



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 65th meeting of the PC-OC
Under the Chairmanship of Ms Selma de Groot (Netherlands)**

**Strasbourg
26-28 November 2013**

1 Opening of the meeting and adoption of the agenda

The PC-OC took note of the opening remarks by Mr Jan Kleijssen, Director of Information Society and Action against Crime, and adopted the agenda as reflected in document PC-OC (2013)OJ2.

2. Presentation and content of the PC-OC website

a. Proposals to improve country information - revised templates:

The PC-OC considered the revised templates, for the publication of country information regarding the implementation of the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons, as proposed by the PC-OC Mod [Doc PC-OC Mod (2013)10] and decided to:

- approve the template regarding extradition and the one regarding mutual assistance in criminal matters with one amendment [Doc PC-OC Mod (2013)10 rev.] and instruct the Secretariat to post them on the website in replacement of the former templates;
- invite all Parties to these conventions to fill in these templates and to send them to the Secretariat by 1 March 2014 for publication on the PC-OC public website;
- ask the PC-OC Mod to finalise the template regarding the transfer of sentenced persons in the light of the discussions held in the special session on this subject.

b. Case law of the European Court of Human Rights

The PC-OC welcomed the publication on its website of the updated 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 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 by the development of both a specific distance-learning course and self-training materials to be made available throughout the HELP web platform and links from and to the PC-OC website.

It noted in particular that the HELP Secretariat plans to develop and carry out both these initiatives in 2014 and proposes co-operation with the PC-OC on the following activities:

- to appoint a working group of at least 4 international experts, who would be in charge of developing both a master curriculum, in English, on international co-operation in criminal matters and Human Rights, and of selecting and/or developing materials for self-learning and awareness-raising on international co-operation in criminal matters;
- to schedule at least 2 meetings of the working group of experts in the period January-June 2014;
- to identify at least 3 pilot target countries where the developed distance learning course could be launched in September-October 2014, following a kick-off meeting organised in co-operation with local authorities. The courses will be hosted on the HELP distance-learning platform, all materials will be translated into national languages and national tutors will be in charge of them;
- to publish all materials selected or developed by the working group for self-learning and awareness-raising on international co-operation in criminal matters, in a specific section of the HELP website, with all possible links to the PC-OC website, before the end of June 2014.

The PC-OC decided to:

- welcome the HELP Secretariat's proposals to integrate international co-operation in criminal matters into the HELP programme in close co-operation with the PC-OC;
- invite experts willing to participate in the working group to inform the Secretariat by 15 December 2013;
- invite experts who would like to propose their country as a pilot target group for the distance learning course to inform the Secretariat.

3. European Convention on Extradition

a. Presentation by the PC-OC Rapporteur on extradition on recent developments and forum discussions

The PC-OC took note of the presentation by Mr Erik Verbert (Belgium) and decided to reiterate its call to all member and observer states to actively participate in forum discussions.

b. The divergence in interpretation of Article 3 of the Second Additional Protocol to the European Convention on Extradition

The PC-OC considered the opinion of the PC-OC Mod as regards the appropriateness of reaching a common interpretation of Article 3 of the Second Additional Protocol to the European Convention on Extradition regarding judgments *in absentia* and the possibility of retrial.

The Committee agreed with the PC-OC Mod that it is the responsibility of each requested party to assess whether the proceedings leading to the judgment *in absentia* or the additional guarantees provided by the requesting state satisfy the rights of defence and that an attempt to reach a common opinion on the interpretation of Article 3 would not be helpful. Recognising the importance of assisting parties in assessing this situation it decided to:

- ask Ms Barbara Goeth-Flemmich (Austria) to assist the PC-OC Mod in preparing a summary of the criteria available, based on the sources identified by the PC-OC Mod, for consideration by the plenary and publication on the website as a useful tool.

c. Interaction between extradition and asylum

The PC-OC considered the practical problems reported by member states in this field [Doc PC-OC Mod (2013)06rev.] as well as the proposal for follow up by the PC-OC. It was recalled however that the CDPC had discussed this issue during its 58th plenary session in 2009 and had concluded that the question was “of great importance to the Council of Europe” but had noted “the absence of a specialised intergovernmental committee dealing with issues to asylum seekers” [Doc CDPC(2009)22 meeting report]. The PC-OC agreed that the issue was of importance to its work and in need of further discussion and decided to:

