



Strasbourg, 31 March 2023

CDPC-BU(2023)2

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

LIST OF DECISIONS

Bureau meeting

Paris (France), 29-30 March 2023

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.

The Secretariat informed the Bureau regarding the state of preparation of the Fourth Summit of the Heads of State and Government of the Council of Europe (Reykjavik, 16-17 May 2023) which will be a historic opportunity for the Council of Europe to refocus its mission, in the light of new threats to democracy and human rights, in particular the Russian aggression on Ukraine.

The Secretariat also informed the Bureau that the CDPC Secretariat can currently no longer fulfil its functions due to the serious increase of its other tasks and responsibilities. The Senior Management of the Directorate General is aware of the situation and has agreed provisionally and as a matter of urgency that the Secretariat of the CDPC is ensured jointly by the Secretaries of the two CDPC subordinate bodies (the PC-PC and the PC-OC) in addition to their other tasks and responsibilities until a more lasting solution can be found.

The Bureau expressed deep concern about this situation and agreed that the CDPC (which is the Council of Europe key Steering Committee acting in the criminal law field) needs a full-time Secretary, of a corresponding grade. It expressed its wish that a permanent solution to the current situation be found as soon as possible and requested that this message is conveyed to the Director General in order to find a permanent solution as soon as possible and hopefully before the CDPC plenary meeting (13-15 June 2023) where the delegations will be informed of the matter and of the solutions found.

The Bureau members further expressed their principal support to the decision taken at the CDPC Plenary in November 2022 to create a sub-group tasked with the follow-up to the Ministers of Justice Venice Declaration on Restorative Justice, but noted that in view of the current staff situation with the CDPC the matter cannot be pursued further at this stage despite the fact that restorative justice is among the priorities of a number of CoE member States.

4. Action Plan on Smuggling of migrants

The Bureau took note of the draft agenda of the 2nd meeting of the Council of Europe Network of Prosecutors on migrant smuggling (CDPC-NPMS), to be held on 3-4 April 2023 in Strasbourg. It also took note of the updated list of members of the Network, as well as of the information document prepared by the Secretariat concerning the restricted website of the Network.

As for future priorities for the implementation of the Council of Europe Action Plan on fostering international co-operation and investigative strategies in fighting the smuggling of migrants, the Bureau agreed that the activities should currently continue to focus on Actions n°3 (cooperation between source, transit and destination countries) and n°5 (ensuring information knowledge on national frameworks in this field).

5. Hate crime

The Bureau recalled that the draft Recommendation on Combating Hate Crime was revised after the second meeting of the Committee (PC/ADI-CH) in September 2022 and was sent to the Plenary Meetings of both the CDPC and the Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) for their consideration and comments.

The Bureau noted that the current version of the draft Recommendation was revised following these two Plenary Meetings and recirculated to all members and observers of the PC/ADI-CH on 9 December 2022 for further comments and input. By the deadline (2 February 2023) a number of comments were received and a number of issues still needed to be discussed and agreed upon, notably the definition of hate crime and the options on how to regulate such acts in the national legislation (as a separate crime, as an aggravating element to other crimes or as a combination of the two).

It was noted that the third meeting of PC/ADI-CH will take place on 30-31 March 2023 with the main aim of considering all comments received and to also consider the first version of the draft Explanatory Memorandum to the Recommendation.

The Bureau also noted that limited public consultations will be held online between May to June 2023 and a sequence of meetings with a select group of NGOs, national equality bodies, national human rights bodies and others will be held.

The Bureau was informed of a proposal by the CDADI Secretariat for the draft Recommendation to be adopted at a joint session of the two steering committees, during or after the CDADI plenary meeting on 5-7 December 2023 (after the CDPC plenary). The Bureau expressed doubts regarding the feasibility of such an approach and decided to come back to this at their plenary meeting in June 2023, instructing the PC/ADI-CH Secretariat to provide a document describing the potential meetings/actions to be taken to finalise the text before the end of 2023. A possibility to finalise the text in written procedure after the plenaries of the CDADI and the CDPC was also mentioned as one option.

The Bureau thanked the PC/ADI-CH for their work.

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

The Bureau took note of the summary meeting report of the 31st meeting of the PC-CP and held an exchange of views with its Secretary.

The Bureau agreed to invite prof Marcel Aebi, who is leading the team of researchers collecting the SPACE Statistics to the next CDPC plenary meeting in June 2023 to present the latest data, in particular the SPACE II data for 2022 (community sanctions and measures) which will be published on this occasion and a press conference with journalists will be held by the Communication Division.

a. 28th Council of Europe Conference of Directors of Prison and Probation Services (CDPPS) (6-7 June 2023, Berlin, Germany)

The Bureau took note of the oral information provided by the PC-CP Secretary and Secretary of Conference and took note of the [Conference](#) website where are to be found the draft programme and all other relevant information related to the Conference.

b. Mental health

The Bureau noted that the Committee of Ministers agreed that PC-CP will draft (by the end of 2024) a Recommendation regarding the management of mental disorders and the promotion of positive mental health by the prison and probation services. The PC-CP started drafting this Recommendation at the meeting of their WG in February 2023 and are expected to finalise the draft by the end of 2024.

