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PC-OC Mod (2013)11

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 16th 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)
9-11 October 2013**

1. Presentation and content of the PC-OC website

a. Finalisation of the improved templates for country information and preparation of guidelines to assist in filling them in

The PC-OC Mod finalised the templates on the basis of the comments received on the draft revised templates for country information contained in PC-OC Mod (2013)05 and discussed the need for guidelines to assist in filling them in. The PC-OC Mod decided to:

- submit the revised templates as contained in doc PC-OC Mod (2013)10 to the plenary for approval;
- inform the plenary that, in the view of the PC-OC Mod, additional guidelines would not be needed.

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

The PC-OC Mod considered the update of the index and summaries of relevant case law of the European Court of Human Rights, thanked Mr Miroslav Kubiček (Czech Republic) for his excellent work and decided to:

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

2. European Convention on Extradition,

a. Consideration of the divergence in interpretation of Article 3 of the Second Additional Protocol in the replies received to the questionnaire on “in absentia cases” and proposals for a practical solution.

The PC-OC Mod decided to inform the plenary of the outcome of its discussions as reflected below:

The PC-OC Mod considered the replies to the questionnaire on “*in absentia* cases” in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition (Doc PC-OC (2013) 01rev3) and discussed the possibility of finding a practical solution to problems the divergence in the interpretation of this article might create, for example by proposing guidelines on the interpretation of the notion of “minimum rights of defence”, “retrial” and “sufficient guarantees”.

It considered that the purpose of this provision was to ensure that extradition of persons judged *in absentia* would not be denied if the requested state had sufficient guarantees that the extradition would not lead to a violation of their fundamental rights enshrined in the European Convention on Human Rights and in particular those specified in Article 6.3 concerning the minimum rights of defence. Ratification of the Second Additional Protocol should not lead to the creation of an additional obstacle to judicial co-operation.

Referring to the explanatory report (paragraphs 27 and 28) to the Second Additional Protocol, the PC-OC Mod underlined that it is the responsibility of each requested party to assess whether the proceedings leading to the judgment *in absentia* or the additional guarantees provided by the requesting state satisfy the rights of defence. It was underlined that this assessment should be made in the light of the ECHR and its case law. This is particularly relevant, for example, in cases where a person had chosen not to appear at his or her trial.

The PC-OC Mod concluded that, in this context, an attempt to reach a common opinion on the interpretation of Article 3 would not be helpful. It was underlined that parties, in examining a request for extradition of a person sentenced *in absentia*, would find sufficient guidance in assessing whether his or her fundamental rights of defence were guaranteed in the following sources:

- the explanatory report to the Second Additional Protocol;
- the case law of the European Court of Human Rights (see notably the case law of the ECtHR of relevance for the application of the European conventions on international co-operation in criminal matters as prepared by the PC-OC, under the keyword “*in absentia*”);
- the information contained in the reply of the requesting state to the questionnaire on “*in absentia* cases” in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition (Doc PC-OC (2013) 01rev3);
- Resolution (75)11 of the Committee of Ministers on the criteria governing proceedings held in the absence of the accused.

b. Interaction between extradition and asylum proceedings; practical problems encountered and proposals for follow up

The PC-OC Mod considered the practical problems encountered by member states as regards the interaction between extradition and asylum procedures (Doc PC-OC Mod (2013)06rev), had a long and substantial discussion on various aspects of this issue and decided to:

- inform the plenary that it was of the opinion that problems encountered by member states as regards the interaction between extradition and asylum procedures could be diminished by enhancing the exchange of information and communication between the different authorities concerned at a national level but also at an international level;

- underlining that work on this issue falls, to a certain extent, outside the competency of the PC-OC, propose that the plenary suggest the CDPC to address this issue both from the perspective of extradition and asylum and consider the possibility of developing a recommendation for adoption by the Committee of Ministers in order to assist member states in striking the appropriate balance between extradition and asylum proceedings.

c. Discussion on the reference moment to be applied when considering double criminality and proposal for follow up

The PC-OC Mod furthermore discussed the reference moment to be applied when considering double criminality as regards extradition requests and decided to:

- invite PC-OC experts to reply to the following short questionnaire :

When determining the reference moment to apply the principle of double criminality in respect of an extradition request do you consider the moment when:

- the offence was committed*
- the extradition request is received*
- the decision on the extradition request is made*

Please provide comments if appropriate.

- instruct the Secretariat to send out this questionnaire and to compile the replies received as a working document for the next plenary meeting.

d. Discussion on the interpretation of Article 14, Paragraph 1b of the Convention and proposal for follow up

The PC-OC Mod held a discussion on the interpretation of Article 14, Paragraph 1b of the European Convention on Extradition and decided to:

- inform the plenary that this issue had been discussed while preparing the Fourth Additional Protocol to the European Convention on Extradition and that its explanatory report (paragraphs 36-39) can be used as an additional source of inspiration for the interpretation of this provision in particular as regards the notions of “opportunity to leave” and “final discharge”.

