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PC-OC (2015)14

**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 68th meeting of the PC-OC**  
**under the Chairmanship of Ms Joana Gomes Ferreira (Portugal)**  
**27-29 May 2015**

**1. Opening of the meeting and adoption of the agenda**

After the opening of the meeting by the Chair, the PC-OC adopted the agenda as reflected in Doc PC-OC (2015) OJ1.

**2. Points for information**

The PC-OC took note of:

- the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and to the CODEXTER, on:
  - the adoption by the Committee of Ministers - on the occasion of their session in Brussels on 19 May 2015 - of the Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism as well as of a political declaration and a three-year Action plan on the fight against violent extremism and radicalisation leading to terrorism. The action plan sets out a series of Council of Europe-led measures to help tackle radicalisation, including in schools, prisons and on the Internet;

- the progress made by the Drafting Committee on Prison Overcrowding, in charge of drafting a White Paper which will aim to encourage member States to open the debate at national level regarding their penal system and to take respective decisions based on their needs and objectives. This multidisciplinary group, in which the PC-OC is represented by Ms Barbara Goeth-Flemmich (Austria) and Ms Imbi Markus (Estonia), had its second meeting on 20-21 May 2015 and will have its next meeting on 26-27 October this year.
- the information provided by Mr Pedro Verdelho (Portugal), member of the T-CY, on the activities of this Committee and in particular as regards mutual legal assistance based on the Cybercrime Convention and the work of the T-CY Cloud Evidence Group;
- the information by Mr Roberto Rivello, Administrator to the HELP Programme, on the finalisation of the joint HELP/PC-OC project for the development of a curriculum and training materials on international co-operation in criminal matters, with a special emphasis on human rights, for distance learning courses for legal professionals in Poland, Portugal, Romania and the Russian Federation. The PC-OC noted that interested members were invited to comment on the draft curriculum before it enters the next stages of development, the drafting of an interactive version and, finally, the adaptation of the course to national requirements;
- the information by the Chair on her participation in the International Conference on the fight against Trafficking in Human Organs held on 25-26 March 2015 in Santiago de Compostela to launch the opening for signature of the Council of Europe Convention on Trafficking in Human Organs;
- the information provided by the Secretariat on the latest signatures and ratifications of the different treaties within the remit of the PC-OC.

### **3. Discussion on the possible contribution by the PC-OC to the action of the Council of Europe to combat terrorism**

The PC-OC discussed its possible contribution to the Council of Europe Action Plan on the fight against violent extremism and radicalisation leading to terrorism on the basis of a discussion paper presented by a scientific expert, Prof Ana Salinas [Doc Pc-OC(2015)08]. The PC-OC agreed that the widest possible ratification and the efficient application of the instruments for international co-operation were of high importance in the fight against terrorism. Particular mention was made of the usefulness in this context of special investigative techniques and Joint Investigation Teams as foreseen by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182) as well of the need for the speedy transmission and handling of extradition requests. The PC-OC decided to inform the CDPC of its intention to assess the implementation and the reasons for non-ratification by some member States of ETS No. 182, and to look for practical solutions to facilitate the transmission and handling of extradition requests.

### **4. Comments on the preliminary draft action plan to the White Paper on Transnational Organised Crime**

The PC-OC took note of the progress made in the drafting of a preliminary action plan to the White Paper on Transnational Organised Crime. It noted in particular the participation of its members, Mr Erik Verbert (Belgium) and Mr Stephane Dupraz (France), in a first interdisciplinary working meeting, held on 17 April 2015, devoted to finding proposals for adequate actions. Note was furthermore taken of the planned organisation of a follow-up meeting in the autumn. The PC-OC decided to follow the development of this future action plan with interest, expecting that its implementation would require an active involvement of the PC-OC.

## **5. Presentation and content of the PC-OC website**

### **a. Country information**

The PC-OC considered the “Inventory of country specific information available on the PC-OC websites” [PC-OC(2012) 09 rev 9] and was pleased to note that up to now out of the 50 Parties to the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, 44 had filled in the revised templates for country information. It underlined, however, that out of the 64 Parties to the Convention on the Transfer of Sentenced Persons, only 42 had provided their country information on the new templates and decided to:

- call again on the remaining Parties to send in their country information by 1 September 2015 at the latest.

### **b. Information on conventions within the remit of the PC-OC**

The PC-OC also noted with satisfaction that the PC-OC website had been improved by ensuring visibility for all conventions falling within the remit of the PC-OC.

The PC-OC furthermore considered and welcomed the two draft notes prepared by the Secretariat upon request by the PC-OC Mod, presenting the relevant provisions on, respectively, MLA [PC-OC(2015)03] and extradition [PC-OC(2015)04] contained in Council of Europe Conventions and decided to agree with their publication on the website as useful tools for practitioners.

