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PC-OC (2023)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 83rd meeting of the PC-OC
Chaired by Joana Gomes Ferreira (Portugal)

Hybrid Meeting held on 2-4 May 2023

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 information provided by the Secretariat regarding the approval by the Committee of Ministers on 15 March 2023 of its Policy Paper on the question of accession of non-member States to Council of Europe conventions on international co-operation in criminal matters. It also took note of information regarding recent work of the CDPC, including the beginning of the negotiations of a Council of Europe Convention on the Protection of the Environment through Criminal Law and the adoption of a Recommendation of the Committee of Ministers to member States on rights, services and support for victims of crime. The PC-OC further noted information provided by the Secretariat on the upcoming 4th Summit of Heads of State and Government which will be held on 16-17 May 2023 in Reykjavik, Iceland.

The PC-OC welcomed the information provided by Azerbaijan of its recent signature of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, and the entry into force with respect to Azerbaijan of the Fourth Additional Protocol to the European Convention on Extradition.

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

3. European Convention on Mutual Assistance in Criminal Matters

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

i. Assessment of the replies to questionnaires and discussion on further steps

The PC-OC took note of the fact that the Committee of Ministers approved its proposal to replace 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.

The PC-OC examined the replies to a questionnaire sent to delegations in December 2022 regarding the preferred option to provide a legal basis to co-operation with the EPPO under the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto. The PC-OC noted that the majority of responding delegations expressed a preference for a self-standing legal instrument for this purpose, while also noting the reply of the Swedish delegation on behalf of the EU Member States expressing their readiness to discuss the outcome of the PC-OC's feasibility study on the matter.

The PC-OC considered that a crucial element for assessing the feasibility of finding a solution regarding this issue under the auspices of the Council of Europe was having a clearer picture regarding the preference of States Parties vis-à-vis the available options, and in particular of the Member States of the EU. The PC-OC took note of the information provided by the Chair on her exchange with the Swedish Presidency of the Council of the EU. The Chair stressed that she explained the need for the PC-OC to obtain a better understanding of the preferences of the EU Member States to the Swedish Presidency, and that the latter expressed its readiness to convey that message to the other EU Member States.

The PC-OC took note of the information provided by the Swedish delegation and the European Commission on the informal operational conclusions following the COPEN meeting on 27 April 2023 (appended to the present list of decisions), including the wish of the European Union to contribute to the ongoing feasibility study by submitting any useful explanations, clarifications and best practices for the purpose of developing co-operation with the EPPO.

As a part of the preparations for this feasibility study, the PC-OC decided to:

- invite non-EU Member States Parties to the Convention who have not yet responded to the questionnaires to do so by 16 June, in order to have as complete an overview as possible of the situation. It also invited non-EU Member States to share any information regarding relevant practical experience or difficulties they may have faced in co-operating with the EPPO;
- invite the EPPO to provide information, by 16 June, regarding the existing co-operation between the EPPO and non-EU Member States, including problems and refusals of co-operation due to a lack of legal basis.

The PC-OC decided to set up a working group composed of its Chair, its Vice-Chair and the Swiss delegation to process this information and lay the groundwork for its feasibility study, and to involve the European Commission in this work. The PC-OC invited other delegations interested in participating in this working group to inform the Secretariat by 16 June.

ii. Possible consultation of the DLAPIL on issues of compatibility with the Council of Europe treaty practice

The PC-OC examined a draft self-standing agreement on co-operation with the EPPO, based on a proposal by the Swiss delegation and the discussions held at the 33rd PC-OC Mod meeting (28 February-2 March 2023). The PC-OC decided to consult the Directorate of Legal Advice and Public International Law on the compatibility of such an instrument with the treaty practice of the Council of Europe, while bearing in mind that this draft does not constitute the beginning of negotiations of such an instrument.

b. Draft Third Additional Protocol

i. Possible amendments to the Convention and its Second Additional Protocol

The PC-OC examined a provisional draft indicating possible amendments to the Convention and its Second Additional Protocol, prepared by a working group composed by its Chair and the UK delegation and amended by the PC-OC Mod at its 33rd meeting; pertaining to channels of communication, hearing by video conference, confidentiality and the *ne bis in idem* principle. The PC-OC amended this document and decided to instruct the PC-OC Mod to continue its examination at its next meeting.

ii. Discussion on other proposals for provisions to be included in the Third Additional Protocol

The PC-OC took note of proposals and suggestions made by the German and Swiss delegations regarding provisions to be included in the future additional protocol. It warmly thanked both delegations for their valuable contributions to its work on modernising the Convention.