3. Mutual Assistance in Criminal Matters

a. Discussion on the liability of legal entities and proposals for follow-up

The PC-OC Mod had a discussion on the proposals by Mr Vladimir Zimin (Russian Federation), contained in doc PC-OC Mod (2013)09, and, considering Mr Zimin’s absence from the meeting, decided to:

- invite Mr Zimin to further comment on his proposal at the plenary meeting;
- ask Mr Eugenio Selvaggi (Italy) to prepare a discussion paper on this issue in time for the next plenary meeting.

b. Discussion on the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing and proposals for follow up

The PC-OC Mod held a discussion on the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing in a transnational context, acknowledged the importance and complexity of the issue and decided to:

- propose to the plenary to devote a special session to this issue during its second meeting in 2014.

c. Discussion and proposals on ways to deal with the increase of MLA requests

The PC-OC Mod furthermore discussed the increase of MLA requests and possible ways to address this issue and decided to:

- propose to the plenary to consider the development of guidelines for practitioners of requesting states on good practices of self-restraint in order to avoid the submission of requests when this is possible.

d. Follow-up to the project VC 2248 on effective tools to facilitate MLA: practical guidelines and model request forms

The PC-OC Mod discussed the possible follow-up to the above mentioned project, also taking into account the activities undertaken in this field by the Polish authorities within a project of the Eastern Partnership Judiciary Panel (doc PC-OC Mod (2013)08) funded by the European Commission and the draft manual on mutual legal assistance developed under the Project on Criminal Assets Recovery in Serbia (Joint Programme of the Council of Europe and the European Union).

The PC-OC Mod decided to inform the plenary that:

- it regretted that the PC-OC had not been directly informed of the project undertaken by the European Union and the Polish authorities;
- the majority underlined the usefulness of appropriate model request forms and guidelines to facilitate MLA;
- it would recommend taking stock of existing model forms and guidelines before proposing any new model forms;
- it invited the plenary to consider the possibility of developing a user-friendly tool on the PC-OC website to assist practitioners in finding appropriate contacts in all parties for the purpose of MLA requests, including for direct transmissions on the basis of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

4. Convention on the transfer of Sentenced Persons and its Additional Protocol

a. Preparation of the special session on the Convention on the Transfer of Sentenced Persons and its Additional Protocol during the 65th plenary meeting of the PC-OC

The PC-OC Mod discussed the organisation of the special session on the Transfer of Sentenced Persons and decided:

- to finalise the programme of the special session doc PC-OC Mod (2013)07 rev), deciding, in particular, to invite a (former) judge of the ECtHR as a keynote speaker and to merge working groups 1 and 2;
- to ask the Chair, in co-operation with Ms Barbara Goeth-Flemmich (Austria) and the Secretariat to contact the possible moderators and rapporteurs mentioned and to decide on background papers to be published;
- to instruct the Secretariat to publish the finalised programme online as well as relevant background papers including the Convention, the Additional Protocol, the various recommendations and the examples of national legislation and procedures with regard to conditional release and measures involving deprivation of liberty (doc PC-OC(2013)02).

b. Consideration of examples of national legislation and procedures with regard to conditional release and measures involving deprivation of liberty

The PC-OC Mod considered the examples contained in doc PC-OC(2013)02 and decided to:

- instruct the Secretariat to publish them online as a useful tool for practitioners

5. Any other business

Further to its opinion provided during its previous meeting, the PC-OC Mod considered a new draft provision related to international co-operation in criminal matters of the “preliminary draft convention against manipulation of sports results” prepared by the European Partial Agreement on Sport (EPAS).

The proposal by INTERPOL was to introduce a provision stating that:

- "any request of co-operation under this article may be made through the International Criminal Police Organization –INTERPOL”.

The PC-OC Mod was of the opinion that specific rules of international co-operation should, in principle, not be introduced in specialised criminal law conventions. It could see no need to introduce such a provision in this particular draft convention.

6. Points for information

The PC-OC Mod thanked its departing member Mr Miroslav Kubiček (Czech Republic) for his outstanding contribution to the work of the PC-OC over the years. As a consequence of his departure, the PC-OC will need to elect a new member of the PC-OC Mod during the 65th plenary meeting.

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

- the on-going activities in the CDPC, by the Secretary to the CDPC, Mr Carlo Chiaromonte, and in particular the activities of the Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT), in which two members of the PC-OC (Ms Selma de Groot (Netherlands) and Mr Erik Verbert (Belgium) are involved;
- the latest signatures and ratifications of the different treaties;
- the nomination of its Chair, Ms Selma de Groot, as from the beginning of 2014 as legal advisor to the Permanent Representation of the Netherlands to the Council of Europe.

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