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PC-OC (2014)14

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 67th meeting of the PC-OC
under the Chairmanship of Ms Joana Gomes Ferreira (Portugal)
18-20 November 2014**

1. Opening of the meeting and points for information

Following the opening of the meeting by the Chair, the PC-OC took note of:

- the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and to the CODEXTER, on:
 - the future activities of a recently created Working Group on prison overcrowding in charge of drafting a report (“White paper”) including proposals for a future action plan. The group will have its first meeting on 8-9 December and will be composed of two experts from each of the following Committees: the CDPC, the PC-CP, the PC-OC, the CCPE and the CCJE. In addition the European Court of Human Rights, the Human Rights Commissioner, the Parliamentary Assembly and the CPT will be represented. The PC-OC will be represented by Ms Barbara Goeth-Flemmich (Austria) and Ms Imbi Markus (Estonia).
 - the items on the agenda of the CDPC of particular interest to the PC-OC during its meeting on 1-4 December, including:

- the follow-up to the White Paper on Transnational Organised Crime and in particular that an Action Plan to ensure the follow-up to the key recommendations contained in the White Paper will be prepared;
 - the model provisions for future Council of Europe conventions in the field of criminal law;
 - the PC-OC's opinion on the opinion of the T-CY on the specific recommendation 2.2 (possible update of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) contained in Recommendation 2041 (2014) of the Parliamentary Assembly of the Council of Europe on "improving user protection and security in cyberspace";
- the request by the Bureau of the CDPC that the PC-OC considers in its forthcoming work and meetings the question of compatibility between the European Convention on Mutual Assistance in Criminal Matters and the Convention on Cybercrime with regard to the question of international co-operation in matters related to electronic evidence and report back to the CDPC on the outcome of this exercise;
 - the decision by the Council of Europe Committee of Experts on Terrorism (CODEXTER) to strengthen the fight against terrorism by:
 - the preparation of an additional protocol to the Convention on the Prevention of Terrorism so as to criminalise the acts of being recruited and trained for terrorism and the travelling, preparing and financing of travel for the purpose of committing terrorist acts. Subject to the final decision by the Committee of Ministers the additional protocol will be finalised in 2015 and will be part of the implementation in Europe of UN Security Council Resolution 2178 (2014);
 - the preparation of a recommendation on preventive measures, radicalisation on the Internet and measures applicable to returning terrorist fighters.
- the information by the Secretary to the PC-OC on the progress made in the joint HELP/PC-OC project for the development of a curriculum and training materials 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 latest signatures and ratifications of the different treaties within the remit of the PC-OC;

The PC-OC took note of the recent update of the index and summaries of relevant case law of the ECtHR [PC-OC (2011) 21 rev8] and thanked Mr Erik Verbert (Belgium) for his valuable additions. The PC-OC was also pleased to hear that this important document will soon be available in French.

The PC-OC furthermore considered the proposal by the PC-OC Mod to also include case law referring to international co-operation as regards search, seizure and confiscation and decided to instruct the PC-OC Mod to add these cases to the index and summaries.

2. Adoption of the agenda

The agenda was adopted as reflected in document PC-OC (2014) OJ2.

3. Presentation and content of the PC-OC website

The PC-OC took note of the "Inventory of country specific information available on the PC-OC websites" [PC-OC(2012) 09 rev 7] and noted that up to now 27 countries have filled in the revised templates for country information as regards transfer of sentenced persons, 38 those on extradition and 37 those on mutual assistance in criminal matters and decided to:

- call again on the remaining countries to send in their country information by 1 February 2015 at the latest.

The PC-OC was also pleased to note that the PC-OC website had improved the visibility of its special sessions.

a. Proposals to ensure the availability of country information and useful tools for practitioners in languages other than English and French

The PC-OC took note of the viewpoint of the PC-OC Mod as regards possibilities to translate country information and useful tools for practitioners into other European languages and agreed that this does not seem to be a priority need for the practitioners who would usually address their questions to the central authorities.

b. Dissemination of information on the PC-OC to practitioners

The PC-OC had an exchange of views and practices on the dissemination of information on the PC-OC to practitioners, taking into account the “Practical measures to facilitate the application of conventions on international co-operation in criminal matters” adopted by the PC-OC during the 61st plenary meeting” [PC-OC (2011) 04 Rev 3].

