2015)

The PC-OC considered the preliminary draft terms of reference for 2014-2015 (PC-OC(2013)06), taking into account the proposals made by the PC-OC Mod, and decided to:

- submit the draft terms of reference as contained in PC-OC(2013)06rev for consideration to the CDPC.

8. Points of information and any other business

The PC-OC took note of the information provided by the Secretariat:

- regarding the decisions taken by the Committee of Ministers, at the 1168th meeting of its Deputies on 10 April 2013, regarding the review of the Council of Europe Conventions;
- on the upcoming activities of the Ad Hoc Drafting Group on Transnational Organised Crime (PC-GR-COT), whose first meeting will be held in Paris on 24-26 June 2013;
- on recent ratifications and signatures of Council of Europe treaties on legal co-operation in criminal matters;
- on the exchange of views held, at the request of the CDPC, between the PC-CP and the PC-OC Mod at their last meeting regarding cases of use of GPS tracking by the police where a suspect or an offender under electronic monitoring crosses the border, in particular as regards the possible continuation of the tracking, storage and the use of data;
- on the consideration, by the PC-OC Mod, of the provisions related to international co-operation in criminal matters of the "preliminary draft convention against manipulation of sports results", prepared by the European Partial Agreement on Sport (EPAS).

The PC-OC also took note of the information provided by the representative of the Council of the European Union, Ms Christina Strömholm, on recent activities and developments of interest to the PC-OC within the European Union.

It was recalled that the PC-OC had decided to hold its 65th plenary meeting from 26 to 28 November 2013. The 16th meeting of the PC-OC Mod will take place from 9 to 11 October 2013.