



Strasbourg, 14 March 2018

CDPC-BU (2018) 1

# EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

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## ANNOTATED AGENDA

Bureau meeting

**Venice, 20 – 21 March 2018**

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

The meeting will start at 14:00 on Tuesday, 20 March 2018.

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

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

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

The Bureau is invited to take note of the information provided by its Chair, Mr Slawomir Buczma, and the Secretariat on the most recent activities of the Council of Europe relevant to the CDPC's work since the last Plenary meeting in November 2017.

The members of the Bureau are invited to provide information on the most recent criminal law issues in their national frame and/or make suggestions for possible new initiatives by the CDPC in criminal law matters and international co-operation.

The Bureau is requested to discuss how the future CDPC work is to be planned in order to fulfil the specific tasks the Committee was entrusted with by the Committee of Ministers, in particular on the basis of its Terms of Reference for 2018-2019. There are eleven “Specific Tasks” contained in the 2018-2019 CDPC Terms of Reference. The Bureau should propose how they should be treated and the schedule to implement the different activities.

#### **4. Activities related to transnational organised crime: Action Plan**

The members of the CDPC Bureau are invited to take note of the information provided by Mr Jesper Hjortenbergh, CDPC co-ordinator on TOC, 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 of justice**

At its last Plenary meeting, the CDPC took note of the interim report [document CDPC (2017) 21 Rev] drafted by the scientific experts (Prof. Lorena Bachmaier-Winter and Mr Iwan Waltenburg) assessing the replies to the questionnaire on the review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators of justice. The CDPC endorsed the proposal made by the Bureau to proceed with the review of Recommendation Rec (2005)9 and approved the draft Terms of reference of a drafting working group.

The TOC Coordinator will present the preparatory works of the first meeting of the drafting working group to be held in Paris on 19-20 April 2018.

The CDPC Bureau is invited to make any comments relating to the coming activities of the working group in view of their first meeting.

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

As for the implementation of the Action Plan, the CDPC is invited to consider 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) prepared a working paper identifying a list of international judicial networks of relevance for the fight against TOC, describing their functions and working methods. Depending on the financial situation, a meeting between the representatives of some of these networks will be organised in 2018 to discuss possible options for the interconnection and/or co-operation of networks. The working paper, as well as a draft invitation letter 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. The working groups should aim at producing, in respect of each State Party, an agreed list of reservations and/or declarations identified as potentially out-dated and/or creating obstacles for efficient co-operation in the treaty concerned. These lists would be appended to a letter, addressed to the PC-OC expert of each country, inviting the expert concerned to ask the appropriate authority of the Party concerned to reconsider the reservations and declarations made in respect to the treaties in question, in view of their possible update or withdrawal. The draft letter, as adopted by the PC-OC plenary at its 73<sup>rd</sup> meeting in 2017, explains the background of the review exercise and draws particular attention to the list identified by the working groups. The letters will be signed by the Chair of the PC-OC and, in respect of the country of origin of the Chair, by the vice-Chair. During its meeting on 20-22 February, the PC-OC Mod noted that the work of two working groups was finalised and decided to ask the remaining group to finalise its work by 9 April 2018. It is foreseen to send the letters as soon as possible after the last working group will have finalised its work. PC-OC experts are expected to report back to the plenary about the follow-up given to the letters received.

• 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 had an exchange of views with Mr Gary Balch, Deputy Chief Crown Prosecutor in the UK and representative of the CARIN Network and agreed that while the issue of asset-sharing needed further consideration, international co-operation for recovery itself was still lacking a common legal basis to address important issues such as non-conviction based confiscation, management of assets, return of property to victims and other questions that are not, or not sufficiently, addressed by existing Council of Europe instruments. It concluded that, given the importance of asset recovery, in particular for the fight against transnational organised crime, it would be worthwhile considering the possible development of a new binding instrument regulating these issues, either as an additional protocol to an existing treaty or as a convention. The PC-OC Mod decided to invite the plenary to consider, in consultation with the COP 198, the possibility of developing a binding instrument addressing international co-operation as regards the management, the recovery and sharing of assets and to invite Mr Vladimir Zimin (Russian Federation) to produce a paper listing possible issues which such an instrument could address.

