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PC-OC (2016)06

**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 71st meeting of the PC-OC  
under the Chairmanship of Ms Joana Gomes Ferreira (Portugal)  
15-17 November 2016**

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

At the opening of the meeting, the Vice-Chair, Ms Joana Gomes Ferreira (Portugal), delivered a farewell message from the Chair, Ms Astrid Offner (Switzerland), who was unable to attend, and who announced her retirement for 2017. The experts of the PC-OC expressed their gratitude for Ms Offner's excellent chairmanship during the last year and her substantial contribution to the work of the committee over many years. The PC-OC conveyed its very best wishes for her future.

The PC-OC also took note of the opening words by Mr Jan Kleijssen, Director, Directorate of Information Society and Action against Crime (DGI). Mr Kleijssen underlined the important role played by the committee in its support to other Council of Europe Committees involved in criminal law activities as well as in its role as an interface with EU bodies such as Eurojust and EJM. He furthermore informed the Committee of the activities of the T-CY, who is currently holding its plenary meeting, and in particular the work of its Cloud Evidence Group whose final report (Doc T-CY(2016)5) is being discussed. The Budapest Convention is celebrating its 15th anniversary as well as the 50th ratification of the Convention. The Octopus Conference, gathering together 90 States, is also taking place this week.

The PC-OC adopted the agenda as reflected in Doc PC-OC (2016) OJ2.

## 2. Points for information

The PC-OC took note of the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and the CODEXTER:

As regards the CDPC who will have its plenary meeting from 29 November till 1 December, on:

- the progress made by the Committee of Offences related to Cultural Property (PC-IBC) tasked with the drafting of a new Council of Europe convention on offences relating to cultural property;
- the follow up by the CDPC to the White paper on prison overcrowding, by the setting up of a working group to propose concrete measures to address this issue;
- the upcoming discussion in the CDPC on possibilities of reviewing the European Convention on the Compensation of Victims of Violent Crimes;

As regards the CODEXTER who will start its plenary meeting tomorrow, on:

- the finalisation of the update of the Recommendation on Special Investigation Techniques in relation to serious crimes including acts of terrorism;
- the drafting of a new recommendation on terrorists acting alone, which should be finalised in 2017;
- the examination of a report on the links between organised crime and terrorism, which can be consulted on the website of the CODEXTER.

Mr Chiaromonte also mentioned the launch meeting of the CoE 24/7 Foreign Terrorist Fighters Network of Contact Points, foreseen in the Additional Protocol to the Convention on the Prevention of Terrorism, which took place on 17 October 2016.

The PC-OC expressed the wish to be involved in the Working Group of the CDPC on prison overcrowding or consulted on the elaboration of possible measures in this area.

The PC-OC also took note of:

- the information provided by Ms Gabriela Bláhová (Czech Republic) who participated, on behalf of the PC-OC, in a meeting organised by the Pompidou Group, on 20-21 October in Vienna with a view to preparing a handbook on controlled deliveries. The handbook, elaborated in co-operation with Eurojust, Interpol, Europol, the OSCE and SEEPAG, should be finalised in March 2017 and will contain a reference to the model request form on controlled deliveries developed by the PC-OC.
- the information provided by the Secretariat on co-operation with the COP 198 for the implementation of the Action Plan on TOC as regards seizure and confiscation of proceeds of crime. The COP 198 proposes to have a discussion on this issue during the next plenary meeting of the PC-OC;
- further information as regards the follow up to the assessment report on MLA by the T-CY carried out by the collection of replies from Parties to the Budapest Convention to a questionnaire. The PC-OC expressed its interest in discussing this issue, as well as the report on cloud evidence further, firstly by the PC-OC Mod, and in the next plenary;
- the information provided by the Secretariat on the latest signatures and ratifications of the different treaties within the remit of the PC-OC;
- the information provided by experts on bilateral treaties;
- the information by Mr Jason Carter (USA) on the reforms conducted to reinforce the US central authority. He also informed the Committee about the consequences of the Microsoft ruling by the Federal Court, stating that US law does not allow for the execution of search warrants for data

content stored abroad. The US government is trying to overturn this ruling which affects MLA requests regarding electronic data to the US. A policy guideline was sent to all States advising them to contact ISP providers directly to obtain user information and to address requests for information on the content of electronic data to the State where these data are stored;

