

Strasbourg, 19 September 2017

CDPC-BU (2017) 3

# EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

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## ANNOTATED AGENDA

### Bureau meeting

Venice, 2 – 3 October 2017

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#### **Activities related to transnational organised crime: Action plan – Monday, 2 October 9:30**

The members of the Bureau are invited to take note of the information provided by Mr Jesper Hjortenbergh, CDPC co-ordinator on TOC, and Mr Oscar Alarcón-Jiménez, Secretariat, on the most recent developments in the implementation of the Action Plan on TOC.

#### **a. Review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators**

At its last Plenary meeting (March 2017), the CDPC took note of the draft questionnaire on Recommendation Rec (2005)9 on the protection of witnesses and collaborators of justice and made some comments, on the basis of which the questionnaire was finalised and presented to the Bureau in April 2017 before being sent to all CDPC delegations by the end of April [CDPC (2017)5 rev]. All CDPC delegations were invited to reply the questionnaire by 30 June 2017. A compilation of the replies was prepared [CDPC (2017)13] (sent by e-mail to Bureau members on 7 September 2017 and a report on the need to update the Recommendation (2005)9 drafted and is now presented to the Bureau.

The Bureau will have an exchange of views with Mr Iwan Waltenburg, scientific expert, on the issue of witness protection and collaborators of justice and in particular on the possibility of reviewing Recommendation Rec (2005)9. The expert will present a Preliminary draft interim report [CDPC (2017)18] based on the answers to the questionnaire.

The Bureau is invited to decide to submit this draft interim report to the CDPC plenary meeting for information and further action and to instruct the Secretariat to draft the Terms of Reference for a possible drafting group to be mandated to review the above-mentioned recommendation should the CDPC Plenary decide on reviewing the recommendation.

**b. Status of implementation of the Action Plan on TOC**

As for the implementation of the Action Plan, the members of the Bureau are kindly invited to take note of the Matrix of the Action Plan on TOC and of the following activities which are currently underway:

**1) Key area 1 (Enhancing international co-operation through networks):**

- Action A2 (“Discuss the setting up and use of secure communications for international co-operation”): Mr Per Hedvall (prosecutor, former Chair of the PC-OC, Sweden) has been appointed as an expert and will be asked to prepare a report on existing initiatives concerning secure communications by Interpol (e-extradition) and the EU (E-codex). His report will be presented to the PC-OC plenary in 2018;

- Action A3 (“Build-up the connection of judicial networks”): Ms Esther George (Solicitor, former Crown Prosecutor, United Kingdom) has been requested to draft a working paper identifying a list of international judicial networks of relevance for the fight against TOC, describing their functions and working methods. A meeting between the representatives of each network will be organised in 2018 to discuss possible options for the interconnection and/or co-operation of networks. The working paper was discussed and approved by the PC-OC which is also following the preparation of the meeting;

- Action A4 (“Establish a mechanism to address judicial co-operation problems), the PC-OC considered the Action plan’s proposal to increase judicial co-operation and to reduce issues arising with non-co-operative States, by the introduction, in the different treaties concerned, of a binding rule for requested countries to send a confirmation of receipt of requests for co-operation and to establish a duty of consultation between the requested and the requesting authorities. The PC-OC agreed, taking into account the replies received to a short questionnaire on this issue, that, even in the absence of a confirmation of receipt, co-operation was usually smooth and consultation rarely refused.

In order to improve international co-operation and to reduce the risk of a request being refused, delayed or unanswered, the PC-OC decided to recommend that:

- requesting authorities should make use of the model request forms and guidelines;
- individual judges should consult the central authorities where a request for co-operation remained unanswered;
- the list of contact points on the PC-OC website should be regularly updated and developed, including, where appropriate, with a list of experts in TOC.

- Action B1 (“Review provisions on international co-operation in CoE conventions and relevant reservations/declarations to them/these conventions”): the PC-OC Mod prepared two documents providing 1) the list of reservations made to the Conventions on Extradition, MLA, Transfer of Proceedings, Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, Transfer of Sentenced Persons [document PC-OC Mod (2016)05rev3], and 2) an assessment of these reservations [document PC-OC Mod (2016)05rev3Add].