During its 73<sup>rd</sup> plenary, the PC-OC considered the discussion paper by Mr Zimin [document PC-OC (2017)09] as well as the outcome of the survey on Legislation, model agreement and practice in asset sharing and decided to ask the PC-OC Mod to discuss this proposal further, taking into account further relevant information documents to be obtained from the Secretariat of Moneyval and the COP 198.

During its 25th meeting on 20-22 February, the PC-OC Mod had an exchange of views with Mr Lado Lalicic (Moneyval Secretariat) on the proposal to prepare a binding instrument as regards international co-operation on the management, the recovery and sharing of assets. The PC-OC Mod heard with interest that the COP 198 had decided to proceed to a horizontal evaluation of the implementation of Article 25 of the Warsaw Convention (on confiscated property, including management and asset sharing) and had sent out a questionnaire to this effect. The outcome of the questionnaire would be evaluated during the plenary meeting of the COP 198 in October 2018.

Considering that only twenty contributions had been received to the survey on national legislation, model agreements and practice related to asset sharing and to avoid duplication of work, the PC-OC Mod underlined the importance of continuing close co-operation with the COP 198 and Moneyval and decided to:

- propose to the plenary to resume discussion on this agenda item once the COP 198 has finalised its assessment of the implementation of Article 25 of the Warsaw Convention.

### c. **Update of the Action Plan on TOC**

Since the adoption of the Action Plan on TOC by the Committee of Ministers (2 March 2016), a certain number of actions have been implemented or are in progress, mainly under **Key area 1** (Enhancing international co-operation through networks), **Key area 2** (Special Investigative Techniques), **Key area 3** (Witness protection and incentives for co-operation) and **Key area 5** (Recovery of assets). As for future remaining possible activities to be implemented, the CDPC Bureau should discuss how to proceed forward, which activities would deserve to be implemented and whether a review/update to the Action Plan on TOC should be done. After two years, such a review/updated of the Action Plan on TOC could be necessary since the implementing part has now produced its first concrete outcomes and therefore on this practical experience a revised/updated version of the Action Plan could respond more efficiently to the specific needs by member States. Some concrete thematic areas to be further developed by the CDPC could be on enhancing international co-operation in criminal matters, smuggling of migrants, Joint Investigation Teams, linkages between terrorism and TOC.

The CDPC Bureau is invited to consider an update of the Action Plan on TOC.

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

The Bureau is invited to take note:

1) the information provided by the Secretary to the PC-CP on the outcomes of the last Working Group meeting, (22-24 January 2018);

2) the draft programme of the 23<sup>rd</sup> Council of Europe Conference of Directors of Prison and Probation Services (CDPPS) "Working together effectively: Management and co-operation models between prison and probation services" (19-20 June 2018, Estonia) and to make any proposals it might find necessary;

3) that the draft CM Recommendation concerning children with imprisoned parents is expected to be adopted by the Committee of Ministers at the end on 4 April 2018;

4) that the SPACE I and II data for 2016 were published on 19 March following two press conferences (in Strasbourg and in Brussels) which attracted significant media coverage. In parallel to that, a jointly EU/CoE funded project lasting 18 months ends on 31 March 2018 and its expected outcome are two longitudinal studies on prison trends in Europe (2005-2015 and 2009-2015) which are expected also to attract the attention of policy-makers and professionals working in the field. A new jointly funded project starts on 1 April 2018 (18 months). Its aim is to link prison statistics with criminal justice statistics and

analyse prison trends and crime trends taken together.