The PC-OC recalled that experts should endeavour to give visibility to its work, and in particular by translating the PC-OC information leaflet into their national language and disseminating it, for example by posting it on their national website. It was decided to look at this issue again at its next plenary meeting.

c. Proposals to ensure visibility of information on conventions within the remit of the PC-OC (other than ETS No. 24, 30 and 112)

The PC-OC considered the present structure of the PC-OC website and the proposal by the PC-OC Mod that the website should have headings in the left-hand banner for each of the conventions mentioned in its terms of reference.

The PC-OC agreed with this proposal and decided to instruct the Secretariat to develop the PC-OC website by adding headings for the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51), the European Convention on the International Validity of Criminal Judgments (ETS No. 70), the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

d. Use of the forum

The PC-OC discussed ways to encourage the use of the forum on its restricted website to raise questions of general interest, underlined the usefulness of the forum to keep a trace of discussions held and decided to:

- invite all Parties to conventions within the competency of the PC-OC to make more use of this forum;
- ask the Secretariat to explain on the forum how to receive alerts in the mailbox when a new conversation is opened.

4. European Convention on Extradition,

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

The PC-OC discussed the outcome of the special session, which was held during the 66th plenary meeting in May, referred to the reports of the workshops [Doc PC-OC (2014)07] and agreed that diverging approaches to the double criminality principle caused obstacles to extradition requests and that it was important to continue discussions in order to find appropriate solutions and avoid impunity. It was decided to:

- resume this discussion at the next plenary meeting on the basis of a reflection paper to be prepared by Mr Erik Verbert (Belgium).

b. Prison standards to consider in extradition matters with non-European states

The PC-OC also took note of a question raised by Ms Kristina Speicher (Germany) as regards applicable prison standards to be considered in extradition requests with non-European states [Doc PC-OC Mod (2014) 06]. The PC-OC, noting the absence of the German delegation, decided to address this important question at its next plenary meeting.

c. Other

The PC-OC took note of an issue raised by Mr Michael de Thurah (Denmark) about a request to Turkey to extradite the suspect of an attempted murder on a prominent Danish personality for the purpose of prosecution. Although the suspect had been arrested by the Turkish authorities in April this year, he had not been extradited. Mr de Thurah indicated that the Danish authorities were informed that the suspect had been released but that they received no final decision on the extradition request and no explanation on the date or the reasons for this release.

The PC-OC recalled the importance of informing requesting states on the final decision on extradition in conformity with Article 18 of the European Convention on Extradition.

The PC-OC furthermore took note of the information provided by Ms Busola Johnson (United Kingdom) that, following a period of uncertainty, the United Kingdom had decided to “opt in” the European Arrest Warrant as from 1 December this year. As a result, the present state of play will remain unchanged.

5. Mutual Assistance in Criminal Matters

a. Preparation of a draft model request form on MLA and practical guidelines for practitioners

The PC-OC considered the draft model request form prepared by the PC-OC Mod [PC-OC Mod (2014)10], made a number of comments and decided to:

- invite experts to send further comments on the model form to the Secretariat by 31 January 2015, including suggestions for missing elements as regards measures for special investigative techniques and joint investigation teams;
- instruct the PC-OC Mod to finalise the form and make proposals for the guidelines for consideration by the plenary at its next meeting.

b. Discussion on MLA in criminal, civil and administrative matters related to criminal offenses, the liability of legal entities, non-conviction based confiscation and proposals for follow-up

The PC-OC considered the discussion paper [Doc PC-OC Mod (2014)08] prepared by Mr. Vladimir Zimin (Russian Federation), as well as the proposal by the PC-OC Mod to prepare a questionnaire and, in the absence of Mr Zimin, decided to:

- postpone discussion on the discussion paper until its next meeting;
- referring to the decision taken as a follow-up to the special session (see item 6), instruct the PC-OC Mod to include the questions related to object-based, value-based and non-conviction based confiscation in the questionnaire to collect information on national practices as regards MLA requests related to seizure and confiscation.

c. Opinion of the T-CY on recommendation 2.2 of PACE Recommendation 2041 (2014) on “improving user protection and security in cyberspace” (possible update of ETS No. 30)

At the request of the CDPC Bureau the PC-OC considered the opinion of the T-CY on the specific recommendation 2.2 (possible update of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)) contained in Recommendation 2041 (2014) of the Parliamentary Assembly of the Council of Europe on “improving user protection and security in cyberspace”.

