



Strasbourg, 15 March 2022

# EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

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## LIST OF DECISIONS

### Bureau meeting

Brussels (Belgium), 15 March 2022

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**1. Opening of the meeting**

The meeting was opened by Katariina Jahkola, CDPC Chair.

**2. Adoption of the draft agenda**

The Bureau adopted its agenda.

**3. Information by the Chair, the members of the CDPC Bureau and the Secretariat**

The Bureau members held an exchange of views on the most recent and significant developments in the Council of Europe, and notably of the consequences of the aggression of the Russian Federation against Ukraine. Carlo Chiaromonte informed the meeting of the decision of the CM of 25 February to suspend Russia's membership in the Organisation and the consequences of this decision, as well as the legal, political and practical implications related to

the Council of Europe's relations with Russia. It was noted that Russia will remain signatory to the Council of Europe conventions and will continue to be member of partial agreements for the time being (for example in GRECO or Moneyval where Russia participates since it is party to the relevant Council of Europe conventions), despite the suspension of its membership rights. It will no longer be invited to the meetings and sessions of the Committee of Ministers (hereafter CM) and of the Parliamentary Assembly of the Council of Europe, as well as to the meetings of the intergovernmental committees, including the CDPC and all its subordinate bodies (PC-OC and PC-CP) and their working groups.

The PACE is holding an extraordinary session on 14-15 March to provide the CM with an opinion on the possible cessation of the membership of the Russian Federation of the Council of Europe, under Article 8 of the Statute.

The Bureau also noted that at the EU Justice and Home Affairs Council on 3-4 March 2022, the French Minister of Justice, representing the EU Presidency, gave a political statement according to which a broad agreement was reached that requests for judicial cooperation in criminal matters for assistance and extradition will no longer be responded. He also stated: "Russia's actions constitute such a violation of international law and international agreements that they justify the choice broadly made by several member states, without prejudice to an examination on a case-by-case basis, not to process the requests for cooperation in criminal matters submitted by Russia and Belarus."

The Bureau agreed that despite this situation, the CDPC activities as planned by its mandate for 2022-2025 will continue without interruption.

#### **4. Action Plan on Smuggling of migrants**

The Bureau considered the list of national representatives appointed by CDPC members to join the future Council of Europe Network of Prosecutors on Migrant Smuggling following the call for candidates sent by the Secretariat after the CDPC Plenary in December 2021 decided to launch action n°1 of the Action Plan ("Addressing investigative, prosecutorial and judicial challenges in migrant smuggling-related cases"). It noted the high number of states that have appointed their representatives, and that in the coming weeks other member states will nominate their national representatives to be added to the list. It also encouraged the member states, which have not yet done so, to send the names of their representatives.

The Bureau had an exchange of views on the potential activities/agenda with regard to the 1st meeting of the Network, which is planned to be held on 10-11 May 2022 in Paris, as well as on the expected outcomes of action n°1 (cf. Action Plan). This 1st meeting, which will hopefully be held in-person, will be dedicated to the establishment of a first personal contact between the members and to the definition of the Terms of Reference of the Network.

#### **5. Hate crime**

The Bureau took note of the information provided by the Secretariat on the outcome of the 1st meeting of the Committee of Experts on Hate Crime (PC/ADI-CH) held on 15-16 February 2022 (in a hybrid format), which is a subordinate body of the CDPC and of the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI).

The Bureau took note that the meeting was successful and that the Committee elected their Chair and vice-Chair from Austria and France. The PC/ADI-CH considered a preliminary outline of a draft comprehensive recommendation on combating hate crime, covering actions ranging

from prevention to prosecution and related also to some strategic steps to be taken, including hate crime reporting, data collection and interagency co-operation and co-ordination nationally and internationally. It was suggested that a public consultation on the text should be held in 2023, the exact format of which is still to be decided.

