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PC-OC Mod (2017) 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 23rd meeting of the restricted Group of experts
on international co-operation (PC-OC Mod) enlarged to all PC-OC members
under the Chairmanship of Mr Erik Verbert (Belgium)
28 February-2 March 2017**

1. Opening of the meeting and adoption of the agenda

The PC-OC Mod took note of the opening words by Mr Jan Kleijssen, Director, Directorate of Information Society and Action against Crime (DG1). He welcomed in particular the development of the PC-OC website, underlining the importance of completing and updating country information. He also invited members of the working group to provide feedback on the use and usefulness of the website. He informed the Committee about the progress in setting up the Platform for Co-operation with the Internet Industry, as called for in the Council of Europe's Internet Governance Strategy 2016-19. Further emphasis was put on the implementation of the Action Plan against Transnational Organised Crime. After the opening of the meeting, the agenda was adopted as reflected in document PC-OC Mod (2017) OJ1.

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 Jan Kleijssen, on the finalisation by the Committee on Offences Relating to Cultural Property (PC-IBC) of the new draft CoE Convention on Offences related to Cultural Property indicating that this draft convention will be examined by the CDPC during its next meeting on 29 to 31 March 2017. It is expected that the Convention will be adopted and opened for signature at the 127th Session of the Committee of Ministers in Nicosia on 19 May 2017.

Mr Kleijssen also informed the experts that the Committee of Ministers had decided to invite Ghana and India to accede to the Convention on the Transfer of Sentenced Persons. Brazil also made a request to accede. As regards the draft amending protocol to the Additional Protocol to this Convention, he mentioned that the PACE would examine the draft protocol in May and that it was to be expected that the Committee of Ministers could open the protocol for signature before the end of the summer.

The PC-OC Mod also took note of:

- the resignation of Ms Malgorzata Skoczelas as a member of the PC-OC Mod;
- the participation of a delegation from Kazakhstan, Party to the Convention on laundering, search, seizure and confiscation of proceeds of crime, in the next plenary meeting of the PC-OC;
- the latest signatures and ratifications of the different treaties within the remit of the PC-OC.

3. Presentation and content of the PC-OC website

The PC-OC Mod considered the inventory of country specific information available on the website of the PC-OC and was pleased to note the publication of the updated list of bilateral treaties in the field of international co-operation of criminal matters. It also noted that many countries had not yet provided country information as regards ETS N°141.

The PC-OC Mod decided to instruct the Secretariat to continue inviting experts, prior to each plenary meeting, to update or provide country information and, as regards bilateral treaties, to specify both the date of signature and the date of entry into force of the treaty concerned as well as the category under which the treaty is to be included.

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

The PC-OC Mod was pleased to note the latest updates and improvements made to the index and summaries of relevant case law of the European Court of Human Rights [document PC-OC(2011)21rev10] as well as of the initiative to give a consultant contract to former PC-OC Mod member Miroslav Kubicek (Czech Republic) with the task of making further proposals for completing and updating the document in time for the next meeting of the PC-OC Mod. Several members of the Mod mentioned new interesting judgments to be added to the compilation.

The PC-OC Mod decided to:

- invite members to send the references of the judgments mentioned to the Secretariat for further consideration by Mr Kubicek;
- consider the proposals made by Mr Kubicek at its next meeting.

b. Consideration of the possibility to publish global and regional conventions on international co-operation on the website of the PC-OC

The PC-OC Mod furthermore considered the publication of such conventions on the website of the PC-OC, noting that the publication of such conventions would be interesting both from the operational perspective as well as for the purpose of finding sources of inspiration for the development of bilateral and multilateral treaties.

The PC-OC Mod decided to propose to the plenary that, departing from the existing information on the website, further links could be introduced to treaties developed by other international organisations such as ASEAN or COMJIB.