- the information by Ms Marieke van der Burg (Netherlands) on the latest developments as regards the initiative to elaborate a global MLA and extradition treaty for the most serious crimes such as genocide, war crimes and crimes against humanity. Up until now, 52 States have demonstrated an interest in such a treaty. Interested States will be invited to a meeting in The Hague in May or June 2017 where they will discuss the content of the treaty and the way forward.

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

The PC-OC took note with interest of the new website of the PC-OC, which will undergo further changes so as to harmonise its presentation with other websites of the Directorate General. The Committee also made some proposals for its further development.

The PC-OC decided to:

- ask the PC-OC Mod to consider the possibility of publishing global and regional conventions on international co-operation in criminal matters on the website;
- ask the Secretariat to publish a list of previous Chairs, vice-Chairs and Secretaries to the Committee.

The PC-OC also considered the latest update of country information available on the website, contained in Doc PC-OC(2012)09 Rev.15, and noted that many countries had not yet provided their information on national procedures as regards the application of ETS N°141. Underlining the importance of completing missing country information and updating information provided, the PC-OC decided to:

- reiterate its call to experts to inform the Secretariat timely of any changes in country information and contact points;
- invite experts who have not yet done so to complete the template for country information on national procedures as regards the application of ETS N°141 by the end of 2016.

The Committee took note of the difficulties encountered in the update of the list of bilateral treaties [Doc PC-OC INF 8] due to the fact that treaties were sometimes difficult to categorise and that there appeared to be a number of inconsistencies between the lists provided by the various States.

The PC-OC decided to:

- instruct the Secretariat to approach the experts of the States concerned so as to solve these issues before the publication of the update;
- invite experts when sending further updates to this document to the Secretariat to clearly indicate the category to which the bilateral treaty belongs.

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

The PC-OC took note of the update of the index and summaries of the case law of the ECtHR proposed by the PC-OC Mod, as well as of the difficulties of the working group to continue this important but labour intensive exercise.

The PC-OC also considered the suggestion made by the PC-OC Mod to collect case law of relevance to international co-operation from the Court of Justice of the European Union and took note of the information that this case law was already available on the website of the EJN.

The PC-OC decided to:

- invite experts to inform the Secretariat of any further decision of the ECtHR that should be included in this document;
- instruct the Secretariat to insert the updates into the index;
- instruct the Secretariat to introduce a link on the PC-OC website to the case law of the Court of Justice of the EU on the website of the EJN;
- ask the Secretariat to recruit an expert to continue the update of the index and summaries, subject to budgetary possibilities.

#### **4. Implementation of the Action Plan on Transnational Organised Crime**

The PC-OC took note of the presentation by Mr Oscar Alarcon, Secretariat, of the elements of the action plan that could be within the remit of the PC-OC [Doc PC-OC(2016)5] and decided to:

- ask the PC-OC Mod to give its views on the activities proposed in this document and to establish priority actions for further discussion at the next plenary meeting.

##### **a. Examination of the draft overview of reservations to Council of Europe treaties within the remit of the PC-OC and proposals for follow up**

The PC-OC considered the catalogue and the overview of reservations made to the conventions within the remit of the PC-OC and of relevance to the fight against TOC, taking into account that the objective of the exercise would be to identify those declarations and reservations that could potentially be modified or withdrawn so as to facilitate this fight.

The PC-OC decided to:

- invite experts to check whether the reservations and declarations listed in the catalogue accurately reflect those made by their respective States and to inform the Secretariat of any amendment to be made;
- invite experts to report practical problems encountered due to existing reservations;
- ask the PC-OC Mod to discuss this issue further and make proposals for follow up.

##### **b. Examination of the draft overview of existing judicial networks and proposals to promote their interconnection**

The PC-OC considered the overview of networks prepared by the Secretariat [Doc PC-OC Mod (2016)6rev] and agreed with the proposals for follow up proposed by the PC-OC Mod.