The CDPC Bureau held an exchange of views on the potential options for public consultations on the draft Recommendation, for example via the Conference of NGOs; requesting a PACE opinion on the draft; as well as consulting national human rights institutions or bodies in the member states, etc. It decided to come back to this issue at the next CDPC Plenary meeting.

The Bureau also noted that a draft recommendation on hate speech has been finalised by the CDADI and submitted to the Committee of Ministers for adoption.

The Bureau thanked the PC/ADI-CH for its excellent work so far and agreed that hate crime is among the key priorities of the CDPC's work.

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

The CDPC Bureau noted that the 28th PC-CP WG meeting was held on 23-25 February 2022 (in a hybrid format) with their elected members and the scientific experts present. The two main issues discussed were mental health and AI. For the first time the scientific experts on AI had the chance to work together face-to-face which should help advance the drafting process in this complex area.

The White Paper on the management of offenders with mental health disorders was considered and suggestions for revision and restructuring were made (the new version will be ready mid-April to be sent for opinion to the CPT and to the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO)).

The Bureau was of the opinion that the text should also be sent to the ECtHR for possible comments.

The Bureau took also note that the White paper is expected to be ready for adoption by the CDPC plenary in December 2022 with a view to sending it in due course to the Committee of Ministers for information and dissemination at national level.

The Bureau also noted that in accordance with the agreement reached at PC-CP level at the end of 2021 regarding the timeline of their planned activities, the work on the White Paper on mental health should be finalised by the end of 2022 and the work on a CM recommendation on AI should be finalised by the end of 2023. This will allow more time to agree on possible standards in this new and rather complex area and also to wait for the outcome of the work on a general AI framing instrument by the Council of Europe Committee on Artificial Intelligence (CAI), which is expected to be finalised in 2023. The PC-CP is working in close co-ordination with the CAI in this area in order to align its definitions and key principles to the ones agreed at CAI level.

The Bureau thanked the PC-CP for its excellent work.

### **a. 27th Council of Europe Conference of Directors of Prison and Probation Services (CDPPS) (21-22 June 2022, Sevilla, Spain)**

The Bureau took note of the oral information provided by the Secretariat regarding the state of the logistical organisation and content of the next CDPPS, as well as that the Conference will be

preceded by a meeting of the PC-CP WG (19-20 June) as well as by the General Assembly meeting of EuroPris (20 June).

The Bureau was invited to appoint a CDPC representative to take part in the Conference and agreed to communicate its decision to the Secretariat in due course.

**b. Items for information**

The Bureau noted that a fourth EU/CoE co-funded project (“SPACE and National Preventive Mechanisms”) started in March 2022 and will last 24 months. Limited funding has been provided to this project in order to enlarge data collection by adding questions related to foreign prisoners and to their transfer.

**7. Artificial Intelligence and criminal law**

The Bureau had an exchange of views with Mr Hjortenbergh, Chair of the Drafting Committee to elaborate an instrument on AI and Criminal Law (CDPC-AICL), who provided information regarding the follow-up actions to the 1st meeting of this Committee, held on 15-16 November 2021.

The Bureau noted that the future workplan and organisation of the CDPC-AICL has been slightly reconsidered, notably in order to better accommodate developments made by the CAI which is tasked with the drafting of a future Council of Europe Convention on AI. As such, the next meeting of CDPC-AICL, which was originally planned to be held on 31 March and 1 April 2022, is rescheduled to 1-2 June 2022 in Paris. During the second half of April, the Chair, the scientific expert and the Secretariat will produce a first draft (a set of possible legal provisions, notably drawing from the progress made by certain CDPC members in their relevant legal frameworks) to be considered in June by the CDPC-AICL which should also decide upon the exact type of instrument to be drafted.

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

The Bureau took note that the PC-OC has had no further meetings since 22-23 November 2021. The meeting of the PC-OC Mod, planned to take place 15-17 March, had to be cancelled pending the nomination of the Secretary of the PC-OC, in replacement of Anita van de Kar who has retired. The next meeting of the PC-OC will be the 81<sup>st</sup> plenary planned to take place on 18-20 May.

