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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 69th meeting of the PC-OC
under the Chairmanship of Ms Joana Gomes Ferreira (Portugal)
3-5 November 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) OJ2.

2. Points for information

The PC-OC took note of:

- its draft terms of reference for 2016-2017 as submitted to the Committee of Ministers in view of their adoption on 26-27 November;
- the words of welcome and information provided by Mr Ivan Koedjikov, Head of the Action against Crime Department, on recent developments in the Council of Europe;
- the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and to the CODEXTER, on:
 - the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, aimed at tackling the problem of "foreign terrorist fighters" which was opened for signature in

Riga on 22 October. The Protocol was signed by 17 member States. The European Union also signed the Protocol together with the Convention on the Prevention of Terrorism;

- the consideration by the CDPC of the possibility to provide a criminal law response to the phenomenon of organised smuggling of migrants. Further to a proposal by the delegation from Malta, the CDPC had decided to assess shortcomings in existing legislation and international instruments as reflected in the discussion paper on “Criminality and migrants”. The CDPC furthermore decided to send out a questionnaire on this issue to member States. The replies and follow-up will be discussed by the CDPC at its next plenary meeting on 1- 4 December. The PC-OC will receive a copy of these documents for information;
 - the progress made by the Working Group on the follow-up to the White Paper on Transnational Organised Crime. Further to the last meeting of this multidisciplinary working group on 17-18 September, attended by Mr Erik Verbert (Belgium) and Mr Stéphane Dupraz (France) on behalf of the PC-OC, a draft action plan, available on the PC-OC website, will be submitted to the CDPC for adoption during its upcoming meeting on 1- 4 December 2015;
 - 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 third meeting on 26-27 October this year. The fourth and last meeting will take place on 21-22 April 2016.
- the information given by the Secretariat on the delay, due to the illness of an expert, in the finalisation of the joint HELP/PC-OC project for the development of the interactive version of the training 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 information provided by Ms Gabriela Bláhová (Czech Republic) who participated, on behalf of the PC-OC, in a short meeting organised on 16 June by the Pompidou Group with a view to preparing a handbook on controlled delivery. She will also participate in a follow-up meeting, hosted by Interpol, on 9-10 November in Lyon;
 - the information provided by Mr Pedro Verdelho (Portugal), member of the T-CY, on the activities of this Committee, in particular regarding the discussions, related to the interpretation of Article 18 (Production orders) of the Budapest Convention, on possible direct co-operation between judicial authorities and foreign service providers so as to obtain subscriber information. Ms Gabriela Blahova will represent the PC-OC at the upcoming meeting of the T-CY on 1 and 2 December and also at the hearing of service providers organised on 30 November 2015;
 - the information provided by the Secretariat on the latest signatures and ratifications of the different treaties within the remit of the PC-OC.

3. Presentation and content of the PC-OC website

The PC-OC took note with interest of the planned new design of the PC-OC website which will replace the present website in the coming months, due to a change in platform.

a. Country information

The PC-OC considered the “Inventory of country specific information available on the PC-OC websites” (PC-OC(2012) 09 rev 11) and was most satisfied 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, 47 and 48 Parties respectively had filled in the revised templates for country information. Out of

the 64 Parties to the Convention on the Transfer of Sentenced Persons, 48 had provided their country information on the new templates, including almost all Council of Europe member States. Underlining the usefulness for practitioners of this type of country information, the PC-OC decided to:

- call on all experts from Parties to the conventions concerned to keep this information regularly updated;
- reiterate its request to experts who hadn't done so to send in their country information as soon as possible.

The Committee also noted that, further to a call for update of the contact persons figuring on the restricted website (the List of officials involved in the practical application 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 well as the Network of single points of contact), 17 updates had been received so far. Underlining the importance of having reliable and updated lists of contact persons, the PC-OC decided to:

- call on all experts from Parties to the conventions concerned to regularly check the accuracy of the contact details provided and to send updates when necessary.

Referring to the "Inventory of country specific information", the PC-OC considered that some of the other information available on the PC-OC website might no longer be relevant or in need of an update. The PC-OC decided to ask the PC-OC Mod to assess the usefulness and accuracy of all the country information mentioned and to report back to the plenary.

b. Update of the index and summaries of relevant case law of the ECtHR

The PC-OC took note of the information provided by Mr Erik Verbert as well as by Ms Gabriela Blahova on recent cases to be included in the index and summaries of relevant case law of the ECHR. The PC-OC was grateful for the proposal by Ms Eleni Loizidou (Cyprus) to assist in updating the index.

The PC-OC decided 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.