**a. Restorative justice**

Finland, France, Italy, the Netherlands, the Russian Federation, Sweden and United Kingdom sent written comments to the draft text [document CDPC (2018)2]. The Bureau is reminded that the draft text was considered and revised during the last CDPC plenary in 2017 up to rule 25. The Bureau is also reminded that the term 'restorative justice' is used throughout the text 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 requested to examine the above comments and proposals sent by member States and to task the PC-CP with finalizing the draft in the light of the approved by the Bureau comments and proposals made by the CDPC delegations.

**b. Manual regarding the criteria for staff selection, training and development of prison and probation staff**

The PC-CP WG at its last meeting in January 2018 started discussing its current task related to the drafting of a manual. This task is to be considered as the follow-up to the 22<sup>nd</sup> CDPPS (June 2017, Norway). Four presentations of recruitment and training systems were discussed in January (France, Germany, the Netherlands and Norway), It was decided to continue this sharing of information and brainstorming at the next meeting of the WG in April 2018 with an emphasis this time on probation staff, before a decision is taken regarding the choice of external consultants and the scope of the manual.

The CDPC Bureau should make any observations or proposals it might find necessary on the way this activity is to be carried out in the future.

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

The Bureau is invited to take note that the revision of the commentary to the European Prison Rules started at the PC-CP WG meeting in September 2017. The work will continue in 2018 with a view to producing a revised and updated commentary.

At its meeting in January 2018, the PC-CP WG gave further instructions to the scientific experts (the meeting being attended only by Mr Harvey Slade) and the draft revised commentary [document PC-CP (2018)1rev] reflects the comments made in January. In addition and following the decisions taken at the last CDPC plenary meeting, the scientific experts have produced a second report indicating which specific rules of the EPR need revision and updating as well [document PC-CP (2018)4]. These two documents have not yet been considered by the PC-CP WG itself.

The Bureau's attention is drawn to the fact that the proposal to revise the EPR concerns only very few rules where international theory and practice have advanced since 2006 and should be done with caution in order not to undermine the quality of the remainder of the text. No specific drafting suggestions have been made regarding the rules to be revised; only the reasons for doing so are presented in the document. Following the decisions taken by the Bureau, such drafting suggestions will be developed further and discussed at the next PC-CP WG meeting.

The Bureau is invited to consider the two texts and to make any comments and proposals it might find necessary, including the scope of the revision of the EPR.

**6. Prison overcrowding**

The Bureau is invited to take note of the information provided by the Secretariat regarding the thematic debate held at the Committee of Ministers level on 13 March 2018.

The Bureau shall discuss this issue and take respective decisions regarding the high level Council of Europe Conference in 2019 in order to discuss the need for developing national strategies/action plans for reducing overcrowding. This Conference should be attended by all relevant actors like ministries of justice and the interior, police, prison and probation services, judges and prosecutors.

## 7. **Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC)<sup>1</sup>**

The CDPC Bureau is invited to take note of the list of decisions of the 25th meeting of the PC-OC Mod held on 20-22 February 2018.. The decisions concern in particular:

### 1. The implementation of the Action Plan on Transnational Organised Crime by the PC-OC

See the different actions under the relevant item 4b.

### 2. The Convention on Extradition

#### a. Preparation of the special session on extradition to celebrate the 60<sup>th</sup> anniversary of the Convention

The PC-OC Mod discussed the programme of the special session based on the proposals received [Document PC-OC Mod (2018)03] as well as possible guest speakers and agreed to hold the session on 20 June.

b. Discussion on the possibility of developing guidelines on the provision of timely information to the Parties requesting extradition on the detention or measures of restriction imposed on the person sought

Further to the request by the Plenary to discuss this possibility, the PC-OC Mod agreed during its 25<sup>th</sup> meeting that, at least for the moment, this would be PC-OC guidelines, without excluding the possibility of integrating them into a recommendation of the Committee of Ministers, or even in a future additional protocol, at a later stage. The PC-OC Mod decided to prepare draft guidelines in time for submission to the PC-OC plenary at its next meeting.