The PC-OC agreed to identify those reservations and declarations that create obstacles to efficient co-operation, including as regards the fight against TOC. It decided to create three working groups, each devoted to a group of treaties, which would share their work in written consultation under the guidance of a co-ordinator. Each group would be tasked with identifying such reservations or declarations and

contact the Parties concerned to see whether any update or withdrawal of these reservations or declarations would be possible. The PC-OC Mod will assess the first results of this exercise.

- Action B3 (“Development/elaboration and support of model request forms”): the PC-OC considered the possibility of developing a model request form for extradition requests and agreed that this could be envisaged at a later stage.

### 3) **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 decided to ask experts to send examples of legislation, model agreements on asset sharing and practice in this field to the Secretariat by 1 September 2017 and invited a representative of the CARIN Network to participate in the upcoming meeting of the PC-OC Mod. The PC-OC Mod will consider the question further and make proposals for follow up to the plenary.

### 4) **Key area 4** (Administrative synergies and co-operation with the private sector) **and Key area 5** (Recovery of assets)

The Bureau is invited to identify possibly priority actions to be implemented in the near future in these two areas. The Bureau is invited to take note that the PC-OC agreed that the Committee should be invited to send one or more representatives to the expert group that could be established to address these issues.

#### 1. **Opening of the Bureau meeting**

The meeting will start at 14:00 on Monday, 2 October 2017.

#### 2. **Adoption of the draft agenda**

The Bureau is requested to adopt the draft agenda of the meeting.

#### 3. **Activities and priorities of the CDPC for 2018-2019**

The GR-J has examined the draft terms of reference of the CDPC and of its subordinated committees (PC-OC and PC-CP) on 14 September 2017. Some delegations praised the good work produced by the Council of Europe in the criminal matters field. The Terms of reference were accepted without changes and transmitted to other Committee of Ministers bodies for further examination (GR-PBA for budgetary issues and then to the Deputies' in November for final adoption). The Secretariat will also briefly present the few changes made internally to the terms of reference as it was approved by the CDPC, which are mainly of formal nature.

On the basis of the tasks assigned to the CDPC in its terms of reference, the Bureau is requested to discuss how the different items/issues should be dealt with in its future work and to identify priorities in this respect.

#### 4. **Council for Penological Co-operation (PC-CP)**

The Bureau is invited to take note of the information provided by Mr Vivian Geiran, PC-CP Chair and of the meeting report of the last PC-CP Working Group meeting, which took place on 20-22 September 2017 [document PC-CP (2017) 15].

The Bureau is invited to take note that the last Conference of Directors of Prison and Probation Services “Staff Recruitment, Training and Development” (June 2017, Norway) was attended by about 140 participants. The participants adopted the Conference conclusions sending a strong message to the national authorities and also to the Council of Europe regarding the importance of good staff, selection, training and development for ensuring public safety and reduce crime in prison. The Bureau is invited to consider in particular indents three and four of the operative part of the conclusions and to suggest which follow-up should be given to the proposals made at the Conference.

The Bureau further invited to take note that the terms of office of several PC-CP WG members will come to an end during the next CDPC plenary meeting. These are Mr Vivian Geiran, the current Chair (Ireland), Mr Jörg Jesse, the current Vice-Chair (Germany), Mr Attila Juhász (Hungary) and Mr Dominik Lehner (Switzerland). The PC-CP WG will consider this issue at its forthcoming meeting on 20-22 September 2017 regarding the election of their future Chair and Vice-Chair and will inform the CDPC with a view to preparing the elections of new members at the next CDPC plenary meeting.