It was recalled that the CDPC, during its meeting on 7-9 December 2021, decided to instruct the PC-OC to send out a short questionnaire to non-EU Parties to the 1959 Convention to obtain further clarity about their position regarding co-operation with the EPPO, existing obstacles and possible solutions in time for the next meeting of the PC-OC Mod and report the outcome to the CDPC.

Further to this decision, on 18 January 2022 the Secretariat, in consultation with the Chair and vice-Chair of the PC-OC, sent out a short questionnaire to non-member states of the EU. Only two replies were received from signatories to the Convention, which highlighted some legal concerns regarding the possible co-operation with EPPO based on a declaration accepting the EPPO as a judicial authority.

The Bureau also took note that the EU is currently in the process of discussing this issue and that the at the PC-OC plenary meeting in May 2022 and the CDPC plenary meeting in June 2022 this issue will be considered further.

## **9. Environment and Criminal Law**

The Bureau held an exchange of views with Mr Thomas Grégoire, Chair of the Working Group on the Environment and Criminal Law (CDPC-EC), who provided information on the outcomes of the deliberations of the 4th, and final, meeting of the Working Group (24-25 February 2022, online). At this meeting the WG agreed, taking into account its comprehensive Feasibility Study, that a new convention on the Protection of the Environment through Criminal Law to replace the existing 1998 Council of Europe Convention would have an added value.

The Bureau expressed its strong satisfaction with the work of the CDPC-EC and agreed that the Feasibility Study should be sent to the CDPC Plenary in June (with a view to its approval). The Bureau instructed the Secretariat to prepare the draft Terms of Reference (to be examined by the CDPC) for a new Drafting Group, composed of experts from all CDPC members, entrusted with the elaboration of a new convention. Upon approval by the CDPC, the draft Terms of Reference will be submitted to the Committee of Ministers for final adoption.

The Bureau thanked the CDPC-EC Chair for the excellent work of the Group whose mandate was fulfilled successfully.

## **10. Victims' rights**

The Bureau was reminded that during its 79th meeting, the CDPC held an exchange of views with Profs Suzan van der Aa and Antony Pemberton on their proposed update of the Committee of Ministers Recommendation(2006)8 on assistance to crime victims and decided to set up a Working Group to draft a Recommendation on the rights of victims taking into account the rights and position of offenders and other persons involved in the criminal law process.

The Bureau took note of the information provided by the Secretariat on the positive outcomes of the deliberations of the 1st meeting of the Working Group, held on 10-11 February 2022, online, in which the draft text was strongly welcomed. This meeting aimed to examine the new draft recommendation which will replace the 2006 Recommendation and align its principles to the EU Victims' Rights Directive. The draft has three chapters: 1) access to justice, individual assessment, information and support; 2) legal proceedings (criminal and others) and 3) other provisions, as well as the Explanatory Memorandum. Following the meeting, the Working Group was invited to submit written comments on Articles 8, 14 and 16, on which 9 delegations sent comments (out of 16) to be incorporated into the revised text, as far as possible, by the two Consultants. The 2nd meeting will be held on 21-22 April in hybrid format, aiming to continue the analysis of the revised draft recommendation.

The Bureau also took note that the Working Group aims to finalise its work for approval by the CDPC at its Plenary meeting in December 2022.

## **11. Information points**

The Bureau took note of the information provided by the Secretariat on points a to f.

**a. Criminal Law and Administrative Law**

The Bureau discussed the opportunity of continuing the work already started by the CDPC on this subject matter, which was suspended at the end of 2019 because the CDPC had decided to focus its work on a limited number of topics due to the Covid crisis.

The Bureau noted that in 2019 a questionnaire had been sent to the CDPC delegations and a considerable number of replies were received. It decided to postpone the analysis of the replies and the work in this area to a later stage as this was considered not a priority topic at that time.

