



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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PC-OC Mod (2011) 02

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 12th meeting of the restricted Group of experts
on international co-operation (PC-OC Mod) enlarged to all PC-OC members
12-14 October 2011**

The PC-OC Mod decided to:

1. Replies to the questionnaire on jurisdiction and transfer of proceedings

- instruct the Secretariat to update the compilation and the summary of replies in time for the PC-OC plenary meeting;
- propose to the PC-OC plenary to consider the development of practical guidelines, if appropriate contained in a legal instrument, addressing mainly the following issues emerging from the replies to the questionnaire in respect of the application of the European Convention on the Transfer of Proceedings in Criminal Matters, of Article 21 of the European Convention on Mutual Assistance in Criminal matters and Article 6, paragraph 2 of the European Convention on Extradition:
 - bilateral consultation between the requesting and the requested states before, during and after (feedback) the submission of requests for cooperation;
 - proportionality of the case with regard to the procedure initiated and the appropriateness to submit the request;
 - ways to accelerate and facilitate procedures so as to avoid impunity while lowering costs and efforts involved (eg by suggested time limits to react to a request ;development of a model form to submit requests, including a coversheet and/or a summary; reconsider translation requirements and burden of costs).

2. Secretariat proposals to improve the presentation and content of the PC-OC website

- thank the Secretariat for the improved presentation of upcoming meetings and the access to documents of previous meetings as well as for the ongoing effort to select important documents produced in the past ten years for publication;
- take note of the update of the list of officials involved in the practical application of the conventions regarding extradition, mutual legal assistance and transfer of sentenced persons as well as of the list "network of single points of contact";
- propose that the plenary ask the Secretariat to post the list of competent authorities in respect of Articles 13 and 15§3 of the European Convention on Mutual Assistance in Criminal Matters on the PC-OC's collaborative workspace;

- ask the Secretariat to send the provisional list of case law of the European Court of Human Rights relevant to the European Treaties on co-operation in criminal matters to the Chair, the vice-Chair as well as to Mr Miroslav Kubiček (Czech Republic) and Mr. Eugenio Selvaggi (Italy), for comments and completion in view of its publication on the PC-OC website;
 - propose that the plenary invite delegations to inform the Secretariat of relevant case law including from national Supreme Courts or Constitutional Courts in order to be published on the website;
 - ask the Secretariat to invite delegations to propose links to websites of interest to the work of the PC-OC;
 - ask the Secretariat to reflect the discussions held in the PC-OC on practical cases in documents that are appropriate to be published on the website.
- 3. Possible ways of allowing practitioners to submit questions to the PC-OC**
- revise the Secretariat proposals in this respect and submit the amended proposals contained in Document PC-OC (2011) 04 rev2 for consideration to the PC-OC plenary ;
 - ask the Secretariat to amend the information sheet on the PC-OC (Doc PC-OC (2011)08) in the light of its discussions, to finalise it in consultation with the Chair and with Mr Eugenio Selvaggi (Italy) for consideration by the PC-OC plenary.
- 4. Feasibility of collecting technical information from Parties to the Second Additional Protocol of the Convention on Mutual Legal Assistance in Criminal Matters concerning the use of hearings by video conference**
- consider the issue, agree on the feasibility in principle and propose that the PC-OC plenary consider the necessity of collecting the relevant information in the light of the background documents prepared by Ms Merja Norros (Finland).
- 5. Consideration of ways to ensure the authenticity of communications forwarded by electronic means (as referred to in Article 6 of the Draft Fourth Additional Protocol to the European Convention on Extradition:**
- have a preliminary discussion on this issue which the CDPC asked the PC-OC to consider.
- 6. Consideration of the feasibility of proposing simplified procedures for the amendment of the European Treaties on co-operation in criminal matters**
- consider the reflection paper prepared by the Secretariat (PC-OC (2011) 17);
 - agree in principle with the feasibility of such procedures but that its usefulness had to be decided on a case by case basis in future binding instruments to be drafted.
- 7. Possibilities to encourage and facilitate the review of existing declarations and reservations to the European Treaties on co-operation in criminal matters**
- take note of the background document prepared by the Secretariat (PC-OC(2011)18 restricted) as well as of the fact that the Secretariat is presently involved in conducting a comprehensive review of all Council of Europe conventions, whereby the review of existing declarations and reservations is taken into account;
 - postpone therefore discussion of this item until the outcome of this review exercise.
- 8. Consolidation of the European Convention on Mutual Assistance in Criminal Matters and its two additional protocols (prepared by Mr Kubiček, Czech Republic)**
- thank Mr Kubiček for this Document, also recalling the consolidated document of the European Convention on Extradition, the first two additional protocols thereto and the draft Fourth Additional Protocol;
 - ask Mr Kubiček and Mr Eugenio Selvaggi (Italy) to update and finalise the documents;
 - invite the PC-OC plenary to examine both these documents at its next meeting and to consider the follow-up that it wishes to give to it, notably as regards its possible dissemination to practitioners;

- take note of the fact that the Secretariat of the Treaty Office will conduct a feasibility study on the development of its website, including the possibility to introduce a search engine allowing users to rapidly find information on common conventional obligations between two Parties to one of the European Conventions on co-operation in criminal matters.

9. Any other business

- take note of the information provided on the reform in the structure of the Council of Europe Secretariat, including in particular the nomination of Mr Ivan Koedjikov as Head of the Department of action against crime;
- take note of the opinion of the CDPC on Parliamentary Assembly Recommendation 1953(2011) on “the obligation of member states and observer states of the Council of Europe to co-operate in the prosecution of war crimes”;
- consider the question raised by the German delegation concerning the difficulties in applying the European Convention on Extradition in respect of a certain Party and instruct the Secretariat to consult with the Treaty Office so as to find an appropriate way to approach this Party and report to the PC-OC plenary;
- consider the issue raised by the German delegation in respect of “in absentia cases” in connection with and the interpretation of Article 3 of the Second Additional protocol to the European Convention on Extradition and to ask the Secretariat to draft a short questionnaire on in absentia judgments and possibilities for re-trial in consultation with Mr Miroslav Kubiček and Mr Erik Verbert (Belgium) for consideration by the PC-OC plenary;
- consider the issue of non conviction based confiscations in relation to mutual legal assistance raised by the Swedish delegation and ask the Secretariat to inquire if this has been discussed by Moneyval and inform the PC-OC accordingly;
- consider the question raised by the Russian delegation of international judicial cooperation in matters regarding liability of legal entities (which may be criminal, civil or administrative), paying particular attention to Article 1, paragraph 4 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and Article 43, paragraph 1 of the UN Convention against corruption;
- take note of the Russian proposals on further modernisation of the European Convention on Extradition and, recalling the invitation to delegations to submit further proposals concerning the modernisation of the European Conventions on co-operation in criminal matters, propose the PC-OC plenary to reconsider them in the future in this wider context.

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