Taking into account the views of the PC-OC Mod and the information that the T-CY would finalise its assessment on the effectiveness of the international co-operation provisions of the Convention on Cybercrime during its upcoming meeting on 2-3 December 2014, and the need for a coherent and comprehensive approach towards mutual legal assistance, the PC-OC decided to inform the CDPC of the following opinion: “Given its mandate in respect of international co-operation in criminal matters, the PC-OC should be represented in future meetings of the T-CY on the effectiveness of the international co-operation provisions of the Convention on Cybercrime and be given the opportunity to be involved in future discussions on a possible additional Protocol to the Cybercrime convention. The PC-OC highlighted that during its discussion on the model request form on MLA, the PC-OC already touched upon the issue of the international co-operation as regards requests for electronic evidence. As a result, the model form shall contain elements for MLA requests in this regard. The work of the PC-OC on the model form should be finalised by May 2015. As regards the possible update of the European Convention on Mutual Assistance in Criminal Matters to address the issue of electronic evidence, the PC-OC was of the opinion that, depending on the outcome of the work of the T-CY, a need for developing the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) by either practical or normative measures could be further considered.”

d. Compatibility between the European Convention on Mutual Assistance in Criminal Matters and the Convention on Cybercrime with regard to the question of international co-operation in matters related to electronic evidence

During its last meeting, the Bureau of the CDPC decided to request that the PC-OC consider, in its forthcoming work and meetings, the question of compatibility between the European Convention on Mutual Assistance in Criminal Matters and the Convention on Cybercrime with regard to the exchange of requests for international co-operation in matters related to electronic evidence and report back to the CDPC on the outcome of this exercise.

The PC-OC considered this question and decided to:

- invite the experts of the PC-OC to reply to the following questions by 31 January 2015:

Do you see an incompatibility between the European Convention on Mutual Assistance in Criminal Matters and the Convention on Cybercrime with regard to the exchange of requests for international co-operation in matters related to electronic evidence? If you do, please explain.

If you see no incompatibility, please explain how you use/articulate these conventions at national level.

- ask the PC-OC Mod to consider the replies and to present its conclusions to the plenary.

6. Special session on international co-operation as regards the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing

As a follow-up to the White Paper on Transnational Organised Crime adopted by the CDPC, the PC-OC devoted the day of 19 November to a special session on international co-operation as regards the seizure and confiscation of proceeds of crime. The session was organised in consultation with the Moneyval Secretariat.

The objective of the session was to assess the effectiveness of international co-operation in this field and the functioning of Council of Europe Conventions of relevance in this regard and to identify obstacles and possible solutions.

In order to assist the PC-OC in getting a better understanding of the subject matter, the following experts were invited as moderators or panellists: Mr Jack De Kluiver (USA), Mr Nico Geysen (Belgium), M. Pascal Gossin (Switzerland), Ms. Desislava Gotskova (Bulgaria), Ms Maria Kyrmizi (Cyprus), Mr Declan O'Reilly (Ireland), Ms Silvija Panovic-Djuric (CoE, Serbia), Mr Evert van der Steeg (Netherlands) and Prof Barbara Vettori (Italy).

The programme included panel discussions in the morning and 2 workshops in the afternoon. The questions addressed during the special session are reflected in Doc PC-OC (2014)13.

The Committee expressed its gratitude to the moderators and the rapporteurs to the workshops, Ms Merja Norros (Finland, workshop 1) and Ms Wietske Dijkstra (Netherlands, workshop 2) for their excellent contributions.

The PC-OC furthermore discussed a reflection paper prepared by Mr Branislav Bohacik, vice-Chair of the Conference of the Parties to CETS No. 198 (Slovak Republic) [Doc PC-OC (2014)12].

