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PC-OC Mod (2014)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 17th 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)
18-20 March 2014**

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 Oscar Alarcon, Secretary to the Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT), on the elaboration and contents of the revised draft White Paper on transnational organised crime prepared by this Group and the procedure being followed to collect final comments on the draft before its finalisation in early April in view of its submission to the CDPC plenary in June;
- the information provided by Mr Roberto Rivello, Administrator of the Council of Europe's HELP Programme, on the follow up to the initiative to develop, in co-operation with the PC-OC, 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. The first stage of the initiative will aim to give a working group of international experts the task of agreeing on a curriculum outline and methodology and of drafting a model course curriculum in English. Together with three experts from Poland, Portugal and Turkey participating on behalf of the PC-OC, representatives of the European Judicial Training Network and Eurojust will join the working group. Two or three working group meetings are to be organised between May and the end of September this year. The drafting and co-ordination of all findings and proposals for learning materials will be entrusted to an expert also appointed by the HELP Secretariat.

The second stage of the initiative, to be launched in the autumn of this year, will involve the choice of the first target beneficiary countries, the adaptation of the course to national needs and the translation of the learning materials into the national languages concerned;

- the latest signatures and ratifications of the different treaties and in particular the entry into force on 1 June 2014 of the Fourth Additional Protocol to the European Convention on Extradition;
- the information provided by Mr Carlo Chiaromonte, Secretary to the CDPC, that the Chair would soon receive a letter inviting the PC-OC to comment on the functioning of the Conventions within its remit.

2. Adoption of the agenda

The agenda was adopted as reflected in document PC-OC Mod (2014) OJ1.

3. Presentation and content of the PC-OC website

The PC-OC Mod welcomed the fact that 17 countries had filled in the revised templates for country information as regards extradition and mutual assistance in criminal matters and decided to:

- call again on the remaining countries to send in their country information by 1 May at the latest.
- a. Finalisation of the improved template for country information as regards the transfer of sentenced persons**

The PC-OC Mod finalised the template as regards the transfer of sentenced persons and decided to:

- submit the revised template as contained in document PC-OC Mod (2013)10rev2 to the plenary for approval.

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

The PC-OC Mod considered the index and summaries of relevant case law of the European Court of Human Rights (document PC-OC(2011)21rev7), and decided to:

- thank Ms Malgorzata Skoczelas Raczkowska (Poland) for having accepted to co-ordinate the different contributions to the index and summaries in the future;
- instruct the Secretariat to post the above-mentioned document on the shared Office Space of the PC-OC Mod;
- invite Mr Erik Verbert (Belgium) to prepare summaries of the recent cases mentioned during the meeting and to insert them into the document on the shared Office Space of the PC-OC Mod for comments.

4. European Convention on Extradition,

a. Preparation of a draft summary of criteria to assess whether a judgment *in absentia* and additional guarantees satisfy the rights of defence (in connection with Article 3 of the Second Additional Protocol)

The PC-OC Mod considered the criteria reflected in document PC-OC Mod (2014)02 and decided to:

- instruct the Secretariat to further elaborate the above-mentioned paper, in co-operation with Ms Barbara Goeth-Flemmich (Austria), by appending a draft note for the attention of practitioners.

b. Preparation of the special session on extradition in May

The PC-OC Mod discussed the programme of the special session in May and decided to:

- hold the special session on 20 May 2014, starting around 11am;
- invite a Judge or representative of the European Court on Human Rights to make a presentation on the case law of the Court as regards issues related to extradition procedures with a special emphasis on diplomatic assurances;
- organise two workshops, one on refusals to extradite and possible solutions to avoid impunity and a second one on double criminality;
- invite the Chair to contact possible moderators and rapporteurs for the workshops;
- instruct the Secretariat to finalise the programme of the special session in co-operation with the Chair and Mr Erik Verbert (Belgium), the PC-OC rapporteur on extradition, and post it on the PC-OC website.

c. Interaction between extradition and asylum proceedings; practical problems encountered and examples of good practice

The PC-OC Mod considered the practical problems and examples of good practice by member states as regards the interaction between extradition and asylum procedures (document PC-OC Mod (2013)06rev2), and concluded that the contributions received as regards good practices did not allow for additional comments or recommendations to be made on this subject. The PC-OC Mod decided to:

- inform the plenary that it wished to reiterate the conclusions reached at its 16th meeting, namely 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 national level but also at international level;
- suggest that the plenary decide on the usefulness of continuing the debate and of repeating its request to experts to send in further examples of good practice.

d. Discussion on the reference moment to be applied when considering double criminality and interpretation *in abstracto* or *in concreto*;

The PC-OC Mod also discussed the replies received to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests and decided to:

- invite PC-OC experts who haven't done so to reply to the questionnaire by 18 April;
- instruct the Secretariat to prepare a table summarising the replies received for the next plenary meeting;
- invite Mr Erik Verbert (Belgium) to prepare a discussion paper on this issue for the next plenary meeting.

