



Strasbourg, 17 September 2015
[PC-OC/PC-OC Mod/Docs PC-OC Mod 2015/ PC-OC Mod (2015)08E]
<http://www.coe.int/tcj>

PC-OC Mod (2015)08

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 20th 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)
15-17 September 2015**

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the agenda was adopted as reflected in document PC-OC Mod (2015) OJ2.

2. Points for information of relevance to the work of the PC-OC

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

- the preparation of an Action Plan to ensure the follow-up to the key recommendations contained in the White Paper on Transnational Organised Crime, which will be submitted to the CDPC for adoption during its next plenary meeting in December. A small working group, with the participation of PC-OC members Mr Stéphane Dupraz (France) and Mr Erik Verbert (Belgium) will meet in Paris on 17-18 September to finalise the draft Action Plan;
- the finalisation of the draft 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 November;

- the participation of Ms Gabriela Blahova (Czech Republic) in a meeting organised on 16 June by the Pompidou Group in view of the preparation of a handbook on controlled delivery. A follow-up meeting is foreseen on 9-10 November in Lyon (hosted by Interpol);
- the latest signatures and ratifications of the different treaties within the remit of the PC-OC;
- the upcoming change in the presentation of the PC-OC website, due to a change in the platform used by the Council of Europe, and which will be presented to the PC-OC as soon as possible.

3. Presentation and content of the PC-OC website

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

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

- ask Mr Erik Verbert (Belgium) to update the case law in time for the plenary.

b. Country information

The PC-OC Mod noted with satisfaction that up to now 45 countries have filled in the revised templates for country information as regards transfer of sentenced persons, 45 those on extradition and 44 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 12 October 2015;
- instruct the Secretariat to regularly invite experts to update the country information provided as well as the names and contact details of the contact points on the restricted website, for example when convening each meeting.

4. European Convention on Extradition

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

The PC-OC Mod had an exchange of views on issues related to the double criminality principle and decided to ask Mr Erik Verbert, rapporteur on extradition, to take these issues into account when preparing his reflection paper to be discussed at the next plenary.

b. Assurances required as regards prison standards in extradition procedures in particular with non-European States

The PC-OC Mod discussed this question on the basis of the discussion paper prepared by Erik Verbert, taking into account the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Prison Rules and the UN Standard Minimum Rules for the Treatment of Prisoners. The PC-OC Mod agreed that, while all mentioned standards were very important, when deciding on extradition of a person to a place where the prison conditions are potentially problematic, the only binding obligation to consider is Article 3 of the ECHR concerning the prohibition of torture and inhuman or degrading treatment or punishment and the related case law of the ECtHR. It was furthermore underlined that given the absolute nature of Article 3, Council of Europe member States should, on principle, provide the same level of protection to all persons within their jurisdiction, regardless whether the state requesting extradition is, or is not, a member State of the Council of Europe. The PC-OC Mod recalled that decisions on extradition and the potential violation of Article 3 were to be taken on a case by case basis, while considering all elements of relevance to the specific case, including the concrete risks.

Given the extensive knowledge of the CPT as regards the prevention of prison conditions which could amount to a violation of Article 3 of the ECHR, the PC-OC Mod decided to invite the CPT to participate in the discussion on this important topic during the next plenary meeting of the PC-OC.

c. Application of Article 16 - provisional arrest - by alternative measures to detention

The PC-OC Mod further considered the divergent application by Parties of the conditions and time-limits of Article 16 when using alternative measures to detention. The PC-OC Mod agreed that Article 16 applies to urgent cases only and that the time limits imposed for this provisional measure serve to protect the right of the person sought not to be deprived of his or her liberty for an unspecified period. The PC-OC Mod also underlined the duty of the States to present the formal request for extradition with due diligence.

The PC-OC Mod reached however no consensus as to the application of the time limits of Article 16 to alternative measures to detention. Most members agreed that house arrest, in particular if associated with electronic monitoring, amounted to a deprivation of liberty close to detention and should therefore be subject to the time limits mentioned in Article 16. Some members were of the opinion that these time limits should also apply to less intrusive measures such as bail, the obligation to report to the police office or the withdrawal of a passport. The latter interpretation was based on considerations such as the fact that these measures should be considered as an alternative to detention, that the text of Article 16 had been drafted at a time where such alternatives were not in use and that the continuation of these obligations would have no legal basis in their national law in the absence of an extradition request after the time limit of 40 days. Other members considered that the time limits mentioned in Article 16 should not apply to measures other than detention as the sanction provided for non-compliance with these time limits is the release of the person sought.