The PC-OC decided to include the proposals by Switzerland in the draft Third Additional Protocol, in view of these proposals being discussed at the next PC-OC Mod meeting. It welcomed the offer by the German delegation to submit concrete drafting proposals regarding its initial suggestions concerning Article 21 of the Convention and the introduction of time limits regarding the acknowledgement of MLA requests and instructed the PC-OC Mod to examine these proposals at its next meeting with a view to their possible inclusion in the draft Third Additional Protocol.

The PC-OC also took note with interest of a suggestion by the delegations of Bulgaria and North Macedonia to reinforce the possibilities of co-operation under Article 21, and invited them to submit proposals in that respect for the next PC-OC Mod meeting, while instructing the Secretariat to compile information regarding the PC-OC's past work on this issue.

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, notably focusing on co-operation with Ukraine. The PC-OC took note of detailed information provided by the Ukrainian delegation in this respect, while expressing its deep appreciation for the excellent level of co-operation Ukraine continues to afford to States Parties to the European Convention on Mutual Assistance in Criminal Matters, despite the extraordinary challenges it is facing as a consequence of the Russian war of aggression against Ukraine.

d. Exchange with a delegation from Thailand

The PC-OC held an exchange of views with a delegation from Thailand, following an invitation it had extended to the Thai authorities in response to their expression of interest in the European Convention on Mutual Assistance in Criminal Matters. It warmly welcomed a presentation by Mr Jumpon Phansumrit, Deputy Attorney General of Thailand, on Thailand's MLA framework and practice, and the clarifications he provided on questions asked by PC-OC delegations, while expressing its hope to pursue this dialogue in the future.

4. 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 an Outline for a PC-OC Guidance on good practices regarding the post-surrender phase, prepared by a working group composed of Aviad Eliya (expert), its Chair and its Vice-Chair. It warmly thanked Mr Eliya for his contribution to the PC-OC's work.

The PC-OC examined this document in detail, while taking this opportunity to share practical experiences regarding several rarely-discussed issues linked to the post-surrender phase, including re-extradition and temporary surrender. It instructed the same working group to amend it in the light of its discussions, with a view to giving this draft guidance its final form, and the PC-OC Mod to examine this document 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, focussing on the effects of the Petruhhin judgment and practical difficulties States Parties have been encountering in their extradition cases, in particular with one non-European State.

The PC-OC took note with satisfaction of the information provided by the Chilean delegation that Chile intends to formally start procedures in order to request to be invited to accede to the European Convention on Extradition. The PC-OC decided to set in motion the procedure laid out in its relevant Policy Paper and recently approved by the Committee of Ministers, with a view to adopting its opinion on such a request at its next plenary meeting in November 2023.

5. Presentation by the UK delegation

The PC-OC took note with great interest of a presentation on the digitisation programme in the UK Central Authority, by Alice Smith, Head of the Strategy and Transformation Team, which was followed by a question and answers session. It warmly thanked Ms Smith for her excellent presentation, which it invited her to share with the Secretariat for dissemination to delegations.

6. Dates of future meetings

The PC-OC noted that the next meeting of the PC-OC Mod would take place on 26-28 September 2023, in Lisbon at the invitation of the Portuguese delegation. It recalled that its next plenary meeting is scheduled for 14-16 November 2023.

Appendix: Informal Operational Conclusions following the COPEN (EPPO) meeting on 27 April 2023

- The European Union welcomes the intense work developed within the PC-OC to find a suitable solution to enable cooperation of the European Public Prosecutor's Office (the EPPO) under the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols (the 1959 European Convention), including with the transmission of questionnaires to the State Parties and the launch of a feasibility study.
- At its meeting on 27 April 2023, convened in view of the PC-OC meeting on 2-4 May 2023, the Working Party on Judicial Cooperation in Criminal Matters (COPEN) has addressed the question of enabling cooperation of the EPPO under the 1959 European Convention from the point of view of the European Union. As all the options require an in-depth analysis for their legal and practical impact, the European Union will further consider this issue.
- As an outcome of the COPEN meeting, the European Union wishes to contribute to the ongoing feasibility study and is willing to submit, if requested by PC-OC, any useful explanations, clarifications and best practices for the purpose of facilitating and further developing the cooperation between the EPPO and the competent authorities of the State Parties.
- The European Union aims to pursue the consideration of this matter and to participate in the PC-OC May meeting, in view of reaching a decision by the end of 2023, in line with the PC-OC revised Terms of Reference.