Several Bureau members made comments to the preliminary draft, namely:

- the Recommendation should reflect the negative impact of prison conditions on the mental health not only of offenders but also of their family and children;
- the authorities should be encouraged to postpone the execution of prison sentences in case of severely mentally ill offenders who cannot get the right treatment in prison;
- the authorities should be left the final decision regarding the resources necessary for research and for training of staff and staff resourcing in the area of mental health;
- the authorities should have the final decision regarding whether a consent for treatment should be needed on all occasions.

c. Artificial Intelligence

The Bureau took note that the drafting of a CM recommendation regarding the ethical and organisational aspects of the use of artificial intelligence and related digital technologies by prison and probation services and of its explanatory report is well advancing.

It was stressed that more emphasis should be made in the text that the responsibility for the design and use of AI as well as the decisions based on the AI algorithms should remain always with the public authorities and the human factor should be decisive. Data protection should - independently of the consent - always be regulated by law. It is also important to guarantee the privacy of inmates in prison.

The Bureau thanked the PC-CP for their work.

7. Artificial Intelligence and criminal law

The Bureau recalled the decision made by the CDPC Plenary in November 2022, according to which the drafting process of CDPC-AICL should be postponed until considerable progress will be made at the level of CAI and took note that the Committee of Ministers had been informed of this decision.

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

The Bureau took note of the list of decisions of the enlarged PC-OC Mod meeting of 28 February-2 March 2023 and of the oral information provided by its Secretary.

The Bureau notably took note of the discussions held within the enlarged PC-OC Mod meeting regarding the issue of co-operation with the European Public Prosecutor's Office (EPPO) under the 1959 European Convention on Mutual Assistance in Criminal Matters, on the basis of replies to a second questionnaire sent to States Parties to the Convention in December 2022, with a view to assessing the feasibility of negotiating a binding legal instrument in order to provide a long-term solution to this issue. The Bureau agreed with the conclusions of the PC-OC Mod that further work of the PC-OC depended on a clear position formulated by the EU on this question and welcomed the contacts between the Chair of the PC-OC and the Swedish Presidency of the Council of the EU in this connection. It also noted that the PC-OC Mod invited the PC-OC to consult the Directorate of Legal Advice and Public International Law on the compatibility of a potential self-standing agreement on co-operation with the EPPO with the treaty practice of the Council of Europe.

The Bureau took note of the ongoing work within the PC-OC regarding the modernisation of the European Convention on Mutual Assistance in Criminal Matters through a Third Additional Protocol to that Convention. It noted that the draft as it currently stands concerns channels of communication, videoconferencing, confidentiality and the introduction of a *ne bis in idem* exception to the execution of MLA requests. The Bureau agreed that this was a crucial window to ensure that this review of the Convention be as thorough as possible and decided to echo the call of the PC-OC Mod and the PC-OC for further proposals and input for the Third Additional Protocol also for the attention of all CDPC delegations.

The Bureau took note of the ongoing work regarding the elaboration of a guidance on good practices regarding the post-surrender phase in extradition proceedings, including the main issues identified by the PC-OC Mod and outstanding questions. It considered that it would be desirable to translate such practical tools into languages other than the two official languages of the Council of Europe and instructed the Secretariat to look into possibilities in this connection.

The Bureau thanked the PC-OC for its valuable work.

9. **Environment and Criminal Law**

The Bureau took note that the first meeting of the Committee of Experts on the Protection of the Environment through Criminal Law (PC-ENV), entrusted by the Committee of Ministers of the Council of Europe with the elaboration of a new draft Convention on the Protection of the Environment through Criminal Law, will take place in the first week of April 2023.

The Bureau held an exchange of views on the modalities of participation of civil society organisations in this drafting work. It was of the opinion that, in view of the fact that a number of NGOs are active in the area of environmental protection, after the draft text is

in a sufficiently advanced stage of finalisation, following the intergovernmental negotiations the Committee may decide to open it for written public consultations.