The PC-OC Mod decided to:

- inform the plenary of its findings;
- invite the plenary to consider solutions to potential problems caused by the difference in interpretation, for example by indicating the national practice with regard to the time limits of Article 16 in the country information sheets.

d. Other

The PC-OC Mod discussed a question raised by Ms Eleni Loizidou (Cyprus) concerning extradition of a person who has obtained asylum status in another EU state. The PC-OC Mod considered that this was a complex issue and recalled the discussion held on asylum and extradition by the PC-OC, underlining that asylum and extradition were two different procedures and that asylum procedures usually do cause a delay in extradition.

5. Mutual Assistance in Criminal Matters

a. Consideration of comments received to the draft model request form on MLA and practical guidelines for practitioners

In view of the upcoming working group tasked with the finalisation of the model request form and the guidelines taking place on 8-9 October in Paris, the PC-OC Mod considered the comments received on the model request form as regards the items dealing with special investigative techniques and decided to deal with the special investigative techniques in an appendix to the draft model request.

It furthermore noted that comments had also been made on other parts of the request form which the plenary had already approved.

The PC-OC Mod also discussed the guidelines accompanying the model request form and decided to:

- instruct the working group to consider the comments made;
 - invite Mr Eugenio Selvaggi, rapporteur on MLA, to complete the draft guidelines with a paragraph devoted to the need for requesting states to observe the principle of proportionality when introducing a request so as to avoid the overburdening of requested states.
- b. Consideration of the replies to the questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime and proposals for follow-up**

The PC-OC Mod considered the 12 replies received to the questionnaire and decided to:

- invite countries that had not yet replied to do so before 12 October;
- inform the plenary that the number of replies received was not yet sufficient to draw any conclusions.

The PC-OC Mod also discussed the possible follow-up on this issue, and decided to inform the plenary of its view that the PC-OC would need to co-operate with experts from MONEYVAL and/or the Conference of Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) (COP 198) to discuss ways to improve international co-operation in this particular field.

c. Other

The PC-OC Mod considered a question posed by Mr Erik Verbert on the problems raised when a person addresses a request to the judiciary to stop an MLA procedure on the basis of a possible violation of human rights. The PC-OC Mod considered that this is an interesting question and decided to ask Mr Verbert to address this question to the plenary in writing.

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 draft amending protocol, taking into account the discussions during the last plenary and decided to:

- recall that the plenary had invited Parties that had difficulties with the draft amendments to propose alternative solutions;
- instruct the Secretariat to consult the Treaty Office as regards the possibility to propose alternative transitory provisions that would not be based on a tacit acceptance procedure but would contain the possibility for States, by declaration at the moment of ratification, to apply the amended protocol on a provisional basis .

b. Discussion on possible amendments to the Convention (ETS No. 112) in a Second Additional Protocol

The PC-OC Mod discussed the two proposals by the Netherlands to amend Article 17 of the Convention contained in Doc PC-OC (2015)05. The PC-OC-Mod supported the first proposal to limit the translation required from the sentencing state to the parts of the judgment that describe the offences the sentenced person was charged with, the reasoning leading to the conviction, the conviction of the sentenced person including the offences for which the person has been found guilty and the penalties imposed. The PC-OC Mod was however divided as to the second proposal to shift the obligation to finance the transfer from the administering state to the sentencing state. The PC-OC Mod furthermore suggested that the plenary consider the possibility of introducing a

provision allowing for the transfer of the sentence in cases where the sentenced person was living in, or had returned to his or her country of origin.

The PC-OC Mod decided to inform the plenary of its findings.

c. Consideration of comments received to the E-transfer proposal by Israel and proposals for follow up

The PC-OC Mod considered the 9 comments received to the e-transfer proposal (Doc PC-OC Mod (2015)05), took note of the questions and obstacles raised and decided to:

- invite experts who have not yet done so to comment on the e-transfer proposal by 12 October;
- inform the plenary that in its view most obstacles raised could be overcome and that security and cost-effectiveness aspects are very important conditions for the implementation of the e-transfer tool but that these should be considered after an agreement on the e-transfer system has been reached in principle;
- invite the plenary to consider starting the e-transfer procedure with a number of pilot countries.

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

The PC-OC Mod considered the draft review prepared by the Secretariat as regards the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 051) and the few comments received, discussed ways to assess the treaties that it has not yet addressed, namely 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) and decided to:

- approve, with some amendments, the draft proposed by the Secretariat as regards ETS No.51;
- ask Mr Erik Verbert to assist the Secretariat in drafting a review on ETS No 70;
- instruct the Secretariat to draft a review on ETS No. 141, based on the replies received to question 2 of the questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime;
- instruct the Secretariat to send the draft review to the PC-OC for comments in good time before the next plenary meeting.

8. Any other business

The PC-OC Mod, noting that Mr Stéphane DUPRAZ (France), vice-Chair of the PC-OC, would leave the Committee, due to a change in his functions, expressed its sincere thanks for his excellent contribution to the work of the Committee and wished him all the best for his future work.