



Vienna, 5 April 2024

CDPC-BU(2024)03

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

LIST OF DECISIONS

Bureau meeting

Vienna, 4-5 April 2024

Criminal Law Secretariat

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1. Opening of the meeting

The meeting was opened by the Chair at 10.00 a.m. on Thursday, 4 April 2024. The Bureau members were greeted by Ms Hanne Juncher, Director of Security, Integrity and Rule of Law, DG I, who thanked the Chair for hosting the meeting at the Austrian Ministry of Justice, made a brief presentation on the most recent and significant developments in the Council of Europe, and introduced the new members of the CDPC Secretariat: Ms Eva Pastrana, the new CDPC Secretary, and Mr Radu Pantiru, the newest member of the CDPC Secretariat. Among other things, Ms Juncher updated the Bureau regarding the opening of the Kyiv Office of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, the adoption by the CAI of the final text of the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, progress on discussions on the new global Convention on the Protection of the Environment through Criminal Law by the PC-ENV, and the proactive role of the Council of Europe in the field on the smuggling of migrants, including the 2nd International Conference on Migrant Smuggling which will be held in the first two weeks of September, organised by the CDPC in collaboration with the OSRSG.

2. Adoption of the draft agenda

The Bureau adopted the agenda of the meeting.

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

The participants introduced themselves to each other.

The Chair reported on his participation in the Second Meeting of the Secretary General of the Council of Europe with Presidents of Intergovernmental Committees on 1 February 2024, where several horizontal issues were debated, including human rights, new digital technologies, protection of the environment, and the increasing burden on States by monitoring mechanisms. He had gathered an excellent impression on the relevance of the CDPC and its sub-committees within the intergovernmental work of the CoE.

The Bureau had an exchange with the Secretariat on the recent developments in the Council of Europe including a meeting of members of the intergovernmental committees. The Secretariat will circulate key points discussed including information on the SG's roadmap on engagement with civil society 2024-2027 -with a focus on youth- and on gender issues. The Bureau expressed satisfaction that the CDPC Secretariat has been reinforced with very experienced personnel.

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

The Bureau heard an address by the PC-CP Secretary, Ms Iliana Taneva, took note of the summary meeting report of the 34th PC-CP WG meeting, and engaged in an exchange of views on that issue.

Some Bureau members expressed interest in the issue of deaths in prisons, and it was decided to include a brief presentation based on a recent report on the topic by the Universities of Nottingham and Galway at the PC-CP plenary meeting in November 2024.

The PC-CP Secretary also reported on her participation, alongside other PC-CP members, in the UNODC Reconvened Open-ended intergovernmental expert group for developing model

strategies on reducing reoffending (March 2024). She also shared the constructive work of the PC-CP with NGOs enjoying an observer status with the PC-CP and the appointment of the PC-CP new Gender Equality Rapporteur.

The Bureau further took note of the PC-CP ToR for 2024-2027, where Ms Taneva shared that the PC-CP working group highlighted the relevance and usefulness of the current Probation rules. She informed the Bureau that there was a discussion about updating only the Commentary instead of the rules themselves. The PC-CP WG decided to revisit this matter when the work on updating the Probation Rules begins.

The Bureau also heard a short presentation regarding the topic of Restorative Justice, particularly on the follow-up to be given to the Venice Declaration adopted by the European Ministers of Justice. The Bureau advanced the discussions on the topic of restorative justice (as foreseen in the ToR) and, in agreement with the PC-CP Secretariat, expressed the view that this matter should be transferred to the CDPC, considering its broad scope and the fact that the CDPC was now better resourced to undertake this task. It was decided to include this point on the agenda of the next CDPC Plenary meeting. The Bureau expressed the wish to have a copy of the last report on the matter and the Secretary of the CDPC undertook to present a summary of last exchanges with the European Forum for Restorative Justice within a month.

a. Education in prison

The PC-CP Secretary informed the Bureau about the work on updating the CM Recommendation (89)12 on education in prison, with the work expected to be finalised by the end of 2025, acknowledging the value of the EuroPris survey and report on the topic. Juvenile offenders will be excluded from the scope of this Recommendation as their educational needs and approach differ from adults. The tasks and responsibilities of probation services will need to be further defined during the work on the text as they differ significantly from the one of prison services.

b. Mental health

The Bureau took note that the drafting of a CM Recommendation regarding the management of mental disorders and the promotion of positive mental health by the prison and probation services was advancing. The first draft was discussed at the 33rd PC-CP WG meeting (September 2023), further considered at the PC-CP plenary meeting of October 2023 and revised by the scientific experts following written comments (sent by the UK delegation to the CDPC) in preparation for the 34th PC-CP WG meeting on 20-22 March 2024. The draft instrument was expected to be finalised for adoption by the end of 2024, as planned.