The PC-OC decided to:

- instruct the Secretariat to appoint a consultant to further develop the overview of networks and to prepare a reflection paper containing proposals on ways to interconnect existing judicial networks and/or options for closer co-operation between them;
- ask the experts to send to the Secretariat further proposals for networks to be added;

- ask the PC-OC Mod to give further consideration to this issue, including the possibility to organise a meeting between representatives of these networks to discuss the options for interconnection and/or co-operation.
- c. Discussion on the possibility to create a network of contact persons within the PC-OC concerning the fight against TOC**

The PC-OC discussed the above question, taking into account the proposal by the PC-OC Mod to invite experts to consider the persons mentioned in the list of single points of contact and to add, where necessary, a different contact point for issues related to TOC.

The PC-OC agreed with the proposal of the PC-OC Mod, considering that, at least for the moment, a multiplication of specialised networks would not be advisable and decided to:

- invite experts to use the network of single points of contact to find the appropriate national expert to answer questions related to TOC, while leaving the possibility of informing the Secretariat of the names of specific national experts on TOC whose contact details could be added to the list of single points of contact.

## **5. European Convention on Mutual Assistance in Criminal Matters**

### **a. Special Session in the context of the Action Plan on TOC: New opportunities for mutual assistance in criminal matters offered by the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters**

The PC-OC held a special session on the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters, including an introductory speech prepared by Mr Eugenio Selvaggi (Italy), rapporteur on MLA and a presentation by Mr Vincent Jamin (Eurojust, JIT Secretariat) on the functioning of Joint Investigation Teams (JITs), on possibilities offered by Eurojust to assist EU States in conducting JITs, including with third States, as well as two parallel workshops.

The first workshop, on Exchange of information (scope of information and channels of communication) discussed the application of the provisions in the Protocol relevant to that theme on the basis of a paper prepared by the moderator, Ms Eleni Loizidou (Cyprus)

The second workshop was devoted to the Gathering of evidence (methods of gathering and admissibility of evidence). Relevant questions on this subject were discussed on the basis of a discussion paper by the moderator, Mr Erik Verbert (Belgium).

The rapporteurs to the workshops, Ms Barbara Goeth-Flemmich (Austria) and Mr Juhani Korhonen (Finland), presented the outcome of the discussions to the plenary.

The session was concluded by the Vice-Chair, Ms Joana Gomes Ferreira.

The PC-OC expressed its gratitude to the rapporteur on MLA, Mr Eugenio Selvaggi, who could not attend the meeting, for his introductory speech, as well as to Mr Jamin, the moderators and the rapporteurs for their valuable contributions. The PC-OC also considered the follow up to the special session taking into account the proposal by the PC-OC Mod and decided to:

- ask the PC-OC Mod to develop a questionnaire on the application of the Second Additional Protocol taking into account the issues raised in the workshops;
- ask the rapporteurs to send their reports to the Secretariat in view of their publication on the PC-OC website, together with the other papers submitted during this special session.

**b. Other: Draft model request form on MLA and practical guidelines for practitioners**

The PC-OC took note of the information that the publication on the new website of the user-friendly version of the model request form and guidelines on mutual legal assistance [Doc PC-OC Mod(2014)10 rev6 and PC-OC(2015)09rev3] has been delayed by the requirement to develop special software allowing for a print-friendly version.

The Committee recalled 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.

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

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

The PC-OC continued consideration of the proposals to amend Article 17 of the Convention (contained in Doc PC-OC (2016)03rev) and had a long discussion about possibilities to limit translation requirements and to allow on a case by case basis to conclude agreements on the shifting of the costs of the transfer from the administering state to the sentencing state .

The PC-OC decided to ask the PC-OC Mod to redraft a proposal on this issue, on the basis of the discussion held in the plenary.

The PC-OC furthermore discussed in depth the proposals by the PC-OC Mod to amend Articles 4 and 7 of the Convention [Doc PC-OC Mod (2016)10]. However, noting the absence of support for the proposals made and the impossibility to reach a consensus on a possible alternative to deal with the revocation of consent to a transfer by the person concerned, the PC-OC decided, for the time being, not to amend these provisions of the Convention.

