



Strasbourg, 8 March 2013  
[PC-OC/GM/Docs 2013/ PC-OC Mod (2013) E]  
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PC-OC Mod (2013) 03

**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 15<sup>th</sup> meeting of the restricted Group of experts  
on international co-operation (PC-OC Mod) enlarged to all PC-OC members  
under the Chairmanship of Ms Selma de Groot (Netherlands)  
6-8 March 2013**

**1. Presentation and content of the PC-OC website**

The PC-OC Mod considered the update of the index and summaries of relevant case law of the European Court of Human Rights, thanked the authors for their work and decided to:

- instruct the Secretariat to publish the index and summaries on the website of the PC-OC.

The PC-OC Mod took note of the information that 9 countries had sent links to national websites for publication on the website and decided to instruct the Secretariat to:

- continue inviting countries to send useful links to their national websites;
- remove links from the front page of document PC-OC INF6 and to add links that are still active to the national links page of the website.

The PC-OC Mod considered the inventory of country information available, analysed its usefulness and decided to:

- instruct the Secretariat to create a revised template for country information (extradition, transfer and MLA) with new boxes to include any useful information contained in PC-OC INF4, 5, 9 as well as in PC-OC INF7 and 71, as well as links to other useful country information published on the PC-OC website, which would be submitted for consideration by the plenary;
- propose to the plenary to move the contents of PC-OC INF 4, 5 and 9 to elsewhere on the site (archives) or to delete them;
- instruct the Secretariat to carry out a stocktaking exercise of replies to questionnaires so as to identify those that contain useful country information and can be transformed into PC-OC INF documents.

**2. Practical problems and concrete cases concerning the implementation of the European Convention on Extradition,**

The PC-OC Mod considered the 26 replies received to the questionnaire on “*in absentia* cases” in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition as well as possible follow up and decided to:

- propose to the plenary that the replies be published on the PC-OC website as useful information for practitioners;
- noting the divergence in the interpretation of Article 3 of the Second Additional Protocol by the Parties, propose that the PC-OC instruct the PC-OC Mod to study the possibility of finding a practical solution to problems this divergence might create, for example by proposing a draft common opinion and/or guidelines on the interpretation of the notion of “minimum rights of defence”, “retrial” and “sufficient guarantees”;
- instruct the Secretariat to invite those countries that have not yet replied to the questionnaire to do so by 15 April 2013.

**3. Practical problems and concrete cases concerning the implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol (in view of the organisation of a special session in November)**

**a. Consideration of examples of national legislation and procedures with regard to conditional release**

The PC-OC Mod considered the contributions received from 7 countries (Doc. PC-OC (2013)02) and decided that it would be necessary to provide states with some further indications on the purpose and best format of these contributions. It agreed on a message to be forwarded to the PC-OC members and decided to:

- instruct the Secretariat to send this message indicating a deadline for replies of 1 May 2013 and to collect the information received.

**b. Consideration of practical problems and legal questions**

In view of the special session to be organised in November, the PC-OC Mod considered the practical problems mentioned in the implementation of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (Doc. PC-OC Mod (2013)02) and decided to propose that the plenary consider:

- the numerous questions related to the application of Article 3 (Sentenced persons subject to an expulsion or deportation order) of the Additional Protocol;
- the need to complete the standard text providing information about the Convention (appendix to Recommendation No R (84)11) with a text on the Additional Protocol;
- the feasibility and appropriateness of proposing the elaboration of a Second Additional Protocol to deal with problematic issues such as the absence of time limits, the obligation to inform the person concerned of the legal consequences of transfer, the withdrawal of consent and arrangements for transfer;
- practical questions related to the application of Article 6 (Supporting documents) of the Convention:
- the need to update the model request form appended to Recommendation No R (92) 18;
- inviting a representative of the EU to present the EU system as regards transfer of sentenced persons;
- inviting an academic to present a keynote address.

The PC-OC Mod underlined that the special session should highlight the 30th anniversary of the Convention and take into account that all 64 Parties to the Convention will be invited.

The PC-OC Mod furthermore considered the question raised in the plenary concerning whether the reciprocity principle can apply to reservations and declarations of Council of Europe conventions, such as the Convention on the Transfer of Sentenced Persons, that have no specific provision in this regard.

The PC-OC Mod took note of the information provided by the Secretariat on the legal opinion received on this question by the Legal Advice Department and Treaty Office. The opinion states that, in the absence of a specific provision in a Council of Europe Treaty, the reciprocity principle may, within certain limits, apply to reservations on the basis of the Vienna Convention on the Law of Treaties (Article 21). The question of the admissibility and legal effects of reservations remains one of the most complex and controversial issues in treaty law, both from a legal and political point of view. The possible application of the reciprocity principle is equally complex and has to take into account the limits imposed by the nature and objective of the treaty, the content of the reservation, the existence of objections to the reservation made, the possibility of other states to make the same reservation, etc. In addition to the above, a reciprocity principle can only be applied to a declaration when the declaration can be re-qualified as a reservation as defined in Article 2, paragraph 1.d of the Vienna Convention on the Law of Treaties. The legal opinion underlines that such analysis and the determination of its legal consequences is a matter for each Party to decide.

