



Strasbourg, 19 February 2015
[PC-OC/PC-OC Mod/Docs PC-OC Mod 2015/ PC-OC Mod (2015)04E]
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PC-OC Mod (2015)04

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 19th 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 Joana Gomes Ferreira (Portugal)
17-19 February 2015**

1. Opening of the meeting and points for information

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

- the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and to the CODEXTER, on:
 - the follow-up to the White Paper on Transnational Organised Crime and in particular the preparation of an Action Plan to ensure the follow-up to the key recommendations contained in the White Paper, which is being submitted to the CDPC for consideration during its next plenary meeting in June. A small working group will meet in April to prepare this Action Plan. The PC-OC is invited to appoint a member to assist the working group in its task. The PC-OC is also invited to give its views on any possible follow-up within its remit;
 - the finalisation of the model provisions for future Council of Europe conventions in the field of criminal law in view of their adoption by the CDPC in June;
 - the opening for signature of the Council of Europe Convention against Trafficking in Human Organs on 25 March in Santiago de Compostela (Spain);

- the setting up of the Committee on Foreign Terrorist Fighters (COD-CTE) under the supervision of the CODEXTER, who will have the task of preparing 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. The Committee will have its first meeting in the week of 23 February and should finalise its work within two months. The draft should be ready to be presented at the Ministerial Conference in Brussels on 19 May 2015.
 - the request to the PC-OC to give its views on its possible contribution to action by the Council of Europe to combat terrorism and in particular as regards international co-operation in areas relevant to Foreign Terrorist Fighters;
- the information provided by Mr Alexander Seger, Secretary to the T-CY, on the activities of the T-CY, the Assessment report adopted by the T-CY during its meeting on 2-3 December 2014 on the mutual legal assistance provisions of the Budapest Convention on Cybercrime and its follow-up. The PC-OC Mod noted with satisfaction that the co-operation between the T-CY and the PC-OC will be improved by the nomination of a representative of the T-CY to attend the meetings of the PC-OC and vice versa;
 - the information by the Secretary to the PC-OC on the soon-to-be-finalised 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 Russia. The course, now in English, will be translated and adapted to the needs of the partner countries and presented to the PC-OC plenary in May;
 - the latest signatures and ratifications of the different treaties within the remit of the PC-OC.

2. Adoption of the agenda

The agenda was adopted as reflected in document PC-OC Mod (2015) OJ1.

3. Presentation and content of the PC-OC website

a. Update of the index and summaries of relevant case law of the ECtHR including cases on search, seizure and confiscation of crime

The PC-OC Mod considered the proposed update of the index and summaries of relevant case law of the European Court of Human Rights (document PC-OC(2011)21rev8), and decided to:

- ask Ms Malgorzata Skoczelas (Poland) to update the index and summaries with cases on search, seizure and confiscation of crime;
- instruct the Secretariat to publish the updated version on the website of the PC-OC.

b. Country information

The PC-OC Mod noted that up to now only 30 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:

- ask the Chair to call again on the remaining countries to send in their country information by 1 May 2015.

c. Information on conventions within the remit of the PC-OC (other than ETS Nos. 24, 30 and 112)

The PC-OC Mod noted with satisfaction the new presentation of the PC-OC website including all the conventions within its remit. It issued some further recommendations for improvement of the website, including in particular the development of a note for practitioners containing all provisions related to international co-operation in Council of Europe conventions which are not within the remit of the PC-OC, and decided to:

- instruct the Secretariat to take these recommendations into account, as far as possible.

4. European Convention on Extradition,

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

In the absence of Mr Erik Verbert, rapporteur on extradition, the PC-OC Mod decided to postpone this agenda item until the discussion of his reflection paper in the plenary.

5. Mutual Assistance in Criminal Matters

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

The PC-OC Mod considered the comments made during the last plenary meeting and further proposals received on the draft model request form, took note that the T-CY would inform the PC-OC of its views on the elements concerning the Cybercrime Convention and agreed on a number of amendments to the remaining elements. The PC-OC Mod also discussed the development of the guidelines accompanying the model request form and agreed to adopt a practical approach for its contents. It was decided to:

- present the draft model form to the plenary for approval;
- ask its rapporteur on MLA, Mr Eugenio Selvaggi (Italy), in co-operation with the Chair and in consultation with Ms Astrid Offner (Switzerland) and the Secretariat, to prepare draft guidelines for presentation at the next plenary.

b. Preparation of a questionnaire to assess the use made of CoE instruments and obstacles encountered in international co-operation as regards seizure and confiscation of proceeds of crime, management of confiscated goods and asset sharing (follow-up to the special session of the 67th meeting)