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

a. Consideration of actions proposed and identification of priority actions for the PC-OC

The PC-OC Mod considered in detail the actions proposed in Doc PC-OC (2016)05 and presented by Mr Oscar Alarcon Jimenez, member of the Secretariat in charge of following the implementation of the Action Plan on TOC.

Mr Alarcon informed the experts that Key area 1 (Enhancing international co-operation through networks), Action A2 of the Action Plan: "Discuss the setting up and use of secure communications for international cooperation" was presently being addressed by a project, involving Mr Per Hedvall (Sweden), to evaluate the state of play of existing initiatives on this subject by Interpol (e-extradition) and the EU (E-codex). A paper on this subject should be ready in time for consideration by the PC-OC plenary in November.

Much time was devoted in considering Key area 1. Action A4: "Establish a mechanism to address judicial co-operation problems". The PC-OC Mod agreed that further information would be required to propose an adequate reply to the issues raised under this action and formulated a few questions to the PC-OC.

As regards Key area 1. Action B3: "Development/elaboration and support of model request forms", the PC-OC Mod considered the possibility of developing a model request for extradition requests and agreed that this could be envisaged, at a later stage.

The PC-OC Mod felt that proposals to implement Key area 1. Action B4: "Draft guidelines on selected topics" could include issues such as hearings by videoconference or double incrimination.

As regards Key area 5 (Recovery of assets), Action B1: "Enhancing the implementation of the existing legal network on the management and disposal of criminal assets", the PC-OC Mod agreed that one of the activities to be implemented, the drafting of a model agreement for asset sharing between CoE member States, was important. It could usefully be addressed by making an overview of existing texts and projects on asset sharing including by the G8, the UN and some bilateral agreements, identifying the difficulties encountered and making proposals to take this further. The Secretariat could liaise with the COP 198 to find out whether work on this subject had already been undertaken or could envisage contracting a consultant to undertake this analysis.

As regards the other actions proposed in the document, the PC-OC Mod shared the view that they were either well underway, or as regards the actions proposed in Key area 3 on Witness protection, or Key Area 4 on Administrative synergies and co-operation with the private sector, or as regards Key area 5 on recovery of assets, that the PC-OC should be invited to send one or more representatives to the expert groups that will address these issues.

The PC-OC Mod decided to:

- invite the PC-OC to answer the questions related to Key area 1, Action 4 by 15 April;
- inform the plenary of its findings.

b. Examination of the catalogue and 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, the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime as well as the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto [PC-OC Mod (2016)05rev3] as well as the overview of these reservations prepared by the Secretariat [PC-OC Mod (2016)05rev3Add].

Experts agreed that it would be important to identify those reservations and declarations that create obstacles to efficient co-operation as regards the fight against TOC. They proposed the creation of several groups of 2 or 3 persons within the PC-OC to identify such reservations or declarations and contact the countries concerned to see whether any update or withdrawal of these reservations would be possible.

The PC-OC Mod decided to submit this proposal to the plenary for consideration.

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

The PC-OC Mod had an exchange of views with Ms Esther George (Solicitor, former Crown Prosecutor UK) on her proposals to interconnect the judicial networks identified in her preliminary reflexion paper [Doc PC-OC Mod (2016)06]. Experts shared the opinion that the most realistic options would be to publish and share the catalogue of networks identified and/or to create an online platform for the sharing of information and knowledge.

The PC-OC Mod, recalling the suggestion by the PC-OC to organise a meeting between representatives of networks to discuss options for interconnection and/or co-operation of networks and aware of the budgetary limitations regarding the organisation of such a meeting, decided to:

- invite the members of the PC-OC Mod to inform the Secretariat of the most relevant networks as regards the fight against TOC to be invited, taking into account geographical distribution;
- ask Ms George to adapt her proposals according to the discussions held;
- share the proposal with the plenary.

5. Mutual Assistance in Criminal Matters

a. Preparation of a questionnaire on the application of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters

As a follow-up to the Special Session on the implementation of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters held during the last plenary meeting, the PC-OC Mod examined and agreed on a draft questionnaire on the application of this protocol as contained in Doc PC-OC Mod (2017)1 rev.