**a. Restorative justice**

The Bureau is invited to consider documents PC-CP (2017) 6 rev 3 and PC-CP (2017) 12. The draft recommendation is based and further develops and updates CM Recommendation Rec n° (99) 19 on mediation in penal matters. It refers to restorative justice in criminal matters in general with specific references to its use also by prison and probation services. The Bureau is invited to note that the European Forum for Restorative Justice is actively contributing to the work on the text. After debating at the PC-CP WG level whether to use the terms “mediation” or “restorative justice” (RJ), it was decided that RJ should be used as a general term covering the different types of interventions involving a victim and an offender, considering also that this term is used in the Directive 2012/29/EU of the European Parliament and of the Council, establishing minimum standards on the rights, support and protection of victims of crime. The Bureau is invited to make any comments and suggestions related to the two texts which it may consider necessary.

**b. Children of imprisoned parents**

The Bureau is invited to consider documents PC-CP (2017) 7 rev 3 and PC-CP (2017) 13 rev. The PC-CP WG took into consideration the comments made at the previous CDPC Bureau meeting (Doc. CDPC (2017) 11) regarding the text of the Recommendation and revised it accordingly. Meanwhile a draft report was elaborated by the two scientific experts which provides additional explanations and examples of good practices and summarizes the replies to a questionnaire (26 country replies were received (one country – Germany sent 11 replies from individual Laender (states)). The Bureau is invited to make any comments and suggestions related to the two texts which it may consider necessary.

**c. Revision of the commentary to the European Prison Rules**

The revision of the commentary started this year first by drafting a preliminary report reflecting the developments in Europe and worldwide after the adoption of the current EPR in 2006 and in particular the relevant case law of the ECtHR and the latest CPT standards. Valuable contributions in this respect were made by one of the PC-CP WG members, Prof Nikolaos Koulouris and by Krešimir Kamber from the Registry of the ECtHR. The revision itself started this summer by the scientific expert, Prof Dirk van Zyl Smit, who was the leading expert in drafting the EPR and their commentary in 2006. It is expected to finish the revision during the first half of 2018.

The Bureau is invited to consider documents PC-CP (2017) 3 rev and PC-CP (2017) 14, as well as the letter sent by Prof van Zyl Smit regarding suggestions for amendments to the EPR themselves and to make any comments and proposals which it finds necessary.

**5. Prison overcrowding**

The Bureau is invited to take note of the information provided by the Chair of the CDPC sub-group on prison overcrowding, Marjorie Bonn, and of the executive summary of its second meeting (7 June 2017, The Hague), [CDPC (2017)10]. Representatives of Bulgaria, Denmark (Jesper Hjortenberg), Greece, Hungary, Italy and The Netherlands (Mrs Marjorie Bonn) were present. The PC-CP Chair, Vivian Geiran and a member of the CPT (Prof Anton Van Kalmthout) also attended.

The Bureau is invited in particular to take note that according to the statistical information provided by the ECtHR about 18% of its rising caseload in the recent years is due to bad prison conditions including prison overcrowding. The Bureau is further invited to consider the table appearing in Appendix III of the

meeting report and related to the front-door and back-door use of alternatives to custody as a basis for discussing measures to be taken by the national authorities in order to reduce prison numbers.

The Bureau is invited to discuss and take respective decision regarding the proposal made to hold a high level Council of Europe Conference in 2019 on the issue involving all relevant actors like ministries of justice and the interior, police, prison and probation services, judges and prosecutors.

## **6. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC)**

The Bureau is invited to take note of the list of decisions of the 24th meeting of the PC-OC Mod held on 26- 28 September 2017 and of the 72nd meeting of the PC-OC, held on 22-24 May 2017. The decisions concern in particular:

