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PC-OC (2022)05

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

List of decisions taken at the 82nd meeting of the PC-OC
Chaired by Joana Gomes Ferreira (Portugal)

Hybrid Meeting held on 15-17 November 2022

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the agenda was adopted as reflected on the website.

2. Points for information

The PC-OC took note of the introductory remarks by Carlo Chiaromonte, Head of Criminal Law and Counter Terrorism. He informed the PC-OC about the ongoing work within the CDPC, and in particular the fact that the Council of Europe is expected to start soon with the negotiation of a new convention on the protection of the environment through criminal law which will replace the 1998 Convention, which never entered into force. He underlined that the PC-OC's contribution on aspects regarding international co-operation would be very valuable and encouraged the Committee to actively contribute to this process. He also informed the PC-OC about the fact that several convention-based committees of the Council of Europe were expected to take decisions regarding the participation of the Russian Federation in their work and that the PC-OC would have a clearer picture of the situation at its next plenary meeting. The PC-OC noted that, as a subordinate body set up by the Committee of Ministers, it is not directly concerned by this exercise.

The PC-OC took note of a Statement by the European Criminal Bar Association on Mutual Recognition of Extradition Decisions, brought to its attention by the Chair for information. Following a brief exchange, the PC-OC reached the conclusion that a mechanism of the kind envisaged in this statement was not

practicable in the context of the European Convention on Extradition. The Chair also informed the PC-OC about the 16th meeting of the Consultative Forum of Prosecutors General of EU Member States in October 2022, with a focus on the judicial response to crimes committed in the context of the aggression of the Russian Federation against Ukraine.

The PC-OC also took note of information provided by the Secretariat about:

- the latest update of the PC-OC's document concerning the case-law of the European Court of Human Rights of relevance for the application of the European Conventions on international co-Operation in criminal matters;
- the status of the request by Brazil to be re-invited to accede to the European Convention on the Transfer of Sentenced Persons;
- interest expressed by Thailand in the European Convention on Mutual Assistance in Criminal Matters. In this respect, the PC-OC agreed to invite a delegation from Thailand to an upcoming plenary meeting of the PC-OC.

The PC-OC also took note of information provided by delegations on the latest bilateral treaties concluded and being negotiated in the area of international co-operation in criminal matters and other developments of relevance for the work of the Committee.

3. Draft policy paper on the accession of non-member States to Council of Europe conventions on international co-operation in criminal matters

In accordance with its terms of reference, the PC-OC examined a draft policy paper prepared by the working group set up during the 81st plenary meeting of the PC-OC, composed of Joana Gomes Ferreira (Chair, Portugal), Adil Abilov (Vice-Chair, Azerbaijan) and Johannes Martetschläger (Austria), with the assistance of Raquel Tavares (expert), as amended and approved by the PC-OC Mod at its meeting on 27-29 September 2022. Ms Tavares was present online during the meeting and explained the various drafting choices made by the working group for this document, which sets down a procedure and criteria for the PC-OC to assess and provide an opinion on requests by third States to accede to Council of Europe Conventions on international co-operation in criminal matters, and which indicates a non-exhaustive list of reliable sources of information to base this assessment on.

The PC-OC decided to adopt this document with amendments and submit it to the CDPC, while inviting the latter to examine, approve and submit this document to the Committee of Ministers of the Council of Europe.

4. European Convention on Mutual Assistance in Criminal Matters

a. Co-operation with the European Public Prosecutor's Office (EPPO)

i. Presentation by and exchange with representatives of the EPPO

In accordance with the conclusions of its last plenary meeting of the PC-OC, during which the Committee noted several uncertainties that non-EU Member States had regarding the functioning and competences of the EPPO, including the nature of the cases it deals with and the involvement of national authorities in its operations, the PC-OC had extended an invitation to the EPPO to send a delegation to its present plenary meeting to inform the PC-OC about these questions. In this connection, the PC-OC heard a presentation by Danilo Ceccarelli, Deputy European Chief Prosecutor, on the mission, status, features, working methods and the nature of cases dealt with so far by the EPPO. Mr Ceccarelli also provided information regarding the modalities for co-operation between the EPPO and non-participating and non-EU states.

In the ensuing discussion, Mr Ceccarelli clarified a number of questions, notably regarding modalities of access to information or evidence provided to the EPPO by non-EU states and issues relating to limitations of use of such evidence or information which may be imposed by requested states when executing MLA requests.

The PC-OC warmly thanked the EPPO delegation chaired by Mr Ceccarelli, who expressed the EPPO's view that the work of the PC-OC was of high relevance for the EPPO and the wish of this body to continue to participate in PC-OC meetings. The PC-OC agreed that the EPPO should be invited to participate in all future PC-OC meetings.

ii. Assessment of the replies received to the questionnaire and discussion

The PC-OC examined the replies by 15 non-EU States Parties to the European Convention on Mutual Assistance in Criminal Matters to a questionnaire regarding possibilities for co-operation with the European Public Prosecutor's Office under this Convention, based on unilateral declarations made by EU Member States, as well as their stance towards negotiating a new instrument in order to provide a clear legal basis for such co-operation. It noted that the positions were evenly split between those that considered that the unilateral declarations were sufficient to co-operate with the EPPO and those that did not, whereas the overwhelming majority of responses expressed support for or a neutral stance towards the possibility of negotiating a new instrument.