The Bureau had no comments to make on the draft text at this stage.

c. Artificial Intelligence by the prison and probation services

The Bureau was invited to note that the Framework Convention on artificial intelligence, human rights, democracy and the rule of law was expected to be adopted by the Committee of Ministers on 17 May 2024 and that its opening for signature will follow shortly. Therefore, the draft Recommendation on the ethical and organisational aspects of the use of artificial intelligence by the prison and probation services will be forwarded to the Committee of Ministers following the advancement of the adoption of the draft Framework Convention in order to align the text as necessary to it.

The Bureau decided that before the draft Recommendation and its commentary are sent to the Committee of Ministers, they will be sent by mail to the CDPC delegations for information and final observations as necessary.

d. 29th CDPPS “Human Rights, Democracy and the Rule of Law at the heart of Prisons and Probation” (Sofia, Bulgaria, 24-25 June 2024)

The CDPC Bureau was invited to take note of the oral information provided by the Secretariat as well as of the draft programme of the Conference, available on its website (<https://www.coe.int/en/web/prison/sofia-24-25-june-2024>). Additionally, the Bureau was invited to appoint a CDPC representative to participate in it.

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

The Bureau was invited to take note of the list of decisions of the enlarged PC-OC Mod meeting of 5-7 March 2024 and of the oral information provided by its Secretary, Mr Hasan Bermek.

The Bureau was invited to take note of the discussions within the enlarged PC-OC Mod meeting regarding a draft Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and its draft Explanatory Report. The main provisions of the Convention to be modernised notably concern channels of communication, videoconferencing, use of technical recording devices in the territory of another Party, interception of telecommunications, costs, and the introduction of time limits for the execution of MLA requests. The draft Protocol is expected to be submitted to the CDPC plenary in November 2024. Some CDPC members pointed out concerns on specific aspects that their delegations may raise in the PC-OC plenary in May 2024. The Secretariat stressed that the intention of the PC-OC Mod was to ensure sufficient flexibility to accommodate different approaches by different member States and took note of these concerns with a view to briefing the Chair of the PC-OC.

The Bureau was also invited to take note of the discussions held by the PC-OC Mod regarding the issue of confidentiality in MLA proceedings, supervision of conditionally released offenders, and the future workplan of the PC-OC, including a review of Council of Europe standards regarding the transfer of criminal proceedings. During the exchanges, the PC-OC Secretariat mentioned the need to develop practical tools and guidelines for practitioners, with a specific request to the CDPC to identify an expert on the topic of transfer of proceedings. The parallel process of EU and CoE discussions in these areas was also discussed whereby CDPC Bureau members stressed the need to ensure coherence.

The Bureau also took note that the CDPC Secretariat would prepare a factsheet of the ECHR case-law on the issue of international co-operation in criminal matters within the next two months.

Other topics discussed included the role of the CoE conventions in the context of international co-operation relating to core international crimes and the intersection with other international initiatives, such as discussions on the possible Tribunal for the crime of aggression; a direct request from the Ukrainian General Prosecutor’s Office to establish closer links with the work of the PC-OC; and the follow-up given to the positive opinion by the PC-OC on Chile’s request to accede to the European Convention on Extradition. Finally, on the topic of the EU’s promotion vis-à-vis third countries of several CoE Conventions, the Bureau members considered it as an excellent opportunity to ensure synergies between the work of the two organisations and

encouraged the PC-OC to elaborate and possibly prioritise potential conventions and candidate countries in that regard.

6. Environment and Criminal Law

The Bureau took note of the information provided by the Secretary to the drafting committee on the new Convention on the Protection of the Environment through Criminal Law (PC-ENV), Mr Carlo Chiaromonte. He presented the outcome of the 3rd meeting of the PC-ENV which took place on 27-29 February 2024 in Strasbourg. This meeting was devoted to continuing the discussions and negotiations concerning the draft Convention, particularly the 2nd reading of a fundamental block (Articles 1 to 30). As some delegations raised concerns about the administrative burden of a “strong” monitoring mechanism, the PC-ENV was requested to provide an alternative, “softer” monitoring mechanism, taking inspiration from previous Council of Europe Conventions disposing of a “softer” monitoring system, for comparison.