4. European Convention on Extradition

a. Follow up to the special session on extradition held during the 66th plenary meeting of the PC-OC

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

b. Assurances required as regards prison standards to consider in extradition procedures in particular with non-European states

Further to the discussions held at its previous plenary meeting and at the last meeting of the PC-OC Mod, the PC-OC continued considering the 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 had an interesting exchange of views with Mr Marc Nève (Belgium), expert on behalf of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in particular as regards the monitoring of assurances after extradition has taken place.

The Committee decided to :

Support the viewpoint of the PC-OC Mod that, when deciding on extradition of a person to a place where the prison conditions are potentially problematic, the only binding obligation to consider is Article 3 of the ECHR concerning the prohibition of torture and inhuman or degrading treatment or punishment and the related case law of the ECtHR. Given the absolute nature of Article 3, Council of Europe member States should, on principle, provide the same level of protection to all persons within their jurisdiction, regardless whether the state requesting extradition is, or is not, a member State of the Council of Europe. The PC-OC recalled that decisions on extradition and the potential violation of Article 3 were to be taken on a case by case basis, while considering all elements of relevance to the specific case, including the concrete risks.

c. Application of Article 16 - provisional arrest - by alternative measures to detention

The PC-OC resumed discussion of a question which was raised in its previous meeting by Ms Joana Ferreira 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 impose a restrictive measure upon the person sought instead of detention.

Referring to the conclusions reached during its previous meeting, the PC-OC noted that further discussion of this question by the PC-OC Mod confirmed the lack of consensus on the application of the time-limits mentioned in Article 16, paragraph 4 to alternative measures to detention.

In order to avoid unnecessary obstacles to extradition procedures due to this divergence of interpretation, the PC-OC, decided to:

- invite all experts from Parties to the Convention on extradition to complete the country information provided with an indication of the application of the time-limits of Article 16 paragraph 4 to alternative measures to provisional arrest;
- invite the experts who have not yet done so to reply to the question by Mr Zimin (Russian Federation) on the use of measures of restriction in extradition cases [Doc PC-OC(2015)15].

The PC-OC also heard an intervention by Mr Yuval Kaplinsky (Israel), where he raised concern about several cases where persons had fled pending extradition procedures further to a decision by the requested state to grant them conditional release. The intervention was followed by an exchange of views about criteria used to impose alternative measures to detention pending extradition procedures.

5. Mutual Assistance in Criminal Matters

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

The PC-OC considered the draft model request form and guidelines prepared by the working group of the PC-OC in consultation with Mr Pedro Verdelho, on behalf of the T-CY and, taking into account the various comments received, agreed on a few amendments. The Committee underlined that in order to ensure an effective use of this important tool by practitioners, it was important that this model request form and guidelines be widely distributed and translated in as many languages as possible, and decided to:

- adopt the model request form and the guidelines as reflected in Doc PC-OC Mod(2014)10 rev6 and PC-OC(2015)09rev3;
- invite experts to have the model request and guidelines widely distributed and translated in their national language and to send it to the Secretariat for publication on the PC-OC website;
- instruct the Secretariat to produce a user-friendly version of the model request form, including an arborescence in the model request form and links to the corresponding parts of the guidelines, and post this version on the PC-OC website as a useful tool for practitioners.

b. Consideration of the replies to the 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 and proposals for follow-up

The PC-OC considered the 25 replies received and agreed that although most States can, in principle, co-operate in the field of seizure and confiscation of proceeds of crime on the basis of existing conventions, and in particular the more specialised conventions, such as the Convention on Laundering, Search and Confiscation of Proceeds of Crime (ETS No. 141), there was still room for improvement as regards the effective use made of this form of co-operation. Specific concerns were raised as regard specific forms of requests for co-operation, such as non-conviction based confiscation, confiscation for the purpose of returning assets to victims and asset sharing. The PC-OC furthermore agreed that mutual assistance requests frequently take too much time to successfully address requests for freezing or seizure of assets deposited on bank accounts.

The Committee supported the view of the PC-OC Mod that the PC-OC would need to co-operate with experts from MONEYVAL and/or the Conference of Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (COP 198) to discuss ways to improve international co-operation in this particular field.

The PC-OC considered that, as a first step in this direction, it would be important to gather country information on national procedures as regards the application of ETS No. 141.