The PC-OC took note of the conclusion reached by the PC-OC Mod at its meeting in September 2022 that it would be unrealistic, under the current circumstances, to expect to reach an agreement on a new instrument on this matter within the timeframe initially envisaged in the terms of reference of the PC-OC, taking into account the positions expressed by different delegations and noting the shift in attitudes since the adoption of the current terms of reference of the PC-OC. The PC-OC Mod had accordingly recommended to the PC-OC to consider instead conducting a study to assess the opportunity and feasibility of negotiating such an instrument, and to make a proposal to the CDPC in consequence. The PC-OC further took note of the fact that the Bureau of the CDPC had expressed support for this approach at its meeting held on 12-13 October 2022, while affirming that the work on facilitating co-operation between the EPPO and non-EU member states remains a priority for the CDPC.

The PC-OC decided to endorse the recommendation of the PC-OC Mod, by inviting the CDPC to invite the Committee of Ministers to amend the terms of reference of the PC-OC, by replacing the second deliverable in its terms of reference (Draft Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 30) on the relations with the European Public Prosecutor's Office) with a study to assess the feasibility of negotiating a binding legal instrument regarding the application of the European Convention on Mutual Assistance in Criminal Matters on the relations with the European Public Prosecutor's Office.

In order to lay the groundwork for this study, the PC-OC instructed the Secretariat, under the supervision of the Chair, to prepare a document setting out the options considered thus far by the PC-OC in this context, and to prepare a new questionnaire, to be addressed to all States Parties to the European Convention on Mutual Assistance in Criminal Matters, in order to obtain a clear picture regarding the preferences of the Parties, including of the participating Member States of the EPPO, vis-à-vis these options. The PC-OC invited the delegation of Switzerland and the European Commission to be associated in this work. The PC-OC further instructed the Secretariat to send this questionnaire in early January, in order to allow for answers to be received by 14 February, on time for the next PC-OC Mod meeting.

b. Discussion on proposals for provisions to be included in a future additional Protocol

The PC-OC examined proposals sent by the United Kingdom for possible provisions to be inserted into the future Additional Protocol, in accordance with the invitation extended by the PC-OC to delegations to that effect. The PC-OC warmly thanked the UK delegation for its valuable contribution to its work, and held an exchange of views which showed that there was broad support within the Committee regarding these proposals which concern videoconferencing, channels of communication and confidentiality of MLA requests, while noting that the issue regarding the mandatory presence of the judicial authorities of the requested State in hearings by videoconference required further discussion. Accordingly, the PC-OC decided to set up a working group composed by the Chair and Veronique Read (United Kingdom), with the assistance of the Secretariat, to prepare concrete drafting proposals on this basis and instructed the PC-OC Mod to examine them at its next meeting.

The PC-OC also welcomed the offer by the Chilean delegation to submit further proposals regarding the future Additional Protocol and invited it to do so before the next meeting of the PC-OC Mod.

c. Exchange of experiences on MLA proceedings (including with non-European states)

The PC-OC held an exchange of experiences regarding MLA proceedings, on the basis of concrete cases and practical difficulties encountered by delegations. The discussions notably included an exchange on the interpretation of different States Parties regarding the definition of “judicial authorities” in the context of Article 6 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The PC-OC delegations also shared their experience on international co-operation with the Russian Federation. The PC-OC notably took note of the information provided by a number of delegations that, while their countries had fully suspended extradition proceedings with the Russian Federation, MLA requests were sometimes considered, on a case-by-case basis. PC-OC decided to continue these discussions in future meetings.

5. European Convention on Extradition

a. Discussion on developing guidance on good practices regarding the post-surrender phase

The PC-OC pursued its discussions on this question, on the basis of the discussion paper prepared by Aviad Eliya and Yael Bitton (Israel), while taking note of the conclusions of the 32nd meeting of the PC-OC Mod that the soft guidance envisaged within this framework could also include issues such as the rule of speciality, re-extradition and communication regarding the length of time already served within its scope. In accordance with the recommendation of the PC-OC Mod, the PC-OC decided to set up a working group composed of its Chair, Vice-Chair and Aviad Eliya (Israel) with a view to preparing a draft document to be submitted to the PC-OC Mod for examination at its next meeting.

b. Exchange of experiences on extradition proceedings (including with non-European states)

The PC-OC had an exchange of experiences regarding extradition proceedings, on the basis of concrete cases and practical difficulties encountered by delegations. One delegation shared its recent experience relating to an extradition case where the failure of the requested State to communicate in a timely and efficient manner the request of its courts for additional information risks leading to the release of the person sought, due to the expiry of the time limit of the provisional arrest. A recurrent issue in these discussions was a series of recent judgments by the Court of Justice of the European Union and by the European Court of Human Rights, which are of particular relevance for the work of the PC-OC. The PC-OC also took note of the [Guidelines](#) published by the European Commission on Extradition to Third States on the basis of judgments of the Court of Justice. The PC-OC decided to pursue these discussions, including with a more in-depth presentation of the relevant judgments of the Court of Justice, at its future meetings.

c. Update of the Publication “Extradition: European Standards”

The PC-OC agreed to instruct the Secretariat to entrust the update of this document to Raquel Tavares (expert), with a view to reviewing this work in the course of 2023.

6. Elections

The PC-OC re-elected Joana Gomes Ferreira (Portugal) as Chair and Adil Abilov (Azerbaijan) as Vice-Chair. It elected Sofia Haq (the United Kingdom) as second substitute member of the PC-OC Mod.

7. Dates of future meetings

The PC-OC decided to hold its meetings in 2023 on the following dates: plenary meetings on 9-11 May and 14-16 November; meetings of the PC-OC Mod on 28 February – 2 March and 26-28 September.

8. Other business

The PC-OC marked the last participation of Merja Norros (Finland) in its meetings, congratulated her on her retirement, and warmly thanked her for her precious contributions to its work since 1996.