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PC-OC (2016)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 70th meeting of the PC-OC
under the Chairmanship of Ms Astrid Offner (Switzerland)
2-4 May 2016**

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the PC-OC adopted the agenda as reflected in Doc PC-OC (2016) OJ1.

2. Points for information

The PC-OC took note of:

- the words of welcome and information provided by Mr Ivan Koedjikov, Head of the Action against Crime Department, on recent developments in the Council of Europe;
- the information provided by Mr Carlo Chiaromonte, Secretary to the European Committee on Crime Problems (CDPC) and to the Committee of Experts on Terrorism (CODEXTER), on:
 - a) the recent adoption by the Committee of Ministers of:

- the terms of reference for the Committee of Offences related to Cultural Property (PC-IBC) tasked with the drafting of a new Council of Europe Convention on offences relating to cultural property;
 - the Action Plan on transnational organised crime (2016-2020) to ensure the follow-up to the key recommendations contained in the White Paper on Transnational Organised Crime;
 - the Guidelines for prison and probation services regarding radicalisation and violent extremism;
- b) the sending back to the CDPC of the Model provisions to be used as guidelines by expert groups that may be mandated to negotiate future criminal law conventions of the Council of Europe;
- c) the finalisation, by the Drafting Committee on Prison Overcrowding, of a White Paper which will aim to encourage member States to open the debate at national level regarding their penal system and to take respective decisions based on their needs and objectives. This multidisciplinary group, in which the PC-OC was represented by Ms Barbara Goeth-Flemmich (Austria) and Ms Imbi Markus (Estonia), had its fourth and last meeting on 21-22 April 2016.

Mr Chiaromonte furthermore informed the PC-OC that the issue of smuggling of migrants will be among the main topics of the forthcoming CDPC meeting and that the CDPC Bureau considered that the drafting of a recommendation on the implementation of the existing standards could be an option.

- the information given by the Secretariat on the delay in the finalisation of the joint HELP/PC-OC project for the development of the interactive version of the training 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 information provided by Ms Gabriela Bláhová (Czech Republic) who participated, on behalf of the PC-OC, in a meeting organised by the Pompidou Group and hosted by Interpol, on 9-10 November in Lyon with a view to preparing a handbook on controlled delivery;
- the information provided by Ms Marie Agha of the T-CY Secretariat, on the activities of this Committee, and in particular the interim report of the Cloud Evidence Group (Doc T-CY (2016)7). Ms Gabriela Bláhová will represent the PC-OC at the upcoming meeting of the T-CY on 23-25 May 2016;
- the information provided by the Secretariat on the latest signatures and ratifications of the different treaties within the remit of the PC-OC.

3. Implementation of the Action Plan on Transnational Organised Crime

The PC-OC considered the draft work plan developed by the Co-ordinator of the Action Plan, Ms Fabienne Schaller (France), and the Chair of the PC-OC with regard to the implementation by the PC-OC of the Action Plan on Transnational Organised Crime (Doc PC-OC(2016)02) and decided to ask the PC-OC Mod to:

- prepare an overview of existing reservations to Council of Europe treaties within the remit of the PC-OC and make a proposal to the plenary about possible follow up;
- prepare an overview of existing judicial networks, taking into account similar exercises undertaken by other bodies, such as the EJM and make proposals on ways to increase co-operation;
- prepare a half-day special session on the application of the Second Additional Protocol for the next plenary meeting;

- consider the possibility of creating a PC-OC network of contact persons responsible for questions related to transnational organised crime.

4. Presentation and content of the PC-OC website

The PC-OC took note with interest of the presentation of the planned design of the future PC-OC website which will replace the present website in the coming months, due to a change in platform.

a. Update of the Index and summaries of relevant case-law of the ECtHR

The PC-OC, after having been informed about new court decisions, discussed the need to update the index and summaries of the case-law of the ECtHR and decided to invite experts to inform the Secretariat of any further decision by the ECtHR which could be of relevance for the future update of the index and summaries of case law by the PC-OC Mod.

b. Assessment of Information available on the website

The PC-OC considered the “Inventory of country specific information available on the PC-OC websites” (PC-OC(2012) 09 rev 13) as well as the findings by the PC-OC Mod and agreed that it is important for practitioners that the PC-OC website contains the most relevant and recent information. The PC-OC agreed that some of the older documents posted as tools for implementation were redundant or outdated.

The PC-OC also underlined the value of having an updated list of bilateral treaties of member States in the fields related to the activities of the PC-OC.

The PC-OC considered the proposals by the PC-OC Mod and decided to:

- instruct the Secretariat to move the documents identified by the Mod to an “archives” entrance to be created under each type of co-operation (extradition, MLA, transfer of sentenced persons, etc.);
- update Doc PC-OC INF 8 in the line of the discussions and invite all experts to provide information on bilateral treaties in the fields of extradition, MLA in the largest sense, transfer of sentenced persons, transfer of proceedings etc. including links to the texts of these treaties;
- reiterate its call to experts from Parties to the conventions concerned to regularly check and update as necessary country information and contact details of officials involved in their practical application.

5. 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 the rapporteur on extradition, the PC-OC decided to postpone discussion on the follow-up to the special session until a further meeting.

b. Bilateral Treaties

The PC-OC discussed the issue raised by the PC-OC Mod that experts needed more information on bilateral treaties in the fields within its remit as well as the possibility to propose model bilateral treaties,

Considering its decision to update the list of bilateral treaties (PC-OC INF 8), the PC-OC decided that it would not be necessary to conduct any further activity on this issue.

c. Practical case

The PC-OC had an exchange of views on a question raised by Ms Gabriela Gonzalez (Chile) as regards the lack of information and justification in cases where extradition had been refused.