The Bureau decided that this work could benefit from the outcome of the work carried out on the drafting of the new Convention on Environment and Criminal Law where the issue of the relations between criminal and administrative law is crucial.

**b. CAI (Committee on Artificial Intelligence)**

The Bureau took note of the information provided by the Secretariat that the Ad-Hoc Committee on AI (CAHAI) ended its terms of reference on 31 December 2021. The CAHAI submitted to the CM a document containing its recommendations concerning the main elements of a transversal legally-binding instrument on the development and use of AI systems based on Council of Europe standards. In 2022 the CM set up a new committee CAI (1 January 2022 - 31 December 2024). The CAI has been tasked with the drafting of an appropriate legal instrument on the development and use of AI systems, taking into account relevant decisions of the CM, including the decisions taken at ministerial level in Hamburg (May 2021) and Turin (May 2022.) The CAI will hold its first meeting in Rome on 4 6 April 2022. The negotiations of the aforesaid appropriate legal instrument will start in September 2022 and end by 15 November 2023.

The CDPC Bureau further noted that the CAI is welcoming input from all intergovernmental committees working on this subject, including the CDPC and the PC-CP and will also provide assistance to them, as necessary.

**c. Medicrime**

The Bureau took note

- of the latest developments in the Committee of the Parties' work, in particular the current work of the draft guidelines for monitoring the implementation of the Convention by the Parties, the preliminary analysis of the replies received from the Parties to the first round of thematic monitoring and the progress of two working groups on the definition of the term "counterfeiting" and on the 24/7 Network;
- that the MEDICRIME Convention and other criminal-law conventions were introduced to the Ministers of Justice of Ibero-American countries in the framework of a conference organised by COMJIB;
- of the voluntary contribution made by France to promote the MEDICRIME Convention.

**d. Terrorism**

The Bureau noted that the CDCT is actively working on the preparation of a new Council of Europe Counter-Terrorism Strategy containing a number of actions considered to be important for states to better prevent and more efficiently fight terrorist threats. In addition to the always dangerousness of terrorist threat in Europe emanating from ISIL/Da'esh and Al-Qaida-inspired

terrorist, main new topics will include far-right extremist group, the role of women and children, deradicalization and the use of new technologies mainly in recruitment.

Two new recommendations (“on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings Related to Terrorist Offences” and “on risk assessment of individuals indicted and convicted for terrorism offences” will be adopted by CM on 30 March.

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

The CDPC Bureau took note that the Nicosia Convention will enter into force on 1 April 2022 and of the organisation of the Council of Europe Conference of Ministers of Culture entitled “Creating our future: creativity and cultural heritage as strategic resources for a diverse and democratic Europe” to be organised in Strasbourg (France).

**f. Cybercrime Convention Committee (T-CY)**

The Bureau noted that on 17 November 2021, the Committee of Ministers of the Council of Europe adopted the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence. The Protocol will be opened for signature in Strasbourg on 12 May 2022.

**g. Revitalising criminal justice work of the Council of Europe, with particular regard to Articles 5 and 6 of the European Convention on Human Rights**

The Bureau took note of the information provided by the Secretariat regarding the draft Declaration by the Committee of Ministers on the need to revitalise the criminal justice work of the Council of Europe with a focus on procedural rights under Articles 5 and 6 which, following its approval by the CDPC at its 80th Plenary Session, will be sent for final adoption to the GR-J first (16 March) and then to the Committee of Ministers (30 March).

**12. Any other business**

No issues were raised under this point.

**13. Dates of the next meetings**

The Bureau took the following decisions regarding meetings in 2022:

- ✓ CDPC Bureau meeting: first half of October 2022
- ✓ 81st CDPC Plenary: 14-16 June 2022
- ✓ 82nd CDPC Plenary: Week of 6-9 December 2022