The PC-OC Mod decided to ask the Secretariat to provide the plenary with the full text of the legal opinion in order to decide on further steps. It was of the opinion that the application of the reciprocity principle to reservations and declarations and its legal effects is a highly complex question of treaty law and that it falls outside the competency of the PC-OC. The PC-OC Mod indicated that this issue is of interest for the application of the conventions on legal co-operation in criminal matters. It was recalled that the Committee of Legal Advisers on Public International Law (CAHDI), in its function as European Observatory of reservations to international treaties, is competent on legal issues regarding reservations and declarations to international treaties.

#### **4. Preparation of the special session on Mutual Assistance in Criminal Matters during the 64th plenary meeting of the PC-OC**

The PC-OC Mod considered the proposals for discussion contained in document PC-OC Mod (2013)01 as well as a possible follow up to the “Project on effective practical tools to facilitate judicial co-operation in criminal matters”, including a standard model request form and guidelines on the drafting of mutual legal assistance requests (Doc. DG-HL (2010)6) and decided to:

- instruct the Secretariat, in co-operation with the Chair and the Rapporteur on mutual legal assistance, Mr Eugenio Selvaggi (Italy), to propose a draft programme on the basis of the discussions held;
- finalise the draft programme on the shared office space of the PC-OC Mod;
- send the draft programme to the PC-OC plenary for comments and approval by a written procedure.

Consideration was also given to a possible follow up to the exchange of views on the service of documents to defendants under penalty of fine. The PC-OC Mod, underlining the importance of service of documents, decided to inform the plenary that it did not see any scope for follow-up.

**5. Exchange of views with the PC-CP regarding cases of use of GPS tracking by the police where a suspect or an offender under electronic monitoring crosses the border, in particular as regards the possible continuation of the tracking, storage and the use of data**

In accordance with the instructions of the CDPC plenary session in December 2012, the PC-CP and the PC-OC-Mod held a joint round table discussion on trans-border issues related to electronic monitoring. The discussions confirmed that so far in Europe there are no bilateral agreements or special regulations regarding trans-border tracking of suspects or offenders under electronic monitoring or regarding sharing of data in relation to this. Both committees concluded that it is premature at this point to regulate at Council of Europe level such possible situations.

**6. Consideration of provisions related to international cooperation in criminal matters of the “preliminary draft convention against manipulation of sports results” prepared by the European Partial Agreement on Sport (EPAS)**

Further to a request by the CDPC, the PC-OC Mod had an exchange of views with the Secretary to the EPAS on the draft provisions mentioned above and in particular on Articles 30, paragraphs 1 and 3, 32 and 43.

The PC-OC Mod noted that Chapter V on international co-operation deals not only with international judicial co-operation in criminal matters but also with co-operation between states and non-governmental bodies. It was suggested that the different forms of co-operation should be reflected in the headings.

The PC-OC Mod indicated that for the purpose of international judicial co-operation in criminal matters with Council of Europe member states, the general formulation of Article 30, paragraphs 1 and 3 would be adequate, considering that the criminal offenses aimed at by the draft are of a general nature with strong financial aspects. However, for non-member states acceding to the Convention, the experts of the PC-OC Mod recognised that the absence of more specific provisions on extradition and mutual legal assistance could be a weakness. One expert considered this weakness as an important obstacle to its potential efficiency as a global instrument. Another shortcoming mentioned was the absence of provisions concerning legal co-operation on civil and administrative matters in relation to possible civil or administrative liability of legal persons.

The experts of the PC-OC Mod also discussed Article 32, on exchange of information between Parties and international sports organisations, underlining that although it was formulated as a non-binding requirement, it would be difficult to apply since it supposes the exchange of information between judicial authorities and private sports organisations on issues that could be covered by the confidentiality of pre-trial procedures and requirements on data protection.

As regards Article 43 of the draft, the PC-OC Mod recommended the deletion of the reference to the additional protocols and that the introduction of references to other conventions, such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), that might be of particular importance given the financial nature of crimes related to manipulation of sports results, could be considered. One expert felt that the article as it stands now has no legal relevance.

**7. Preliminary exchange of views on possible future activities of the PC-OC**

In order to collect ideas for the terms of reference of the PC-OC for the period 2014-2015, the PC-OC Mod had an exchange of views on possible future activities.

In addition to the proposals for future work made in regard of the Convention on the Transfer of Sentenced Persons, the PC-OC Mod recalled that some of the outstanding issues on the agenda of the PC-OC deserve further attention. These issues concern in particular:

- the relationship between extradition and asylum proceedings;
- the application of the "*aut dedere aut iudicare*" principle;
- the use of "guarantees" in international co-operation;
- mutual legal assistance for the purpose of criminal, civil or administrative proceedings against legal entities.

The PC-OC Mod decided to:

- ask the rapporteur on extradition matters, Mr Erik Verbert (Belgium), to prepare a discussion paper on the issue of extradition and asylum in time for the next plenary meeting, taking into account the previous discussions and available information within the PC-OC;
- instruct the Secretariat to prepare preliminary draft terms of reference, on the basis of the discussions held, for consideration by the plenary.

#### **8. Any other business**

The PC-OC Mod took note of the information provided by the Secretariat on:

- the latest signatures and ratifications of the different treaties;
- the review of Council of Europe conventions by the Committee of Ministers;
- the activities of the European Committee on Crime Problems and in particular the participation of the PC-OC in the recently created Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT).

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