The findings of the PC-OC Mod with regard to other proposals were also discussed, and in particular:

- *the widening of the scope of the Convention to persons who returned voluntarily to their country of origin before having served their sentence:*

The PC-OC decided to support the findings of the PC-OC Mod that the draft Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons provided an acceptable solution to this problem.

- *the non-payment of fines or compensation of victims:*

The majority of the PC-OC decided to support the findings of the PC-OC Mod that this issue should be addressed by updating Recommendation R (92)18 by the Committee of Ministers which also addresses the issue of fines. One expert was of the opinion that this issue could not be solved by a recommendation.

- *the provision of information on the execution of the sentence by the administering state:*

The PC-OC discussed this issue, noting that many Parties do not accurately enforce Article 15 of the Convention which contains an obligation for the administering State to provide information to the sentencing state. Particular mention was made of the need to promptly inform the sentencing State of release, including conditional release, of sentenced persons in order to enable that State to inform victims. The viewpoint of the majority of PC-OC Mod members, who saw no compelling reasons to amend the text of Article 15, was also taken into account.

The PC-OC decided to continue discussions on this issue at its next meeting.

#### **b. Preparation of a questionnaire concerning the possible establishment of an E-transfer tool**

Further to the discussions held at the previous meeting on the possibility to develop an electronic tool to facilitate transfer procedures (e-transfer proposal by Israel, contained in Doc PC-OC Mod (2014)04), the PC-OC examined a draft questionnaire prepared by the PC-OC Mod and had an exchange of views with the Secretariat of the Directorate of Information Technologies.

The PC-OC decided to:

- approve the questionnaire with certain amendments and invite experts to send their replies to the Secretariat by 20 January 2017 at the latest;
- ask the PC-OC Mod to consider the replies received and make proposals for follow-up.

### **7. European Convention on Extradition**

#### **Practical cases**

The PC-OC had an exchange of views on the questions raised by Ms Tetiana Shorstka (Ukraine) in her discussion paper [Doc PC-OC Mod(2016)12] as regards the possibility for requesting states to appeal against a refusal to extradite. Many experts informed that in their countries, the requested state and not the requesting state would be entitled to appeal. The PC-OC also discussed the use of alternatives to detention in view of extradition.

The PC-OC also discussed a question raised by Ms Eleni Loizidou (Cyprus) on whether it would be necessary to send a new requalified extradition request for the execution of the sentence of a person when, after the initial extradition request for prosecution and before a final decision is taken, this same person has been judged *in absentia* for the same facts retaining the right to retrial in case of extradition. Most countries said that it would not be necessary to send a new request and that the sending of additional information explaining the reasons for the *in absentia* trial would suffice.

The PC-OC was also informed of the recent judgment in the Case C-182/15 by the Court of Justice of the EU concerning the extradition by Latvia to the Russian Federation of an Estonian national. The plenary exchanged views on the possible consequences of this decision to extradition procedures.

The PC-OC underlined the importance of keeping extradition issues on the agenda, and decided to:

- ask the PC-OC Mod to further address the issue of alternatives to detention, taking into account the document Measures of restriction in extradition cases - Replies to a question posed by Mr Vladimir Zimin (Russian Federation) [PC-OC (2015)15 Bil. Rev].

### **8. Election of the Chair and Vice-Chair of the PC-OC**

The PC-OC decided to elect Mr Erik Verbert (Belgium) as its Chair and to re-elect Ms Joana Gomes Ferreira (Portugal) as its Vice-Chair for a term of one year, starting in 2017.

The PC-OC noted that as a result of the election of one of the members of the PC-OC Mod as a Chair, Ms Tetiana Shorstka (Ukraine), the first substitute to this working group, will become a member of the PC-OC Mod.

**9. Dates of meetings in 2017**

The PC-OC decided to have its plenary meetings on 22-24 May and 21-23 November 2017. The PC-OC Mod will meet on 28 February-2 March and 26-28 September 2017.