5. Mutual Assistance in Criminal Matters

a. Ways to deal with the increase of MLA requests

The PC-OC Mod also discussed, as a way to deal with the increase of MLA requests, the possible 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. The PC-OC Mod, recalling that the Convention does not foresee any grounds of refusal for so called “de minimis cases”, considered that the overload could also be addressed by improving the case management system in requested states. It was decided to:

- propose to the plenary to address these issues in general practical guidelines to facilitate MLA as proposed hereafter.

b. 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, taking into account existing national and international guidelines and model request forms as compiled in document PC-OC Mod (2014)01 as well as the activities undertaken in this field by the Polish authorities within a project of the Eastern Partnership Judiciary Panel (document 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 considered that it would be useful to adopt a standard model request form and practical guidelines on MLA for the implementation of Council of Europe instruments in this field. It decided to:

- propose that the plenary instructs the PC-OC Mod to develop such a standard model request form and practical guidelines on the basis of the work undertaken within the Project VC 2248 (Doc DG-HL(2010)6) and taking into account the existing model request forms and guidelines mentioned above;
- invite the PC-OC experts who hadn't yet done so to provide further examples of national model request forms and guidelines.

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

Proposals for follow-up to 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 considered the issues addressed and proposals made during the special session on the Transfer of Sentenced Persons and decided to inform the plenary as follows:

The following issues were identified as the main obstacles to a speedy and successful implementation of the Convention and the Additional Protocol thereto:

- the absence of time-limits as regards: procedures; the revocation of consent; the actual transfer;
- the time needed and expenses incurred to meet translation requirements;
- the organisation and cost of the actual transfer.

The PC-OC Mod also identified the following obstacles:

- the non-payment of fines or compensation to victims;

- the application of the convention to persons who returned to their country of origin before having served their prison sentence;
- the lack of information on early release given prior to the transfer to the authorities involved and to the person concerned;
- the lack of information on the execution of the sentence in the administering state;
- the impossibility to transfer mentally ill persons who have committed a crime and whose detention is imposed as a measure by a non-judicial authority;
- the difficulty in communicating with the authorities in charge of the surrender .

The PC-OC Mod addressed obstacles specifically related to the implementation of the Additional Protocol:

- the interpretation of the notion of flight in Article 2, including the possibility of widening the scope to persons who have to serve a prison sentence but who returned to their country of origin;
- the interpretation of the consequential link between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1, including the possibility of deleting this requirement;
- the absence of time-limits as regards the application of the rule of speciality.

The PC-OC Mod added the first two questions in the draft revised template for country information on the Convention on the Transfer of Sentenced Persons

The experts also discussed the refusal by some Parties to the Additional Protocol to transfer a prisoner in the absence of his or her consent and concluded that the Protocol does not provide for such grounds of refusal..

Finally, the PC-OC Mod noted with interest the information given by the Secretariat that the Council for Penological Co-operation (PC-CP) was considering the possibility of developing country fact sheets in the prison field and wished to consult the PC-OC on items that could be included as useful information for the decision-making authorities as regard transfer or extradition.

The PC-OC Mod decided to make the following proposals for further action:

- the PC-OC could consider the feasibility and appropriateness of developing a binding instrument including the following issues:
 - o time-limits as regards: procedures; the revocation of consent; the actual transfer;
 - o widening the scope of the Convention to persons who returned voluntarily to their country of origin before having served their sentence;
 - o deletion of the consequential link between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1 of the Additional Protocol;
 - o introduction of time-limits as regards the application of the rule of speciality in the Additional Protocol.
- The PC-OC could consider the feasibility and appropriateness of developing a binding or non-binding instrument as regards the following issues:
 - o translation requirements;
 - o organisation and cost of the actual transfer;
 - o non-payment of fines or compensation to victims;

- the PC-OC could consider the feasibility and appropriateness of developing a non-binding instrument as regards information on the execution of the sentence by the administering state;
- the PC-OC could have a further debate as regards the impossibility to transfer mentally ill persons who have committed a crime and whose detention is imposed as a measure by a non-judicial authority.

7. Comments on the revised draft White Paper on transnational organised crime by the PC-GR-COT

The PC-OC Mod took note of the presentation of the paper by Mr Erik Verbert, who participated in the drafting Group on behalf of the PC-OC, welcomed the revised draft White Paper and made some comments as regards the drafting of recommendations and proposals for future action as regards judicial and police co-operation under item 4.2. Mr Carlo Chiaromonte, Secretary to the CDPC, took good note of these comments.

8. Any other business

No other issues were raised.

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