1. The implementation of the Action Plan on Transnational Organised Crime by the PC-OC [PC-OC 2016)05]. See the different actions under the relevant item.
2. The Convention on the Transfer of Sentenced Persons:
  - a. The PC-OC concluded that no consensus could be found for a proposal to modify the Convention but decided to explore possibilities to draft new guidelines on this issue, including an update or consolidation of existing recommendations. The PC-OC Mod will make a proposal to the plenary in this regard.
  - b. The possible establishment of an e-tool. Further to the examination by the plenary of the replies to a questionnaire on this issue, the PC-OC noted that a large majority of the 27 replies received were, in principle, positive to the idea. They agreed however that further inquiries would be necessary to ensure that countries would be willing to accept e-communication by finding appropriate answers to questions related to security, data protection and costs. The PC-OC Mod will continue this discussion taking into account the experience of Iberred in the field of e-communication.
3. The Convention on Mutual Assistance in Criminal Matters:
  - a. The PC-OC adopted a questionnaire on the application of the Second Additional Protocol to this Convention. The PC-OC Mod will make a preliminary assessment of the replies received and make proposals for follow-up.
  - b. The PC-OC discussed the issue of MLA for the purpose of proceedings against legal entities and decided to prepare a survey on this issue by inviting experts to report on their experience. The PC-OC Mod will consider the survey and inform the plenary of its findings. At its next plenary the PC-OC will continue discussions taking into account two discussion papers on this issue, prepared by Mr Eugenio Selvaggi (Italy) and by Mr Vladimir Zimin (Russian Federation).
4. The Convention on Extradition:
  - a. "Measures of restriction in extradition cases". The PC-OC discussed the 15 replies to a question asked by Mr Vladimir Zimin on the use of alternatives to detention in extradition cases and decided to resume discussion at its next meeting, inviting countries who hadn't replied yet to do so.
  - b. "Practical issues raised related to extradition" concerned the consequences of the Petruhhin judgment by the EU Court of Justice and the role of Interpol. Discussion on both issues is on the agenda of the PC-OC Mod and will be continued at the next plenary meeting of the PC-OC.
5. The Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime:

The PC-OC heard a presentation by representatives from Kazakhstan on the application of the convention as well as on the structure of the judicial system and reforms made to the judicial and penitentiary systems. See also the discussion on asset sharing under the Acton plan on TOC.

6. Index and summaries of relevant case-law of the ECtHR:

The PC-OC Mod will discuss and decide on proposals to update this important document.

**7. Revision of the model provisions; issues of administrative sanctions**

The document on “Model provisions” was adopted by the CDPC in June 2016. The Committee of Ministers took note of this document in September 2016. Following the adoption of the new Council of Europe Convention on Offences relating to Cultural Property, Mr Herrnfeld (also Chair of the drafting committee on the Convention on Cultural Property), has prepared a revised version of Model provisions documents including some amendments that take into account the outcomes of the negotiations on the new convention.

The Bureau is invited to propose to the CDPC that the Model provisions documents are to be considered “living documents” that may be modified according to changes occurred in the standard setting practices in criminal law field. The Bureau is also invited to examine the proposed amendments to the Model provisions documents (appearing in track changes). These amendments are mainly related to the question of how and when Parties to a convention should apply criminal and/or may apply administrative sanctions and in which circumstances.

The Bureau should decide how to proceed with regard to the general issue of administrative proceedings and sanctions. An option could be to instruct the secretariat to hire (an) experts to prepare an analysis on this subject.

**8. The role of victims within the criminal justice system**

Following the work carried out by the CDPC on Review of Council of Europe legal instruments in criminal matters [CDPC (2014) 14 Fin], the CDPC kept a divided opinion on the issue of a possible updating of the European Convention on the Compensation of Victims of Violent Crimes.

During its Plenary meeting in December 2016, the CDPC had an exchange of views with Ms Anna Wergens (consultant) on the basis of her discussion paper on a possible update of the Convention [CDPC (2016) 20]. In order to take a decision on the need and modalities for a possible update of this Convention, the CDPC agreed to draft a questionnaire to be sent to all CDPC delegations. This questionnaire, prepared in consultation with Ms Wergens, was adopted by the CDPC during its 72nd meeting, in March 2017 and sent out to all CDPC delegations.

The aim of this questionnaire is threefold. The first objective is to gather information on the implementation of the Convention and the practical difficulties related to its application. With regard to the need to ensure access to justice for victims, a particular dimension of this objective is to find out which assistance is given to applicants and potential applicants of compensation.

The second aim is to identify the specific problems related to victims of cross-border victimisation.