The PC-ENV Vice-Chair, member of the CDPC Bureau, Ms Cristina Mauro, complemented the information by referring to the interaction and inputs from the civil society organisations involved in the process and, in reply to a member, detailed the negotiating role of the EU and the care paid by the Chair to ensure all willing MS can voice their views.

The Bureau was informed that the draft of the Convention would be finalised at the next meeting of the drafting committee in June. The explanatory report will have to be finalised later either by a written procedure or following a new meeting of the drafting committee.

The Bureau welcomed the work of the Drafting Committee and noted that there might be a need for a 5th meeting for the finalisation of the explanatory report.

7. Smuggling of Migrants

Throughout this session, the CDPC Secretary provided an overview of the implementation of the Action Plan in Fighting the Smuggling of Migrants, the CDPC tasks vs. mobilised resources (welcoming the UK voluntary contribution), the publication of 25 country profiles on migration in the CDPC website, the participation of the CDPC/Directorate in the Global Alliance to Counter Migrant Smuggling convened by the European Commission last November, and details on the organisation by the Council of Europe of a 2nd International Conference on Migrant Smuggling in September 2024, aiming at bringing together, inter alia, members of the CoE Network of Prosecutors on Migrant Smuggling and of the Eurojust Focus Group on Migrant Smuggling (concept note attached to the agenda).

The Bureau took note of details on the independent expertise offered by the UK to support the work of the two experts previously tasked by the CDPC to co-author the report on the need for and feasibility of a new instrument by the Council of Europe. The two experts, Mr Andreas Schloenhardt and Mr Calogero Ferrara, shared their professional and complementary expertise and highlighted their independence from any government. While retaining its co-authorship, they welcome contributions from any CDPC member, the independent expert proposed by the UK, and selected international organisations. The Bureau also took note of the fact that the experts will contact UNODC, IOM and -via the CDPC Secretariat- the UNHRC. They will be attentive to the work of the EU. Additional contributions are expected during the CDPC Plenary and the September conference.

The Chair then led a session focused on the substance of the draft report circulated, whereby the experts made it clear that they would present arguments for and against a CoE legal instrument, for the CDPC MS to take a final political decision. Presentations and discussions focused on the following issues, gaps and deficiencies:

- Divergent national offences and other laws relating to the smuggling of migrants
- Conflicting international and regional instruments
- Definitional/conceptual issues
- Smuggling of migrants vs trafficking in persons
- Subject of criminalisation: organised crime – smugglers – smuggled migrants
- Aggravations and sanctions
- Types and methods of smuggling
- Corruption and money laundering
- Protection and assistance of smuggled migrants
- Prevention and legal avenues of migration
- Implementation and review

Following an exchange of views with the experts, the CDPC Chair outlined the plan for the upcoming weeks, with experts to finalise their draft by 17 May for its distribution to CDPC members on 20 May. Ahead of its presentation at the Plenary meeting on 17-19 June, members will be requested to focus on specific issues and provide written comments in advance, if relevant. The Bureau tasked the Secretariat with exploring ways for migration experts to, exceptionally and beyond the standard practice of one delegate per CDPC MS, join the CDPC delegates for the full day during the Plenary on this topic. The main reason being that Migrant Smuggling is not only about criminal law but also about prevention and the fact that the CDPC was exceptionally tasked to work on this topic directly, rather than through sub-committees or groups of experts. The objective is to present an advanced draft report at the September Conference, finalise it during the October Bureau meeting, and formally adopt it at the November CDPC Plenary.

8. Asset Recovery

The Bureau was invited to take note of the oral information provided by Ms Livia Stoica Becht, Head of Economic Crime and Corruption Department, on the state of preparations of the work of the Committee of Experts on Criminal Asset Recovery (PC-RAC). The Bureau took note that following the call for nominations issued in February 2024, the large majority of member states had confirmed their participation, as well as Canada and Morocco. The Committee's first meeting was scheduled for 29-31 May 2024, focusing on exchanges of views with experts on the scope of the draft additional protocol to the CETS no. 198¹ and substantive issues to be covered, while the second and third meetings scheduled in fall 2024 would aim to discuss preliminary text proposals.