10. Information points

The Bureau took note of the information provided by the Secretariat on the following points:

a. CAI (Committee on Artificial Intelligence)

The Bureau noted that in the context of the working process towards the drafting of a [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of law, the Council of Europe's Committee on Artificial Intelligence (CAI) held its 4th Plenary meeting on 1-3 February 2023. The Bureau noted that during the meeting, members of the CAI notably had the opportunity to examine Chapters VII ("Follow-up mechanism and cooperation") and VIII ("Final clauses") of the draft instrument. Following this meeting, a revised "[Zero Draft](#)" version of the [Framework] Convention was made public. The Bureau further noted that the next CAI Plenary meeting would be held on 19-21 April 2023.

b. Medicrime

The Bureau took note of the fact that, at an online extraordinary meeting of all representatives of the Parties, the MEDICRIME Committee amended its rules of procedure by including a new rule (2.1.5) on the restriction of participation of a Party which has ceased to be a member of the CoE following the procedure under Article 8 of the Statute for a serious violation of Article 3 of the same Statute. The meeting decided to apply this new rule to the Russian Federation and to Belarus with immediate effect. As a result, the Committee currently has no Chair and will elect a new Chair at its next meeting to be held on 10-12 May 2023.

c. Terrorism

The Bureau noted that the Council of Europe Committee on Counter-Terrorism (CDCT) held its 9th Plenary meeting on 30 November – 2 December 2022, during which the CDCT approved the new Council of Europe Counter-Terrorism Strategy for the period of 2023 - 2027, that looks to support members with addressing emerging terrorist threats in Europe, while ensuring the continuity of actions undertaken in this area to date. The Bureau noted that the Strategy was formally adopted by the Committee of Ministers on 10 February 2023, allowing for actions looking at the rise of violent extremism conducive to terrorism, relationship between terrorism and violation of the rules of the war, issues related to foreign terrorist fighters, and disengagement and reintegration of women and children affected by terrorism, among others.

The Bureau also noted that the CDCT agreed on the feasibility of elaborating a pan-European definition of terrorism and to launch formal negotiations at its next Plenary meeting in May 2023. The Bureau noted the information provided by its members outlining that a positioning on this issue is also happening at the EU level.

The Bureau took note that the next CDCT Plenary meeting will be held on 23-25 May 2023.

d. Council of Europe Convention on Offences relating to Cultural Property

The Bureau took note of the publication “The Nicosia Convention, 10 Questions and Answers” and that conference on this topic will be organised in Latvia in June 2023.

The Bureau members of the States which have not yet signed or ratified the Convention took note of the invitation to incite their authorities to do so.

In this respect the Bureau noted that the European Commission has issued a Communication COM(2022)800 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU action plan against trafficking in cultural goods, urging the EU MS to ratify the Nicosia Convention.

e. Council of Europe Convention against Trafficking in Human Organs

The Bureau took note that the Committee of the Parties to the Santiago de Compostela Convention adopted its rules of procedure in February 2023 and will hold their 3rd Plenary meeting on 24-25 April 2023.

11. Any other business

The Bureau took note of the information provided by Ms Livia Stoica, the newly appointed Secretary to the Conference of the Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (COP 198) that following a joint session held by COP 198 and the PC-OC in November 2022, during which the findings of a 2019 [expert study](#) on asset recovery commissioned by the PC-OC was discussed among others, the COP 198 had the intention to propose that an *ad hoc* Committee be set up to draft an additional protocol to the Convention CETS No. 198 regulating the confiscation, management and sharing of assets.

The Bureau took note of the draft ToR of C-RAC Committee on Criminal Assets. The Bureau was informed that an early version of these draft terms of reference was examined on 24 March by the Bureau of the COP 198 and that further consultations were planned in April in the framework of the Conference of the Parties to finalise the proposal. The Bureau further noted that, according to the procedures and established practice in place within the Council of Europe, it would be up to the CDPC to examine and potentially transmit these terms of reference to the Committee of Ministers.

The CDPC Bureau also was of the opinion that the terms of reference should provide for a clear role for the CDPC in steering and supervising the negotiation and finalisation of such an additional protocol, in accordance with point (x) of the CDPC’s terms of reference. It was also pointed out that further discussions would be needed on the added value of the possible protocol and that the draft terms of reference should include more information about the scope of the proposed protocol.

The Bureau decided that, in order to prepare the discussions during its Plenary meeting, these terms of reference should be accompanied by a paper, setting out the views of the COP 198 notably on the desirability and feasibility of an Additional Protocol to

CETS No. 198. It also invited the Chair of COP 198 to attend in person its Plenary meeting in June 2023 in order to present these views and to hold an exchange of views with the CDPC delegations on that basis.

The Bureau took note that its Chair had been invited by the French authorities to an international event on organised crime to be held in Paris on 27-28 April 2023. It held an exchange of views on the possible messages to be conveyed in her speech at that event on the CDPC's role and accomplishments.

12. Dates of the next meetings

The Bureau recalled that the 83rd CDPC Plenary will be held on 13-15 June 2023 and the 84th CDPC Plenary will be held on 20-22 November 2023 and decided that the meetings should be held in person and not in a hybrid format as the hybrid format does not allow the delegations not present in the room to take equally good part in the discussions and the decisions taken. In addition, the hybrid format requires shorter meeting sessions for interpretation reasons and additional costs for ensuring technical and interpretation logistics of good quality.

The Bureau decided to hold its next meeting on 5-6 October 2023.