The PC-OC decided to:

- ask the rapporteurs to send their reports of the workshops to the Secretariat by 15 January 2015;
- instruct the PC-OC Mod to develop a questionnaire to address, *inter alia*, the questions raised by Mr Bohacik and Mr Zimin so as to assess the use made and obstacles encountered by the experts when using the different Council of Europe instruments for the purpose of international co-operation as regards the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing;
- instruct the PC-OC Mod to make proposals for a follow-up to the special session on the basis of the outcome of the workshops and the discussions held.

7. Convention on the transfer of Sentenced Persons and the Additional Protocol thereto

a. Proposals for updating/improving the Convention on the Transfer of Sentenced Persons and its Additional Protocol, including, where possible, by non-binding measures

The PC-OC considered the proposals it had made to the CDPC, as well as alternatives available [Secretariat note PC-OC (2014)10] in line with the instruction by the CDPC to “carefully consider which issues could be dealt with in (a) new binding instrument(s) or otherwise could be dealt with in ways which could be more effective than the “normative” one, i.e. operational/practical level.” The PC-OC decided to:

- instruct the PC-OC Mod to prepare a draft protocol to amend the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167) for consideration at its next plenary;
- continue discussions on the best ways to improve the implementation of the Convention on the Transfer of Sentenced Persons.

The PC-OC furthermore discussed the proposal by Israel to consider the development of an electronic tool to facilitate transfer procedures [e-transfer, contained in Doc PC-OC Mod (2014)04], agreed that it was an interesting proposal and decided to instruct the PC-OC Mod to further consider this proposal, inviting Israel to attend this meeting.

b. Other

Ms Tetiana Schorstka (Ukraine) informed the PC-OC about the difficulty in handling requests for transfer by prisoners who had been serving their sentence in the Autonomous Republic of Crimea (Crimea) and who had been moved to a prison outside Crimea, in the Russian Federation.

8. Review of Conventions within the remit of the PC-OC. Draft reply to the CDPC.

The PC-OC considered the draft reply to the CDPC, prepared by the PC-OC Mod, as regards the review of conventions within the remit of the PC-OC and decided to approve the draft letter, with some amendments, to be sent to the Chair of the CDPC.

9. Model provision on international co-operation in future Council of Europe conventions in criminal matters

At the request of the CDPC, the Chair of the PC-OC participated, on 9 September, in a working group created to develop model provisions for future Council of Europe conventions in criminal matters [Doc CDPC (2014) 07]. Further to this meeting, the PC-OC Mod was invited to comment on the provisions dealing with international co-operation in criminal matters as reflected in Doc PC-OC Mod (2014)05. Taking into account the views of the PC-OC Mod, the PC-OC decided to inform the CDPC of its opinion that for model provisions in a future convention on a specific criminal behaviour, the provision on international co-operation should remain short and general and that the proposed wording would be acceptable.

10. Elections

a. Election of the Chair and vice-Chair

The PC-OC re-elected Ms Joana Ferreira (Portugal) as its Chair for her second and last term. It elected Mr Stéphane Dupraz (France) as its vice-Chair. The PC-OC thanked its outgoing vice-Chair, Mr Per Hedvall (Sweden) for his excellent work during his vice-chairmanship and chairmanship over the last years.

The PC-OC, noted that by the election of one of the members of the PC-OC Mod as its vice-Chair, there would be a vacancy in the PC-OC Mod and that a new member would have to be elected. It was decided to:

- elect a new member of the PC-OC Mod at its next plenary meeting;
- agree that the outgoing vice-Chair, Mr Per Hedvall, would remain in the PC-OC Mod until the elections.

b. Election of a gender equality rapporteur

The PC-OC elected Ms Eleni Loizidou (Cyprus) as its gender equality rapporteur and thanked the outgoing rapporteur, Ms Antonella Sampo-Couma (Monaco), for her commitment to the task.

11. Any other business

The PC-OC took note of the information by Ms Tetiana Schorstka (Ukraine) about the impossibility of executing requests for international co-operation for issues which have taken place in Crimea and the preparation of a notification in this regard which will be addressed to all Parties to international instruments with Ukraine.

12 Dates of future meetings

The PC-OC decided to hold its plenary meetings in 2015 from 27 to 29 May and from 3 to 5 November.

The meetings of the PC-OC Mod will take place from 17 to 19 February and from 15 to 17 September 2015.