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PC-OC Mod (2016)11

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 22nd 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 Astrid Offner (Switzerland)
27-29 September 2016**

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 (2016) 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 Mr Carlo Chiaromonte, Head of the Criminal Law Division and the Counter-Terrorism Division, on the latest developments in the work of the CDPC and the CODEXTER. He underlined the importance of international co-operation in the work of these Committees, indicating as examples:

- the setting up of a 24/7 network of contact points, foreseen under the Additional Protocol to the Convention on the Prevention of Terrorism, to exchange in real time police information as regards travel foreseen by persons suspected to be foreign terrorist fighters. A first meeting of the 25 contact points already nominated will take place in Strasbourg on 17 October;
- the initiative by the CDPC to organise a conference on Joint Investigation Teams (JIT) in March/April 2017 exploring the possibilities of drawing on the expertise of the EU, and in particular Eurojust's JIT Secretariat in organising JIT with non EU countries.

Mr Chiaromonte also mentioned:

- the progress made by the Committee on Offences Relating to Cultural Property (PC-IBC) in the drafting of the new CoE Convention on Offences related to Cultural Property indicating that a first draft of this convention is now available;
- the decision by the CDPC not to elaborate new standards in relation to the smuggling of migrants but to organise a high-level meeting on this issue for prosecutors and police. The exact date and venue of this conference which should take place by the end of this year are not yet known;
- the creation by the CDPC of a working group to consider the recently adopted White Paper on Prison Overcrowding and to develop concrete proposals for its implementation by member States.

The PC-OC Mod also took note of:

- the decision taken by the Committee of Ministers to send the Draft Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons and its explanatory report to the Parliamentary Assembly of the Council of Europe for opinion;
- information about ongoing activities within the T-CY which will have its next plenary meeting on 14-15 November 2015;
- the latest signatures and ratifications of the different treaties within the remit of the PC-OC.

Experts in the PC-OC Mod raised questions as regards the draft Convention on Offences related to Cultural Property, and in particular as regards international co-operation. It was underlined, both in the context of this particular convention and in general that illegal acts committed by legal entities, in the sphere of criminal, administrative or civil law, or recovery of assets by non-conviction based confiscation were either not or insufficiently regulated by existing Council of Europe instruments. The PC-OC Mod decided to inform the plenary of its view that these issues would need further consideration.

3. Presentation and content of the PC-OC website

The PC-OC Mod was pleased to note that the new website of the PC-OC would soon be launched. A proposal was made that the website should also contain a list of Chairs and Secretaries to the PC-OC.

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

The PC-OC Mod considered the new summaries proposed [document PC-OC Mod(2016)08rev] to update the index and summaries of relevant case law of the European Court of Human Rights], and decided to:

- invite the experts of the Mod to send comments to Ms Malgorzata Skoczelas (Poland), co-ordinator of the index, with a copy to the Secretariat;
- instruct the Secretariat to update the index and summaries of case law after consultation with the co-ordinator and publish it on the website;
- ask the plenary to indicate any further case law to be introduced.

The PC-OC Mod furthermore considered the feasibility of collecting case law of the Court of Justice of the European Union of relevance to international co-operation, and in particular cases affecting relations with non EU States and decided to submit this question to the plenary.

Finally, the PC-OC Mod agreed that it was increasingly difficult to find experts ready to work on the update of the index and case law and decided to bring this to the attention of the plenary. The PC-OC Mod expressed its gratitude to Ms Fernanda Iannone from the Secretariat for her assistance.

4. Implementation of the Action Plan on Transnational Organised Crime (TOC)

The PC-OC Mod held an exchange of views with Mr Oscar Alarcon Jimenez, member of the Secretariat in charge of following the implementation of the Action Plan on TOC. He mentioned in particular the decision to update the Recommendation Rec (2005)9 of the Committee of Ministers to member States “on the protection of witnesses and collaborators of justice”. Considering that this issue is addressed in Article 23 of the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters, the possibility to appoint a member of the PC-OC to participate was mentioned.

The PC-OC Mod asked several questions on the implementation of the Action Plan and decided to instruct the Secretariat to extract from the Action Plan the tasks to be implemented by the PC-OC and to present these to the plenary.

a. Examination of the overview of reservations to Council of Europe treaties of relevance to the fight against TOC within the remit of the PC-OC and proposals for follow up

The PC-OC Mod examined the catalogue of reservations made to the European Convention on Extradition and the Additional Protocols thereto, the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto, the European Convention on the Transfer of Proceedings in Criminal Matters as well as the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime [PC-OC Mod (2016)05rev] as well as the overview of these reservations prepared by the Secretariat [PC-OC Mod (2016)05Add].

The PC-OC Mod agreed that for the purpose of the fight against TOC not all treaties falling within the remit of the PC-OC were relevant. It was felt however that the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto were important in this regard. Experts considered that it was sometimes difficult to distinguish reservations from declarations since the difference depended on the interpretation by the Parties of the content of declarations.