### 3. The Convention on Mutual Assistance in Criminal Matters

a. Examination of the replies to the questionnaire on the application of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters and proposals for follow up

The PC-OC adopted a questionnaire on the application of the Second Additional Protocol to this Convention. The PC-OC Mod considered during its meeting in February 2018 the 34 replies received [Document PC-OC Mod (2017)04rev] to the questionnaire, including 6 replies from non-Parties as well as the summary and overview of replies [Document PC-OC Mod (2017)04ADD rev]. The PC-OC Mod assessed the outcome, made proposals to the Plenary as regards follow-up and decided in particular to instruct the Secretariat to invite PC-OC experts to complete or update the inquiry conducted in 2012 on legal and technical aspects of the use of video conferences in mutual legal assistance in criminal matters.

b. Consideration of the survey on MLA for the purpose of proceedings against legal entities (in particular from the perspective of the requesting State) and proposal for follow up

The PC-OC had 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 noted at its 25<sup>th</sup> meeting that the survey did not indicate any major problem or experience with regard to MLA requests for the purpose of proceedings against legal entities. Mr Vladimir Zimin noted that, for example, the Russian Federation would have difficulties to execute an MLA request concerning

<sup>1</sup> All documents that are mentioned under this item which are not included in the agenda of the CDPC Bureau meeting can be found on the PC-OC website : <https://www.coe.int/en/web/transnational-criminal-justice-PCOC>

a legal entity because legal entities have only administrative liability under Russian law. In his view the Convention on Mutual Assistance in Criminal Matters would need to be supplemented with an explicit provision, mentioned in his discussion paper, to provide for a legal basis.

The PC-OC Mod, referring to the related work of the CDPC on model provisions concerning administrative sanctions, proposed to the PC-OC Plenary to resume discussion of this item once this work has been completed.

#### 4. The Convention on the Transfer of Sentenced Persons

Discussion on possibilities to draft new guidelines on the transfer of sentenced persons, including an update of existing recommendations and proposals for follow-up

Further to the decision by the Plenary not to draft a binding instrument, but to draft a recommendation or guidelines, the PC-OC Mod agreed to propose the drafting of a comprehensive recommendation to replace and complete the existing ones on the basis of the proposals received and discussions held, reflected in [Doc PC-OC Mod (2018)01] as well as [Document PC-OC Mod (2018)02] containing a consolidated overview of the norms contained in existing recommendations by the Committee of Ministers. The PC-OC Mod decided to draft a preliminary draft recommendation for consideration by the PC-OC plenary.

### 8. 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 draft revised versions of the Model provision documents including some amendments that take into account the outcomes of the negotiations on the new convention. At its last Plenary meeting, the CDPC took note that the 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 is invited to take note of the recent developments relating to the general issue of the use of administrative sanctions in criminal law conventions and that the Secretariat has appointed an expert to make a study and prepare working documents providing a clearer picture of the situation in member States and in the international context.

### 9. Victims

AT its meeting in October 2016, the bureau decided a) “to consider the role of victims within the criminal justice system as an important issue to be developed in CDPC future work provided that it is dealt with using a holistic approach;” and b) “that two different subjects should be dealt separately: 1) the specific issue of possible updating of the Convention on the Compensation of Victims of Violent Crimes and 2) the more general question of the role of victims in the criminal justice system, including the restorative justice;”.

On the first issue, the CDPC at its last Plenary meeting, took note of the presentation by Ms Anna Wergens on the outcome of the questionnaire sent to all CDPC delegations and, considering the replies received, decided not to take any steps to update the European Convention on the Compensation of Victims of Violent Crimes.