- invite all experts to send examples of good practice in this area as well as obstacles encountered to the Secretariat by 15 February 2014;
- instruct the PC-OC Mod to consider this issue further in preparation of the special session on extradition to be held during its 66th meeting.

d. Reference moment to be applied when considering double criminality

The PC-OC considered the replies to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests [Doc PC-OC (2013) 12], underlined the importance of this question as well as the divergence in views and decided to:

- discuss this issue further, including the question on interpretation *in abstracto* or *in concreto*, at the special session on extradition in view of the preparation by the Secretariat of a note to be published on the PC-OC website;
- ask Mr Erik Verbert to prepare a discussion paper on this question.

e. Interpretation of Article 14, Paragraph 1b of the Convention

The PC-OC considered and shared the findings of the PC-OC Mod as regards the interpretation of this provision which concerns an exception to the rule of speciality. It recalled that this issue had been discussed while preparing the Fourth Additional Protocol to the European Convention on Extradition and that its explanatory report (paragraphs 36-39) can be used as an additional source of inspiration for the interpretation of this provision in particular as regards the notions of “opportunity to leave” and “final discharge”.

The PC-OC decided that further guidance on this interpretation would, for the time being, not be necessary.

f. Presentation of the INTERPOL e-extradition initiative

The PC-OC heard a presentation by Mr Joël Sollier, Director of the Office of Legal Affairs, INTERPOL, as regards the e-extradition initiative and had an exchange of views.

The PC-OC thanked Mr Sollier for the interesting information provided and decided to:

- publish Mr Sollier’s intervention on the website of the PC-OC.

4. Mutual Assistance in Criminal Matters

a. Presentation by the PC-OC Rapporteur on MLA on recent developments and forum discussions

The PC-OC took note of the presentation by Mr Eugenio Selvaggi (Italy)

b. Liability of legal entities

The PC-OC discussed the liability of legal entities on the basis of the discussion paper presented by Mr Selvaggi [Doc PC-OC(2013)13] and decided to:

- resume consideration of this important question at a future meeting;
- invite Mr Vladimir Zimin (Russian Federation) to present further proposals on this issue.

c. Seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing

The PC-OC agreed that this issue was important and complex and, considering the proposal by the PC-OC Mod, decided to devote a special session to this issue during its second meeting in 2014, in co-operation with other Council of Europe committees or bodies such as MONEYVAL for whom this question is of particular relevance.

d. Ways of dealing with the increase in MLA requests

The PC-OC considered the proposal by the PC-OC Mod to develop guidelines for practitioners of requesting states on good practices of self-restraint in order to avoid the submission of requests when this is possible. The Committee agreed that this topic required further consideration and decided to:

- instruct the PC-OC Mod to develop its proposal, taking into account the requirements of the convention as well as the possibility for requesting states to consider the principle of proportionality.

e. Follow up to the project VC 2248 on effective tools to facilitate MLA: practical guidelines and model request forms

Referring to the decision taken during the 64th meeting to resume its work on the development of practical guidelines and model request forms for MLA, as a follow-up to the project mentioned above, the PC-OC took note of the information that the European Union in co-operation with Poland had already developed such model request forms in the context of a project in the EU's Eastern Partnership Initiative [Doc PC-OC Mod (2013)04]. The PC-OC regretted that it had not been directly informed of this project.

The PC-OC considered the proposals of the PC-OC Mod to take stock of existing model forms and guidelines before proposing any new model forms;

The PC-OC decided to:

- invite experts to send existing national or international model forms and or guidelines to the Secretariat by 1 March 2014;
- instruct the PC-OC Mod to consider the collection of model forms and /or guidelines and to make proposals for a follow-up.