The PC-OC Mod decided to submit this draft questionnaire to the plenary for adoption.

b. Cybercrime: discussion of the report on Criminal justice access to electronic evidence in the cloud

The PC-OC Mod heard an interesting presentation by Mr Alexander Seger, Secretary to the T-CY, on the above report. Particular attention was drawn to the adoption by the T-CY, on 28 February 2017, of a Guidance Note on Article 18 of the Budapest Convention, concerning domestic production orders for subscriber information. The PC-OC Mod took note that the T-CY would examine the terms of reference for the Committee in order to elaborate an additional Protocol to the Budapest Convention at its next plenary meeting.

The PC-OC Mod underlined that close co-operation between the T-CY and the PC-OC will continue to be necessary in particular on the issue of electronic evidence.

The PC-OC Mod decided to share this information with the plenary.

c. Mutual legal assistance for the purpose of proceedings against legal entities

When discussing the Action Plan against TOC, the PC-OC Mod mentioned the paper by Mr Zimin (Russian Federation) related to MLA in criminal, civil and administrative matters related to criminal offences, the liability of legal entities, non-conviction based confiscation and proposals for follow-up, of which the planned discussion at the 68th meeting had been postponed. An additional paper by Mr Selvaggi (Italy) will also be made available.

The PC-OC Mod decided to propose that the plenary discuss these papers at its next plenary meeting.

6. Convention on the Transfer of Sentenced Persons

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

Further to the discussions held in the last plenary, the PC-OC Mod reconsidered the proposals contained in Doc PC-OC Mod(2016)03rev and concluded that, for the moment, no consensus could be found, neither for a proposal to modify the Convention as regards translation requirements, nor, taking into account the global nature of this instrument, for a shifting of the costs of the transfer from the administering state to the sentencing state.

As regards translation requirements, the PC-OC Mod proposed that efforts should be made to change the practice in this regard by developing a model request form and guidelines so as to streamline and accelerate transfer procedures and avoid unnecessary translation and costs. At a later stage, such a model request form and guidelines could be integrated into a recommendation by the Committee of Ministers, also covering other concerns identified.

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

b. Examination of the replies received to the questionnaire concerning the possible establishment of an E-transfer tool and proposals for follow-up

The PC-OC Mod considered the 18 replies received to the questionnaire as reflected in Doc PC-OC Mod (2017)2, noting that this document will be updated when further replies have been received. The PC-OC Mod concluded that many States have concerns related to the legal basis of an e-transfer tool as well as with data protection requirements. In addition, since too few states seem to have facilities allowing access of prisoners to the Internet, consideration should be given to starting the development of an e-transfer tool between central authorities.

The PC-OC Mod was interested to hear from Ms Iliana Taneva, Secretary to the PC-CP, that the European Organisation of Prison and Correctional Services (EuroPris) has valuable data on prison conditions and facilities in Europe.

The PC-OC Mod decided to:

- instruct the Secretariat to ask for legal advice on the legal basis required to develop an e-transfer tool within the Council of Europe allowing parties to the Convention to use it for the purpose of the transfer procedures contained in it, as well as on data protection requirements;
- submit its proposal to the plenary for further discussion;
- invite EuroPris to the next plenary meeting.

7. European Convention on Extradition

a. Discussion on Measures of restriction in extradition cases: the use of alternatives to detention

The PC-OC Mod further addressed, in the presence of Ms Iliana Taneva, Secretary to the PC-CP, the issue of alternatives to detention pending extradition, taking into account the replies to a question posed

by Mr Vladimir Zimin (Russian Federation). The increased use of alternatives to detention, including pending extradition, was noted.

Given the interest in sharing information on the use of alternatives to detention, the PC-OC Mod decided to invite experts who have not yet replied to Mr Zimin's question to do so by 30 April 2017, also indicating the maximum duration of detention pending extradition in their national legislation.