As regards the reservations made to the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No. 141, 1990), the PC-OC Mod agreed with the Secretariat proposal that the reservations made to this Convention should be analysed together with those made to the more recent Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No.198, 2005).

The PC-OC Mod decided to:

- instruct the Secretariat to complete the catalogue and the overview with the reservations made to the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto;
- instruct the Secretariat to liaise with the Secretariat of the Conference of Parties to this treaty (COP 198) in order to explore possibilities for co-operation between the PC-OC and COP 198 so as to issue joint conclusions in this particular field;
- propose that the plenary invite Parties to the Conventions listed in the catalogue to check whether the catalogue accurately reflects the reservations made by them.

b. Examination of existing judicial networks and proposals to promote their interconnection

The PC-OC Mod considered the document presenting an overview of judicial networks prepared by the Secretariat [Doc PC-OC Mod (2016)06] and mentioned several networks to be added.

It also discussed proposals for follow-up and the possibility of organising a meeting between the Secretariats and/or members of these networks to discuss options for closer co-operation. The possibility to appoint an expert to make a reflexion paper on this issue was also mentioned.

The PC-OC Mod decided to instruct the Secretariat to update the overview in line of the discussions held and to present it to the plenary for further discussion.

c. Discussion on the possibility of creating a network of contact persons within the PC-OC concerning the fight against TOC

The PC-OC Mod considered the above question and was of the opinion that the list of single points of contact could constitute a basis for such a network.

It decided to inform the plenary of its proposal to invite experts to consider the persons mentioned in the list of single points of contact and to add, where necessary, a different contact point for issues related to TOC.

5. Mutual Assistance in Criminal Matters

a. Preparation of a Special Session on the implementation of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters

The PC-OC Mod discussed the organisation of the special session, which is part of the implementation of the Action Plan against TOC. Considering that the special session was too short to address all provisions contained in this Protocol, it agreed to organise workshops focusing on the two major innovations introduced by this instrument, namely with regard to the scope and methods of exchange of information and the new methods related to the gathering of evidence. Possible follow-up to the special session was also discussed.

The PC-OC Mod decided to:

- adopt the programme of the special session as included in Doc PC-OC Mod (2016)09;
- propose, as a follow-up to the special session, that the plenary ask the PC-OC Mod to develop a questionnaire on the application of the Second Additional Protocol taking into account the issues raised in the workshops.

b. User-friendly version of the model request form on MLA and practical guidelines for practitioners on the new website

The Secretariat informed the PC-OC Mod that the publication of a print-friendly version of the model request form, as requested by the PC-OC, will require the development of a specific tool. The functionalities and cost of this tool are presently being examined.

6. Convention on the Transfer of Sentenced Persons

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

The PC-OC Mod further discussed proposals on possible amendments to the Convention on the Transfer of Sentenced persons mentioned in Document PC-OC Mod (2016) 04 and in particular:

- *the possibility of introducing time limits for the revocation of consent by the sentenced person:*

The majority of PC-OC Mod members agreed on a proposal to amend Articles 4 and 7 of the Convention by introducing conditions to revocation of consent while at the same time giving an incentive to States to finalise the proceedings within a reasonable delay.

The PC-OC Mod decided to bring the proposal, contained in Doc PC-OC Mod(2016)10, to the attention of the plenary for further discussion.

- *the widening of the scope of the Convention to persons who returned voluntarily to their country of origin before having served their sentence:*

The PC-OC Mod agreed that the draft Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons provided an acceptable solution to this problem.

- *the non-payment of fines or compensation of victims:*

The PC-OC Mod confirmed its opinion that this issue could not be addressed by a binding instrument but could be addressed by updating Recommendation R (92)18 by the Committee of Ministers which also addresses the issue of fines.

It was decided to inform the plenary of its proposal to finalise its work on the Draft Second Additional Protocol to the Convention before considering the development of a new recommendation which could update the existing ones and address issues that were not suitable to be regulated by a binding instrument.

- *the provision of information on the execution of the sentence by the administering state:*

The majority of PC-OC Mod members saw no compelling reasons to amend Article 15 of the Convention which contains an obligation for the administering State to provide information to the sentencing state. If an amendment is to be envisaged, further discussions would be necessary in the plenary.

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

b. Preparation of a draft questionnaire concerning the possible establishment of an E-transfer tool

The PC-OC Mod considered the draft questionnaire prepared by the Secretariat, agreed on some amendments and decided to submit the questionnaire [PC-OC Mod(2016)07rev], for consideration and adoption by the plenary.

7. Any other business

The Chair, Ms Astrid Offner, informed the PC-OC Mod that she intends to retire in spring 2017 and therefore would no longer be available to chair the PC-OC in 2017. The PC-OC will have to elect a new Chair during its upcoming plenary meeting in November 2016.

The PC-OC Mod also took note of the Discussion paper concerning extradition issues submitted by Ms Tetiana Shortska (Ukraine) which will be presented to the plenary for discussion.