The PC-OC also discussed the proposal by the PC-OC Mod to develop a user-friendly tool on the PC-OC website to assist practitioners in finding appropriate contacts in all parties for the purpose of MLA requests, including for direct transmissions on the basis of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and decided that:

- further discussion would be needed to reinforce co-operation with other existing networks, such as EJN and IBERRED, and to avoid overlap.

5. Special session on the Convention on the Transfer of Sentenced Persons and its Additional Protocol

On the occasion of the 30th anniversary of the Convention on the Transfer of Sentenced Persons (ETS No.112), the PC-OC devoted a special one-day session to the functioning of this convention and its additional protocol. For the first time, experts from all 64 States Parties to this convention had been invited to exchange experiences and look for solutions to any legal or practical problem encountered.

The PC-OC welcomed the participation of experts from the following non-European Parties: Canada, Chile, Costa Rica, Israel, Japan, Korea and Mexico.

During the session, chaired by Mr Per Hedvall (Sweden), the PC-OC heard opening words by Mr Philippe Boillat, Director General of Human Rights and Rule of Law, and an introductory speech by Mr Vincent A. De Gaetano, Judge at the European Court of Human Rights.

The PC-OC furthermore heard a presentation by Ms Barbara Goeth-Flemmich (Austria) based on the answers received to the questionnaire on the functioning of the Convention and its Additional Protocol.

In the afternoon, two parallel workshops, one devoted to the Convention and the second to the Additional Protocol allowed experts to exchange experiences and to make proposals for improvement.

The rapporteurs at the workshops informed the plenary on the discussions held and the proposals for future action.

The PC-OC also heard a presentation by Ms Joana Ferreira (Portugal) on the future of the Convention on the Transfer of Sentenced Persons and its Additional Protocol and the options for improvement.

In conclusion to the special session the PC-OC agreed that there was an obvious need to improve the functioning of both the Convention and the Additional Protocol but that further reflection was needed to agree on appropriate steps for future action. The PC-OC decided to:

- instruct the PC-OC Mod to make concrete proposals for further action to be taken, on the basis of the discussions and different proposals made, indicating priorities as well as the appropriateness and the time necessary to prepare either guidelines and/or binding or non-binding legal instruments;
- invite experts who had not yet replied to the questionnaires on the implementation of the Convention on the Transfer of sentenced persons and its Additional Protocol to do so by 15 February 2014;
- instruct the Secretariat to publish the interventions made, including the summaries by the rapporteurs, during the special session on the PC-OC website.

6. Elections

a. Chair and vice-Chair of the PC-OC

Further to the expiry of the mandate of its Chair, Ms Selma de Groot (Netherlands), and its vice-Chair, Mr Per Hedvall (Sweden), and noting that the Chair would not be available for a second term due to a change in functions, the PC-OC elected Ms Joana Gomes Ferreira (Portugal) as its Chair and re-elected Mr Per Hedvall as its vice-Chair for a term of one year, starting in 2014.

The PC-OC expressed its gratitude to Ms de Groot for the excellent work accomplished during her chairmanship and wished her much success in her future functions.

b. Member of the PC-OC Mod

In replacement of Mr Miroslav Kubiček (Czech Republic) who resigned due to a change in functions, the PC-OC elected Ms Astrid Offner (Switzerland) as a member of the PC-OC Mod.

7. Any other business

No other issues were raised.

8. Points for information

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

- on the activities of the CDPC, presented by its Secretary, Mr Carlo Chiaromonte, and in particular its Ad Hoc Drafting Group on Transnational Organised Crime (PC-GR-COT);
- on the Draft White Paper on Transnational Organised Crime, to be finalised by the PC-GR-COT, which was distributed to all participants with a request to provide the Secretariat with comments on its contents;
- on recent ratifications and signatures of Council of Europe treaties on legal co-operation in criminal matters;
- on the preparation by the Parliamentary Assembly of a report on measures to avoid the abuse of the Convention on the Transfer of Sentenced Persons;
- 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).

9. Dates of meetings in 2014

The PC-OC decided to hold its plenary meetings in 2014 from 19 to 21 May and from 18 to 20 November.

The meetings of the PC-OC Mod will take place from 18 to 20 March and from 7 to 9 October 2014.