The Chair underlined the importance of consultations with relevant committees, as set out in the PC-RAC's terms of reference, notably the PC-OC.

The Bureau decided to nominate Ms Cristina Mauro as its representative to the PC-RAC.

¹ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

9. Draft Recommendation on combating technology-facilitated violence against women and girls

The Bureau was invited to take note of the ToR of the Committee of Experts on combating technology-facilitated violence against women and girls (GEC/PC-eVIO), which include a draft Recommendation to be finalised by the end of 2025. The Co-Secretary of the GEC/PC-eVio, Ms Camille Gangloff, provided a summary of the next steps and working methods, identified experts, and the revised timetable including a first meeting of the committee in September 2024 where the preliminary outline would be presented. A concept note was already attached to the draft agenda of the CDPC Bureau meeting.

10. Information points

The Bureau was invited to take note of the information provided by the Secretariat on points a to c.

a. Committee on Artificial Intelligence (CAI)

The Bureau took note of the fact that on 14 March 2024, the Committee on Artificial Intelligence (CAI) has approved the draft Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law and submitted it to the Committee of Ministers for adoption, together with its accompanying draft Explanatory Report, Adoption by the Committee of Ministers is foreseen for 17 May 2024.

The Secretary of the Committee on Artificial Intelligence (CAI), Mr Kristian Bartholin informed the Bureau members of the negotiating process leading to the final adoption of the text by the CAI.

b. Artificial Intelligence and criminal law

The Bureau was invited to consider modalities for reconvening activities of the Drafting Committee to elaborate an instrument on AI and criminal law (CDPC-AICL) in the context of the next CDPC Plenary, which will be held in June 2024. To that end, the Bureau was informed that the contract of the external consultant hired to support activities of CDPC-AICL (Prof. Sabine Gless, University of Basel) has expired and that she was interested in continuing her engagement. Additionally, since the last meeting of the Drafting Committee was almost two years ago, it is possible that some national experts have changed positions and/or no longer work on relevant issues. Consequently, the Bureau was invited to consider the need for countries to update their nominations. Lastly, following the retirement of Mr Jesper Hjortenber, the Bureau was invited to note that the Drafting Committee would need to designate a new Chair.

The members of the Bureau expressed varying views on whether the new instrument should be limited to automated driving or have a larger scope but agreed that it was for the Plenary to decide on the scope of the future instrument. There was also consensus that Professor Gless should be invited to the next Plenary meeting to contribute to the discussion on this matter.

c. MEDICRIME, Trafficking in Human Organs and Cultural Property

The Bureau was invited to note that the Bureau of the MEDICRIME Committee gathered online on 13 February 2024 and discussed: (i) internal issues related to the functioning of the Committee of the Parties, (ii) the report on the 1st Monitoring round, and (iii) the strategy to be followed so that signatory countries join the Convention. An additional Bureau meeting will take place on 23-

24 April 2024 to discuss *inter alia* the best way to promote the signature/ratification of the MEDICRIME Convention by CoE member States. The Bureau welcomed that Tunisia signed the MEDICRIME Convention on 7 February 2024, and two new countries (Senegal and Cameroon) were invited by the Committee of Ministers to join the MEDICRIME Convention. Further details, including cooperation activities, can be found in the [document appended](#) to the agenda.

The members of the Bureau were informed that the Bureau of the Santiago de Compostela Convention will discuss (16-17 April 2024) the answers received by Parties to the country profile questionnaire and will analyse the draft monitoring questionnaire for its adoption at the forthcoming Plenary meeting.

The Bureau took note that, pending the set-up of the Committee of the Parties to the Council of Europe Convention on Offences relating to Cultural Property, called Nicosia Convention, the Secretariat will organise an international meeting in Spain (19-20 June) to set-up an Advisory Group aimed at enhancing the establishment, operation and development of National Platforms.

11. Any other business

12. Dates of the next meetings

The Bureau took note of the fact that the next Plenary meeting will take place in Strasbourg on 17-19 June and decided to fix the next Bureau meeting for 14-15 October 2024 in Venice. The exact date of the November 2024 Plenary meeting was not yet confirmed, but it was decided that it would take place in the week of 18 November.