### **c. Update of the index and summaries of relevant case law of the ECtHR**

The PC-OC was informed of the considerable efforts deployed by Ms Malgorzata Skoczelas (Poland), member of the PC-OC Mod, to complete the index and summaries of case law of the ECtHR with cases relevant for the application of conventions on international co-operation as regards search, seizure and confiscation of proceeds of crime, and in particular ETS No. 141, but that she had not identified any decision that would be relevant in this context.

The PC-OC decided to take note of this information and to invite experts to inform the Secretariat of any further decision by the ECtHR which could be of relevance for the future update of the index and summaries of case law by the PC-OC Mod.

## **6. European Convention on Extradition**

### **a. Proposals for follow up to the special session on extradition held during the 66th plenary meeting of the PC-OC**

In the absence of the rapporteur on extradition, Mr Erik Verbert (Belgium), the PC-OC decided to postpone discussion on the possible follow-up to the special session until its next meeting, on the basis of the reflection paper to be prepared by the rapporteur.

### **b. Prison standards to consider in extradition matters with non-European states**

The PC-OC discussed a question raised by Ms Kristina Speicher (Germany) as regards applicable prison standards to be considered in extradition requests with non-European states as well as the level of diplomatic assurances required [Doc PC-OC Mod (2014) 06]. The PC-OC considered that this was an important question, that it should not be limited to non-European States and that it should take into account the case law of the ECtHR, the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Prison Rules and the UN Minimum Standards for the Treatment of Prisoners. The PC-OC decided to instruct the PC-OC Mod to give further consideration to this question and to report back to the plenary.

**c. Other - Art. 16**

The PC-OC discussed a question raised by Ms Joana Ferreira (Portugal) as regards the application of Article 16 of the Extradition Convention – provisional arrest - and in particular the time-limits imposed, when the requested State chooses to retain the person sought by a restrictive measure instead of detention.

The PC-OC noted that while in some States alternatives to provisional arrest are never applied, in many others such alternatives were used (such as conditional release on bail, house arrest or confiscation of passport). Among the States applying alternatives to detention, some applied Article 16 under the same conditions and time-limits as detention. Others were of the opinion that the time-limits of Article 16 only applied to provisional arrest in detention.

The PC-OC, noting the divergence in application of Article 16, decided to ask the PC-OC Mod to give further consideration to this question, to make proposals for follow-up and to report back to the plenary.

**7. Mutual Assistance in Criminal Matters**

**a. Draft model request form on MLA and practical guidelines for practitioners**

The PC-OC carefully considered the draft model request form prepared by the PC-OC Mod [PC-OC Mod (2014)10rev 2] as well as the draft guidelines, agreed on a number of amendments, taking into account the comments by Mr Pedro Verdelho, representative of the T-CY, and decided to:

- adopt the draft model request form, with the exception of the items dealing with special investigative techniques;
- invite the experts to send comments on this aspect of the model request form and on the draft guidelines by 1 September 2015;
- instruct the PC-OC Mod to consider the comments received;
- set up a small working group, composed by Ms Marieke van der Burg (Netherlands), Ms Imbi Markus (Estonia), Ms Yael Bitton (Israel) and the Chair, who could meet during a two half-day meeting to be organised in Paris in October, with the task of finalising the form and guidelines for adoption by the plenary at its next meeting.

**b. Draft questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime**

As a follow-up to the special session held on international co-operation as regards the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing, the PC-OC considered the draft questionnaire proposed by the PC-OC Mod as well as the amendments proposed by Wietske Dijkstra (the Netherlands), and decided to:

- adopt the questionnaire with several amendments, as contained in Doc PC-OC Mod (2015)03 rev 3;
- instruct the Secretariat to send out the questionnaire as soon as possible, inviting experts to reply to the questionnaire by 1 September 2015;
- ask the PC-OC Mod to consider the replies received and report back to the plenary.

**c. Discussion on MLA in criminal, civil and administrative matters related to criminal offenses, the liability of legal entities, non-conviction based confiscation and proposals for follow-up**

The PC-OC, noting the absence of Mr Vladimir Zimin (Russian Federation) and his request to postpone consideration of his discussion paper [Doc PC-OC Mod (2014)08], decided to postpone discussion of this item until a subsequent meeting.

**d. Proposals for follow up to the special session on international co-operation as regards the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing**

The PC-OC took note of the viewpoint of the PC-OC Mod that the answers to the questionnaire mentioned under point 7b would provide a good basis for further decisions and decided to resume discussion on the follow-up at a subsequent meeting.

