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PC-OC (2012) 07

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 62nd meeting of the PC-OC
under the Chairmanship of Mr Per Hedvall (Sweden)**

Strasbourg
9-11 May 2012

1. Elaboration of draft practical guidelines as a follow up to the replies to the questionnaire on jurisdiction and transfer of proceedings

The PC-OC considered and endorsed the approach proposed for the draft outline for practical guidelines proposed by the PC-OC Mod (PC-OC Mod (2012) 01 Rev) as well as for the model request form on laying of information (contained in document PC-OC (2012)06), made suggestions for their further development

and decided to instruct the PC-OC Mod to:

- finalise the draft guidelines and the model request form, taking into account the comments made by the plenary and to present it for consideration at its next plenary meeting.

2. Presentation and content of the PC-OC website

The PC-OC welcomed the information provided by the Secretariat about the creation of a shared office space allowing the members of the PC-OC Mod and other interested members of the PC-OC to work together in-between meetings on the development of the draft guidelines and other documents as appropriate. Noting that country information on the website was often outdated, the PC-OC decided to:

- instruct the Secretariat to invite delegations to update the information concerning their country.

- With regard to the draft list of relevant case law of the European Court of Human Rights (ECtHR)

The PC-OC considered the provisional Index of Case Law by the ECtHR of relevance for the application of the European Conventions on international judicial co-operation in criminal matters (contained in Document PC-OC (2012)°03) and suggested that it be completed with some further keywords (for example “*in absentia*”; “*ne bis in idem*”) and related cases. The PC-OC also took note of the information provided by the Secretariat about the consultation with the Case-law information and publications division of the Court, and decided to:

- invite delegations to send further suggestions for keywords and cases to the Secretariat by 11 June;
- instruct the Secretariat to publish the index on the public website of the PC-OC, taking into account the amendments proposed and in consultation with the European Court of Human Rights;
- ask the PC-OC Mod to make proposals as to the possible indexing of decisions concerning admissibility of complaints.

The PC-OC also discussed the approach to be adopted with regard to the summaries of the case law by the ECtHR, and decided to:

- endorse the approach proposed and instruct the PC-OC Mod to finalise the work undertaken and present it for consideration at the next plenary meeting in view of its publication.

The PC-OC also discussed ways to ensure the regular updating of the case law published and decided to:

- invite all delegations to keep the Secretariat informed of new Court decisions of relevance to the PC-OC;
- instruct the Secretariat to update the publication at a regular basis in consultation with the Chair.

- With regard to the proposed useful links

The PC-OC discussed the amended list prepared by the Secretariat (PC-OC (2011) 25 Rev2), noting the usefulness of creating links to websites of relevant international governmental organisations and courts, proposed some additional links and decided to:

- instruct the Secretariat to post these links on the public website of the PC-OC;
- instruct the PC-OC Mod to make proposals to improve the country information available on the website, including by introducing links to national websites of relevance to international judicial co-operation in criminal matters.

- With regard to the use of the forum

The PC-OC, noting the usefulness of the forum for raising issues of common interest, decided to:

- encourage all delegations to make regular use of the forum.

3. Possible ways of allowing practitioners to submit questions to the PC-OC

The PC-OC considered the information leaflet on the PC-OC as amended by the PC-OC Mod (Document PC-OC (2011) 08 rev3)

and decided to:

- agree with the text, as amended during the meeting (Document PC-OC (2011) 08 rev4), noting that additional editorial changes might be proposed by the publications department of the Council of Europe.

The PC-OC furthermore considered the proposals for dissemination and publication of the leaflet and decided to:

- have the information leaflet published on the PC-OC website and, subject to approval by the Council of Europe's Committee for the rationalisation of publications, to have the information leaflet printed as a small coloured pamphlet, including a space to allow each delegation to insert contact details for practitioners in their home country;
- invite the members of the PC-OC to distribute the leaflet to practitioners in their home country in the best possible way, including by posting the text on an appropriate national website;
- take note of the proposal by the Romanian and Russian delegations to translate the leaflet into their national language and invited them to inform the Secretariat of the number of leaflets requested in each of these languages.

4. Practical problems and concrete cases concerning the implementation of conventions

a. Presentation by PC-OC Rapporteurs on recent developments and forum discussions related to extradition, mutual assistance and transfer of sentenced persons

The PC-OC took note of the information provided by Ms Barbara Goeth-Flemmich (Austria), Mr. Erik Verbert (Belgium) and Mr. Eugenio Selvaggi (Italy) with regard to transfer of sentenced persons, extradition and mutual assistance in criminal matters respectively and decided to discuss at a future meeting:

- the question raised on the reference moment to be applied when considering double criminality in respect of extradition;
- the question raised with regard to the interpretation of Article 14, paragraph 2b of the European Convention on Extradition;
- the experience within the EU of the transposition and application of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

b. Consideration of the replies received to the questionnaire on legal and technical aspects of video conferences and proposal for follow-up.