The PC-OC decided to:

- invite experts who had not done so to reply to the questionnaire by 30 December 2015;
- ask the PC-OC Mod to develop a draft template on country information as regards ETS No.141, for consideration by the PC-OC at its next meeting;
- inform the CDPC of its wish to obtain assistance from experts from MONEYVAL or the COP 198 to take this issue further;
- appoint Ms Wietske Dijkstra (The Netherlands) as its rapporteur in respect of the ETS 141.

c. Presentation of a project for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes

The PC-OC took note with interest of a presentation by Ms Wietske Dijkstra on a project for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes and the preparation of a global Multilateral Treaty to cover these issues.

The presentation indicated that an increasing number of countries are prosecuting atrocity crimes. These crimes have in common that they have usually been committed a long time ago and in countries around the world where the CoE treaties are not always applicable. In the absence of a global international convention in this field and in order to make domestic prosecution of genocide, crimes against humanity and war crimes easier and more effective, it is envisaged to develop a multilateral treaty that would obviate the need for bilateral agreements. The countries that launched the initiative are actively striving to gather global support. The initiative's scope extends to all States. Currently, over 45 States have expressed their support for this initiative.

The PC-OC furthermore discussed a question raised by Erik Verbert, in his discussion paper "MLA- Just a matter of States" [PC-OC(2015)18] on the problems raised when a person addresses a request to the judiciary to stop an MLA procedure on the basis of a possible violation of human rights.

6. 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 devoted considerable time to discussing the preliminary draft protocol to amend the Additional Protocol to the Convention, including the proposals for amendments by the Netherlands contained in Doc. PC-OC (2015)17 and the alternative transitional measures proposed by the Treaty Office. The Committee agreed, with an amendment to the drafting of Article 1, on the substantial articles contained in the draft. As to the final and transitional provisions, contained in Articles 3 to 7, the PC-OC agreed on adopting option B proposed by the Treaty Office, with some alternatives to be decided at the next meeting.

The PC-OC decided to:

- instruct the Secretariat to finalise the update of the explanatory report in consultation with Ms Barbara Goeth-Flemmich, rapporteur on transfer of sentenced persons;
- ask the PC-OC Mod to consider the draft explanatory report;
- finalise the draft amended Protocol and explanatory report at its next plenary meeting;
- invite the Treaty Office to attend the next meeting of the PC-OC, so as to advise it on the different alternatives in the transitional provisions.

b. Discussion on possible amendments to the Convention (ETS No. 112) in a Second Additional Protocol

The PC-OC considered the two proposals by the Netherlands to amend Article 17 of the Convention (contained in Doc PC-OC (2015)05) by limiting the translation required from the sentencing state and by shifting the obligation to finance the transfer from the administering state to the sentencing state. The PC-OC furthermore considered the proposal by the PC-OC Mod to introduce a provision allowing the transfer of the sentence in cases where the sentenced person was living in, or had returned to his or her country of origin.

Considering that more time was needed to come to a common position on possible amendments to the Convention, the PC-OC decided to ask the PC-OC Mod to look into these possibilities further, taking also into account the proposals previously made by the PC-OC and those discussed in the special session on the transfer of sentenced persons.

c. Consideration of comments received to the E-transfer proposal by Israel and proposals for follow up

Further to the discussions held at the previous meeting and, taking into account the comments received (Doc PC-OC Mod (2015)05rev) and the views expressed by 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 discussion revealed that, while there was considerable interest for the proposal, there were also important concerns, in particular as regards procedural requirements in national legislation, aspects of security, data protection, system management and costs.

The PC-OC decided to:

- instruct the Secretariat to inquire about possibilities to address these concerns, before resuming examination of the proposal at its next meeting.

7. Finalisation of the Review of Council of Europe Conventions within the remit of the PC-OC

The PC-OC considered the draft review on the conventions within the remit of the PC-OC as contained in Doc PC-OC (2015)06rev, taking into account the comments received, and decided to:

- adopt the draft review with some minor amendments and to submit it to the CDPC.

8. Election of the Chair and vice-Chair

Further to the expiry of the mandate of its Chair, Ms Joana Ferreira (Portugal), and the change in functions of its vice-Chair, Mr Stéphane Dupraz (France), the PC-OC elected Ms Astrid Offner (Switzerland) as its Chair and elected Ms Joana Ferreira as its vice-Chair for a term of one year, starting in 2016.

The PC-OC expressed its gratitude to Ms Ferreira for the excellent work accomplished during her chairmanship.

9. Meetings in 2016

The PC-OC decided to hold its plenary meetings in 2016 from 2 to 4 May and from 15 to 17 November.

The meetings of the PC-OC Mod will take place from 23 to 25 February and from 27 to 29 September 2016.

10. The PC-OC, noting that Ms Imbi Markus (Estonia) was retiring, thanked her for her valuable contributions to the work of the Committee over many years and wished her all the best for her future.