**e. Compatibility between the European Convention on Mutual Assistance in Criminal Matters and the Cybercrime Convention with regard to the question of international co-operation in matters related to electronic evidence**

The PC-OC considered the replies received to this question raised by the CDPC Bureau [Doc PC-OC Mod (2015) 02 rev] and agreed with the conclusion reached by the PC-OC Mod.

The PC-OC decided to inform the CDPC that there was clearly no incompatibility between the European Convention on Mutual Assistance in Criminal Matters (ETS No.30) and the Cybercrime Convention(ETS No.185) underlining that both instruments completed each other. In addition, countries mentioned no particular problems related to the interaction between these conventions at national level.

**8. Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto**

**a. Draft protocol to amend the Additional Protocol to the Convention and draft revised explanatory report**

The PC-OC considered the preliminary draft protocol to amend the Additional Protocol to the Convention as proposed by the PC-OC Mod, including the proposal for amendment by the Netherlands contained in Doc. PC-OC (2015)05]. While the PC-OC could agree on some minor amendments (as reflected in Doc PC-OC Mod(2015)01rev2) the discussion revealed that a few Parties had difficulties with the most important amendments proposed.

The PC-OC decided, therefore, to leave time to the experts of these Parties to propose alternative solutions to the issues raised and to resume discussion of the draft protocol and its explanatory report at its next meeting.

As regards the proposal by the Netherlands to amend Article 17 of the Convention on the Transfer of Sentenced Persons (ETS No. 112), the PC-OC agreed that the proposal was interesting and that it needed further debate.

The PC-OC decided to ask the PC-OC Mod to consider this question further in the context of the future revision of the Convention, as well as other proposals concerning this revision.

**b. E-transfer proposal**

Further to the discussions at the previous meeting and in the meeting of the PC-OC Mod, the PC-OC gave further consideration to the proposal by Israel to develop an electronic tool to facilitate transfer procedures (e-transfer, contained in Doc PC-OC Mod (2014)04). The PC-OC agreed that it was a highly interesting proposal and decided to:

- post the Powerpoint presentation given by Mr Aviad Eliya (Israel) on the PC-OC website;
- instruct the Secretariat to invite experts to provide their comments and their legal or practical requirements by 1 September 2015;
- ask the PC-OC Mod to consider the comments received and report to the plenary.

**c. Other**

The PC-OC took note with interest of an information given by Mr Walter Corea (Costa Rica) indicating that Costa Rica had created a special budget to finance, under certain conditions, the transfer of foreigners sentenced in Costa Rica to their countries of origin. The PC-OC decided to post this information on its website as a useful tool for practitioners involved in the transfer of sentenced persons.

**9. Review of Council of Europe Conventions within the remit of the PC-OC. Discussion on the operation of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51) and of the European Convention on International Validity of Criminal Judgments (ETS No. 70)**

The PC-OC assessed the operation of the conventions mentioned above and agreed that the conclusions to the study conducted in 2003 [Doc PC-OC(2003)07] were still valid. As to ETS No. 70, the PC-OC was of the opinion that this convention was in need of further assessment.

The Committee furthermore considered the draft review on the conventions within the remit of the PC-OC as contained in Doc PC-OC (2015)06 and decided to:

- invite experts to comment on the draft review by 1 September 2015;
- ask the PC-OC Mod to:
  - complete the draft review for consideration and adoption at its next plenary meeting on the basis of the discussions held and comments received;
  - make proposals for the assessment of ETS No. 70, for example by means of a questionnaire, and as regards ETS No. 141, to consider the replies to the questionnaire;
  - prepare a draft letter to the CDPC on the assessment of the operation of ETS Nos. 51, 70 and 141 for consideration and approval at its next meeting.

**10. Election of a member of the PC-OC Mod**

The PC-OC elected Ms Eleni Loizidou (Cyprus) as a member of the PC-OC Mod, in replacement of Mr Per Hedvall (Sweden). Ms Imbi Markus (Estonia) was elected as substitute member.

**11. Appointment of a representative of the PC-OC in the T-CY**

The PC-OC appointed Ms Gabriela Blahova (Czech Republic) to represent the PC-OC in the meetings of the T-CY.

**12. Preliminary terms of reference of the PC-OC for 2016-2017**

The PC-OC considered the preliminary draft terms of reference proposed for its work in the upcoming biennium and decided to submit them, as reflected in Doc PC-OC(2015)12, for approval to the CDPC.

Finally, the PC-OC also considered an outstanding task contained in its current terms of reference, namely to complete the standard text providing information on the Convention on the Transfer of

Sentenced Persons (appendix to Recommendation No. R (84)11) with a text on the Additional protocol and to update the model request form appended to Recommendation No. R (92)18.

The PC-OC decided to inform the CDPC that it proposes to postpone this task until its ongoing work on the Convention on the Transfer of Sentenced Persons and its Additional Protocol is completed.