The questionnaire is finally intended to gather views from the member states about how the implementation of the Convention could be improved.

The replies received are reflected in the document [CDPC(2017)16] and the secretariat made a summary of the replies reflected in document [CDPC(2017)20].

The replies to the questionnaire gathered from member States will constitute the basis for an analysis by the CDPC.

The Bureau is invited to discuss the replies received, and in particular the replies to questions 20 and 21 related to the possible update of the convention or the development of a recommendation with guidelines, in view of the decisions to be taken by the CDPC on the possible update of the Convention on the Compensation of Victims of Violent Crimes during their 73rd meeting in November/December

2017.

## **9. Links between Organised Crime and Terrorism**

Most of the CDPC members were present to the Malaga Conference, including members of the Bureau. The Bureau is therefore invited to discuss on the outcomes of the Conference and its conclusions in view of possible future actions.

## **10. Terrorism**

The Bureau is invited to take note of the information provided by the Secretariat on the most recent activities carried out in the field of counter-terrorism, including on the work done with regard to the elaboration of the new recommendation on "Terrorists acting alone". The 4th meeting of the Drafting Committee will be held on 17 -19 October 2017. France is representing for the CDPC in this activity.

The Bureau is invited to take note of the final version of Recommendation CM/Rec(2017)6 on "special investigation techniques" in relation to serious crimes including acts of terrorism and its explanatory report, adopted by the Committee of Ministers on 5 July 2017.

## **11. Smuggling of migrants**

The Bureau is invited to take note of the of the information provided by Mr Sławomir Buczma and the Secretariat on the Conference on Smuggling of Migrants, held on 23 June 2017 in the Palais de l'Europe, Strasbourg.

Since the Maltese delegation to the CDPC presented a proposal for new activities on the topic of 'Criminality and Migration' in 2015, the CDPC agreed to include criminal justice aspects related to this issue in its future activities and to study where it can provide added value to a criminal justice and law enforcement response. In May 2016, at their 126th Ministerial Session in Sofia, Bulgaria, the Committee of Ministers embraced the proposal and welcomed the preparation of adequate measures to provide member States with concrete tools to prevent and fight the smuggling of migrants.

At the Conference in June 2017, experts and high-level representatives from member States of the Council of Europe, as well as representatives of international organisations and academic experts, discussed best practices and concrete measures to prevent and combat the smuggling of migrants; to develop strategies for cooperation and information exchange and to protect the rights of smuggled migrants.

In light of the remarks and presentations made during the Conference, some observations and recommendations for further action of the Council of Europe were drawn. In the field of prevention, it was noted that technical experts' meetings can be convened in order to exchange experiences, develop strategies and recommendations on the priorities in the prevention field. Their findings can inform the further work of the CDPC. With regards to aspects of criminalisation, the Council of Europe could consider the possibility of setting up a database containing country profiles on migrant smuggling-related legislation and policies to be published on the CDPC website. As it concerns the promotion and facilitation of international co-operation, the elaboration of a comprehensive Council of Europe strategy could be considered. The Council of Europe could also examine the opportunity of convening a focused group to collate and disseminate relevant statistics, reports and other documents, and identify areas for further research and development.

The Bureau is invited to examine and discuss the final observations for Council of Europe Further Action on the Smuggling of Migrants, to identify the concrete elements for future CDPC action and to make any comments and/or proposals it considers appropriate.

**12. TC-Y**

The Bureau is invited to take note of the information provided by the secretariat notably on the planning to draft a protocol to the Cybercrime Convention.

**13. Council of Europe Convention on Offences relating to Cultural Property**

The Bureau is invited to take note of the information provided on this item and in particular that the EU is working on a regulation on the important of cultural property in the EU.

**14. Gender equality**

The Bureau is invited to take note of the information provided by the secretariat.

**15. Information provided by the Secretariat**

The Bureau is invited to take note of the information provided by the Secretariat on sub-items a. and b. below and make any comment it considers appropriate.

**a. MEDICRIME****b. Trafficking in human organs****16. Any other business****17. Dates of the next meetings**