The PC-OC Mod considered the draft prepared by the Secretariat, and agreed on an amended version, also considering the questions raised in the discussion papers [Doc PC-OC Mod (2014)08] prepared by Mr Vladimir Zimin (Russian Federation), and [Doc PC-OC (2014)12] prepared by Mr Branislav Bohacik (Slovak Republic) and decided to:

- submit the draft questionnaire to the plenary for approval.

c. Proposals for follow-up to the special session on the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing

The PC-OC Mod discussed the possible follow-up to the special session, and decided to inform the plenary of its view that the answers to the aforementioned questionnaire would provide a good basis for further decisions.

d. Compatibility between the MLA Convention and the Cybercrime Convention with regard to the question of international co-operation in matters related to electronic evidence

The PC-OC Mod considered the replies received to this question raised by the CDPC Bureau [Doc PC-OC Mod (2015) 02 rev] and concluded that there was clearly no incompatibility between the Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and the Cybercrime Convention (ETS No. 185). In addition, countries mentioned no particular problems related to the interaction between these conventions at national level. The PC-OC Mod decided to inform the PC-OC plenary of this conclusion.

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

a. Preparation of a Draft Protocol to amend the Additional Protocol to the Convention (ETS No. 167)

The PC-OC Mod considered the preliminary draft amending protocol prepared by the Secretariat in consultation with Ms Barbara Goeth-Flemmich (Austria), and proposed some amendments, taking into account the discussions during the plenary and the replies received to the questionnaire [PC-OC (2013)10 Rev 2] and decided to:

- submit the draft amending protocol to the plenary for consideration;
- instruct the Secretariat to consult the Treaty Office as regards the transitory provisions;
- ask the Secretariat, in consultation with Ms Goeth-Flemmich, to prepare a draft Explanatory report for consideration by the plenary.

b. E-transfer proposal by Israel

The PC-OC Mod discussed the proposal presented by Mr Aviad Elya (Israel) to develop an electronic tool to facilitate transfer procedures (e-transfer, contained in Doc PC-OC Mod (2014)04). The PC-OC Mod welcomed the proposal, agreed that it was very interesting and decided to:

- ask Ms Barbara Goeth-Flemmich (Austria) and Mr Anthony Vella (Malta) to further develop the proposal in co-operation with Mr Elya;
- invite the plenary to consider the proposal at its upcoming meeting.

7. Review of Conventions within the remit of the PC-OC. Follow-up to the reply sent to the CDPC

The PC-OC Mod, further to the reply sent by the Chair to the CDPC as regards the review of conventions within the remit of the PC-OC, discussed ways to assess the treaties that it has not yet addressed, namely the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 051), the Convention on International Validity of Criminal Judgments (ETS No. 070) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS

No. 141) as well as the need to expand its comments as was done in the report CDPC (2014)14 rev and decided to:

- invite the plenary to discuss, at its next meeting, the operation of the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders and of the Convention on International Validity of Criminal Judgments;
- ask the Secretariat to prepare, for the Conventions that have already been addressed, a note expanding the comments provided, in co-operation with the rapporteurs of the different conventions and the Chair.

8. Any other business

a. Counterterrorism

The PC-OC Mod discussed, in the presence of Mr Ivan Koedjikov, Head of the Action against Crime Department and Anti-terrorism Co-ordinator, the possible contribution of the PC-OC to the action of the Council of Europe to combat terrorism and in particular as regards international co-operation in areas relevant to Foreign Terrorist Fighters. In this respect the PC-OC Mod took note of the activities of the Global Counterterrorism Forum (GCTF) and in particular the Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector, The Hague-Marrakesh Memorandum on Good practices for a More Effective Response to the FTF Phenomenon and Recommendation for Using and Promoting Intelligence Information in Rule of Law Based, Criminal-Justice Sector-Led Investigations and Prosecutions. The PC-OC Mod agreed that it would be important to discuss this issue further in the plenary and decided to:

- ask a scientific expert to prepare a reflection paper, for consideration by the plenary, on possible action to be undertaken in the field of international co-operation within the remit of the PC-OC, taking into account the recommendations by the GCTF.

b. Follow up to the White Paper on Transnational Organised Crime

The PC-OC Mod discussed its possible contribution to the preparation of an Action Plan to ensure the follow-up to the key recommendations contained in the White Paper and decided to:

- invite members of the PC-OC to participate in the small working group of the CDPC that will meet in April;
- invite the PC-OC to comment on the proposed action plan during its next meeting on 27-29 May.