On the second issue, the CDPC at its 71<sup>st</sup> Plenary session (November 2016), in relation to the more general future work of the CDPC on victims’ rights, that the drafting of a new convention should be discouraged but the idea of drafting a non-binding legal instrument (recommendation) or guidelines on this topic using a more comprehensive and broader approach should be further considered. As far as the scope of this future non-binding legal instrument is concerned, the CDPC also foresaw to invite the Secretariat, together with the help of experts, to draft a questionnaire aimed at finding out whether such

an instrument could provide more clarity in relation to the practical experiences of member States in the implementation of existing instruments and how member States apply the rules on victims' rights internally, before beginning the work.

The Bureau shall examine this question and decide how to proceed with the future work on victims' rights and particularly whether the proposal of draft a questionnaire to be submitted to member States still remains the best option.

## 10. Links between Organised Crime and Terrorism

As follow-up to the Malaga Conference, the CDPC and the CODEXTER agreed on the setting-up of a joint working group of experts (CDPC-CODEXTER) aimed at discussing future common topics and actions for both committees to ensure a valuable follow-up to the Malaga Conference.

The CDPC is invited to take note of the information provided by the Secretariat on the planned first meeting of this working group and of the working document [CDPC (2018)5].

## 11. Terrorism

The CDPC 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 CDPC is in particular invited to take note of the information provided by the Secretariat on the fact that the CDCT (new name of the CODEXTER as from 1 January 2018) is preparing a Council of Europe Strategy on Counter-Terrorism (2018-2022) that is expected to be finalised at its next Plenary meeting (16-18 May 2018). The Strategy is still under preparation but it appears clear that some of the activities/actions foreseen would involve also the CDPC.

## 12. 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. 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.

At its last Plenary meeting, the CDPC agreed to set up two focused working groups composed of a limited number of experts dealing with a) preventive measures and b) practical measures to improve international co-operation. The first meeting of these two working groups will take place on 21-23 June in Paris.

The Bureau is requested to examine the working documents of the two working groups on smuggling of migrants as prepared by the two experts, Professor Andreas Schloenhardt (on prevention) and Mr Calogero Ferrara (on international co-operation), in close co-operation with the Secretariat and appoint one or two of its members to participate in the two working groups.

## 13. Cybercrime Convention Committee (TC-Y)

The Bureau is invited to take note of the information provided on this issue

**14. Elections**

The Bureau is invited to take note of the fact that at its next Plenary meeting the CDPC shall elect two new members of its Bureau [document CDPC (2018) 1].

**15. Opinion by the CDPC on the PACE Recommendations**

The Bureau is invited to consider if the CDPC should provide its opinions on the Recommendation 2121 (2018) – “The case for drafting a European convention on the profession of lawyer” and on the Recommendation 2123 (2018) – “Strengthening international regulations against trade in goods used for torture and the death penalty” and if yes, provide elements to be included in these opinions.

**16. Information provided by the Secretariat**

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

**a. Gender Equality**

At its last Plenary meeting, the CDPC hold an exchange of views with Ms Carlien Scheele, CoE Gender Equality Advisor, on effective gender mainstreaming in all CoE policies. The CDPC Gender Equality rapporteur, Ms Irene Fuentetaja, presented some proposals related to gender to be further at the forthcoming Plenary meeting.

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

Latvia signed the Convention on Offences relating to cultural Property on 22 February 2018.

**c. Medicrime**

Russia will ratify the MEDICRIME Convention on 20 March 2018 bringing the total number of Parties to 12.

According to Article 23 of the MEDICRIME Convention, the first meeting of the Committee of the Parties shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. As Burkina Faso was the tenth signatory of the MEDICRIME Convention (27/07/2017), the Convention entered into force on 1/11/2017 and thus the first meeting of the MEDICRIME Committee of the Parties should be convened by November 2018. Regarding the Committee of the Parties, the rules of procedure should be drafted.

**d. Trafficking in human organs**

The Convention entered into force on 1<sup>st</sup> March 2018. Armenia and Montenegro signed it on 24 January and 16 February 2018 respectively.

**17. Any other business**

Delegations are invited to present any other issues.

**18. Dates of the next meetings**

The bureau shall agree on the dates of its next 2018 meeting.