Questions were furthermore raised by Ms Shorstka (Ukraine) as regards appeal procedures in extradition cases as well as regards difficulties linked to the use by Parties of alternatives to detention pending extradition.

The PC-OC decided to invite Ms Shorstka to prepare a short discussion paper on these questions for consideration at a future meeting.

6. Mutual Assistance in Criminal Matters

a. Draft model request form on MLA and practical guidelines for practitioners

The PC-OC considered the user-friendly version of the model request form and guidelines on mutual legal assistance [Doc PC-OC Mod(2014)10 rev6 and PC-OC(2015)09rev3] presented by the Secretariat and took note of the fact that this version would be available on the future website, including a print-friendly version.

The Committee recalled that in order to ensure an effective use of this important tool by practitioners, it was important that this model request form and guidelines be widely distributed and translated in as many languages as possible, and decided to:

- reiterate its call to experts to have the model request and guidelines widely distributed and translated in their national language and to send it to the Secretariat for publication on the PC-OC website.

b. Finalisation of the Draft template for country information on national procedures as regards the application of ETS N° 141

The PC-OC considered the draft template, proposed by the PC-OC Mod, for country information on national procedures as regards the application of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N° 141). Referring to the Action Plan on Transnational Organised Crime, the PC-OC suggested that the COP 198 could consider creating a similar template for the national procedures as regards the application of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The PC-OC decided to:

- adopt the template, with a few amendments, as contained in Doc PC-OC Mod(2016)01rev(2);
- invite experts to complete the template by 1 October 2016.

c. 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 was informed that 30 replies had been received up to now and agreed with the PC-OC Mod that the additional replies received did not challenge the conclusions reached by the PC-OC at its 69th plenary meeting. The PC-OC also welcomed the decision by the PC-OC Mod, to publish the replies to the questionnaire, including future updates, on the PC-OC website as a useful tool for implementation under the heading “Seizure and Confiscation” and decided to invite countries that have not yet replied to do so as soon as possible.

Considering possible follow-up to improve international co-operation in this particular field, the PC-OC decided to discuss this issue further in a future meeting, in relation to the implementation of the Action plan on Transnational Organised Crime, on the basis of the replies received to question 11 of the questionnaire, which contains proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing.

d. Practical case

The PC-OC took note of the question raised by Ms Antonella Sampo-Couma (Monaco) regarding difficulties related to MLA requests with confidentiality clauses.

The PC-OC decided to thank Ms Sampo-Couma for her proposal to prepare a discussion paper on this issue for consideration at a future meeting.

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

a. Draft protocol to amend the Additional Protocol to the Convention and draft revised explanatory report

The PC-OC considered the Draft protocol to amend the Additional Protocol to the Convention, as contained in PC-OC Mod (2015)01rev 6, and agreed on the remaining alternatives, taking into account the suggestions made by Ms Ana Gomez from the Treaty Office.

The PC-OC also considered the Draft revised explanatory report as proposed by the PC-OC Mod [Doc. PC-OC(2015)02rev2.]

The PC-OC decided to approve the text of the draft amending Protocol and the draft revised explanatory report as contained in docs PC-OC Mod (2015)01rev 7 and PC-OC(2015)02rev3 and to submit these texts to the CDPC at its next plenary meeting.

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

The PC-OC considered the proposals by the PC-OC Mod to amend Article 17 of the Convention, agreed on some amendments (as contained in Doc PC-OC (2016)03rev) and decided to discuss this proposal further at its next meeting, together with the other possible amendments proposed by the PC-OC Mod.

c. E-transfer proposal by Israel and discussion on follow up

Further to the discussions held at the previous meeting and, taking into account the comments received (Doc PC-OC Mod (2015)05rev2) and the information provided by the Secretariat of the Directorate of Information Technology (DIT), the PC-OC resumed consideration of the proposal by Israel to develop an electronic tool to facilitate transfer procedures (e-transfer, contained in Doc PC-OC Mod (2014)04).

The discussion revealed that more clarity was needed on the aim, needs and modalities of this tool. The PC-OC therefore decided to ask the PC-OC Mod to prepare, in consultation with the DIT Secretariat, and in the light of the discussions held, a questionnaire for adoption by the plenary at its next plenary meeting.

8. Election of a member of the PC-OC Mod and possible substitutes

Further to the change in functions of Mr Stéphane Dupraz (France) and the retirement of Ms Imbi Markus (Estonia), the PC-OC elected Mr Juhani Korhonen (Finland) as member of the PC-OC Mod and Ms Tetiana Shorstka (Ukraine) and Ms Céline Guillet (France) as first and second substitutes respectively.

The composition of the PC-OC Mod will be:

Ms Astrid Offner (Switzerland, Chair)
Ms Joana Ferreira (Portugal, Vice-Chair)
Ms Barbara Goeth Flemmich (Austria)
Mr Juhani Korhonen (Finland)
Ms Eleni Loizidou (Cyprus)
Mr Eugenio Selvaggi (Italy)
Ms Malgorzata Skoczelas (Poland)
Mr Erik Verbert (Belgium)
Mr Vladimir Zimin (Russian Federation)