The PC-OC, underlining the growing interest and possibilities for the use of video conferences in international judicial co-operation, considered the replies contained in Document PC-OC (2012) 01 rev and the proposal to publish the replies on the website of the PC-OC and decided to:

- instruct the Secretariat to invite delegations that had not yet replied to the questionnaire to do so;
- publish the updated compilation of replies on the restricted website of the PC-OC;
- instruct the Secretariat to invite delegations to reconsider their replies by 11 June in view of their publication as a useful tool for practitioners on the public website of the PC-OC;
- invite delegations to send further documentation on this issue, specifying whether this may be posted on the public or on the restricted website;
- instruct the PC-OC-Mod to look into the feasibility of developing guidelines on the use of videoconferences and report to the plenary at its next meeting;
- take note of the information provided on the European e-Justice Portal: https://e-justice.europa.eu/content_videoconferencing-69-en.do.

c. Discussion on the relationship between extradition and expulsion

In the light of the discussion paper (Document PC-OC (2011) 09rev) prepared by Mr Eugenio Selvaggi (Italy) and taking into account the questions prepared by the PC-OC-Mod, the PC-OC had

a discussion on the relationship between extradition and expulsion (disguised extradition). The PC-OC decided to:

- instruct the Secretariat to reflect the discussions held in a draft note;
- instruct the PC-OC Mod to consider this draft note in view of its adoption by the PC-OC and publication on the website as an information document for practitioners and to make proposals for follow-up to this discussion.

d. Consideration of a draft note on discussions held on “dual criminality *in abstracto* or *in concreto*”

The PC-OC considered the draft note (PC-OC (2012)02) as proposed by the PC-OC Mod and decided to:

- publish the note on the website as an information document for practitioners.

e. Finalisation of a draft 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 draft questionnaire proposed by the PC-OC Mod, as well as the draft questionnaire proposed by the German delegation and decided to:

- instruct the PC-OC Mod to finalise the questionnaire in the light of the comments made and submit it to the PC-OC plenary for adoption.

f. Discussion on the application of interim measures (rule 39) of the ECtHR in cases of extradition

Following an introduction by Mr Erik Verbert (Belgium), the PC-OC had an exchange of views on the application of interim measures by the European Court of Human Rights in cases of extradition with Mr Stephen Phillips, Deputy Section Registrar at the ECtHR and Ms Irène Kitsou-Milonas, Head of Section of the Department for the Execution of Judgments of the ECtHR.

g. Discussion on relations with non-member states of the Council of Europe that are Parties to European Conventions on co-operation in penal matters

The PC-OC considered the proposals made by the Secretariat to develop its relations with the non European states that are Parties to the European conventions on extradition, on mutual assistance in criminal matters and on the transfer of sentenced persons. The PC-OC, underlining the importance of strengthening these relations for the mutual benefit of all Parties, decided to:

- invite the states concerned to give the names of persons to be included in the list of officials involved in the application of the conventions on co-operation in penal matters and the network of single points of contact;
- invite them also to participate in the forum of the PC-OC collaborative space;
- organise at each plenary meeting a session devoted to one of the three main conventions, inviting the Parties that have no permanent observer status to participate;
- organise at the 63rd plenary meeting a session devoted to the European Convention on Extradition and invite Korea and South-Africa to attend.

h. Discussion proposed by the Czech Republic on the issue of bilateral treaties with the Bailiwick of Guernsey, the Isle of Man and the Bailiwick of Jersey on exchange of information relating to tax matters between Parties to the European Convention on Mutual Assistance in Criminal Matters.

On the basis of the discussion paper (Document PC-OC (2012)04) introduced by Mr Jakub Pastuszek (Czech Republic), the PC-OC had an exchange of views and experiences on the above issue, and in particular whether information obtained under these treaties could be used in criminal cases without the consent of the state concerned.

5. Elections

a. Composition of the PC-OC Mod

During its 61st meeting, the PC-OC decided that the composition of the PC-OC Mod would be reconsidered at the next plenary session. However, considering the fact that the PC-OC will have to elect a new Chair and Vice-Chair during its 63rd meeting and that the Chair and Vice-Chair are members of the PC-OC Mod, the PC-OC decided to:

- postpone a decision on the composition of the PC-OC Mod until its 63rd plenary meeting.

b. Gender Equality Rapporteur

In line with its terms of reference, the PC-OC elected Ms Antonella Sampo-Couma (Monaco) as Gender Equality Rapporteur.

6. Points for information and any other business

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

- the entry into force on 1 May 2012 of the Third Additional Protocol to the European Convention on Extradition;
- the state of procedure of the adoption of the Fourth Additional Protocol to the European Convention on Extradition;
- the agenda of the 62nd meeting of the CDPC (29 May-1 June);
- the preparation of the 31st Council of Europe Conference of Ministers of Justice (Vienna, 19-21 September 2012) which will be held on the theme: "Responses of Justice to urban violence".

The PC-OC also took note of the information provided by the representative of the Council of the European Union and in particular with regard to the negotiation of the draft Directive of the European Parliament and the Council on the European Investigation Order, of the draft Directive establishing minimum standards on the rights, support and protection of victims of crime and of the recent entry into force of the European Criminal Records Information System (ECRIS,) providing for the exchange of criminal records of EU nationals between member states.