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[PC-OC/PC-OC Mod/Docs PC-OC Mod 2023/ PC-OC Mod (2023)05]  
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PC-OC Mod (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 33<sup>rd</sup> meeting of the restricted Group of experts  
on international co-operation (PC-OC Mod) enlarged to all PC-OC members  
chaired by Joana Gomes Ferreira (Portugal)**

**(Room 16, Palais de l'Europe) 28 February-2 March 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 of relevance to the work of the PC-OC**

The PC-OC Mod took note of the information provided by the Chair, the Secretariat and delegations, including:

- the ratification of the Fourth Additional Protocol to the European Convention on Extradition (CETS No. 212) by Azerbaijan;
- the ratification of the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 222) by Hungary;
- developments regarding a possible Additional Protocol to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);
- bilateral treaties recently concluded or for which negotiations are ongoing, as well as changes to domestic legislation of interest to the PC-OC.

### **3. European Convention on Mutual Assistance in Criminal Matters**

#### **a. Review of the questionnaires on co-operation with the European Public Prosecutor's Office (EPPO) and discussion on further steps**

The PC-OC Mod examined the replies by 22 States Parties to the European Convention on Mutual Assistance in Criminal Matters to a questionnaire 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 Mod noted in particular 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 Mod agreed that determining the compatibility of a potential self-standing agreement on co-operation with the EPPO with the treaty practice of the Council of Europe would contribute to this feasibility study. The PC-OC Mod thus proceeded to a discussion on the potential contents of such an instrument, on the basis of a preliminary proposal presented by the delegation of Switzerland. It invited delegations wishing to do so to provide comments on this draft proposal by 24 March 2023. The PC-OC Mod decided to instruct the Secretariat, under the supervision of the Chair, to revise this document in the light of its discussions and these comments, and to submit it for examination by the PC-OC at its next plenary meeting. The PC-OC Mod recommended that the PC-OC examine and amend this document as necessary, with a view to consulting the Directorate of Legal Advice and Public International Law on that basis.

The PC-OC Mod considered that another crucial element for assessing the feasibility of finding a solution on this matter 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. It therefore instructed the Chair to meet with the Swedish Presidency of the Council of the EU, in order to explain the position of the PC-OC and to convey this need of obtaining a clearer direction from EU Member States as to which solution would be more desirable.

The PC-OC Mod further considered that EU Member States should be encouraged to facilitate exchanges between the PC-OC and the Working Party on Judicial Cooperation in Criminal Matters (COPEN), with a view to keeping the latter informed of the state of the discussions within the Council of Europe on this matter.

#### **b. Draft Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

The PC-OC Mod examined a provisional draft indicating possible amendments to the Convention and its Second Additional Protocol, prepared by a working group composed of the UK delegation, the Chair and the Secretariat, and pertaining to channels of communication, hearing by video conference, confidentiality and the *ne bis in idem* principle. It amended this document and decided to submit it for consideration at the next plenary meeting of the PC-OC. It further decided to renew the call for further proposals from all delegations regarding other matters to be included in the future Third Additional Protocol, to be sent to the Secretariat by 14 April 2023.

The PC-OC Mod noted with interest the proposal of one delegation to allow the requested state to dispense with the obligation to ensure the presence of its judicial authorities in hearings by video conference, in cases where the witness or expert consents and which do not raise particular issues regarding the protection of their rights, with a view to unburdening courts in such cases. It considered that this proposal merited further discussion at the next PC-OC plenary meeting.

#### **4. European Convention on Extradition - Draft guidance on good practices regarding the post-surrender phase**

The PC-OC Mod examined an outline document 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 Mod decided to ask the same working group to refine this document in the light of its discussions, complementing it with proposals for good practices whenever possible, with a view to presenting this document to the next plenary meeting of the PC-OC.

Taking into consideration the various questions raised during its examination of this document, the PC-OC Mod considered that it would be useful for the PC-OC to have a *tour de table* regarding the issues raised in the outline document with regard to re-extradition to a third state (Article 15 of the Convention).

Regarding the issue of temporary surrender (Article 19, paragraph 2 of the Convention), the PC-OC Mod invited delegations who have more experience in this matter to share the concrete ways in which they arranged for temporary surrender with the working group, in order to allow the latter to explore the possibility of elaborating a draft model agreement for that purpose.

#### **5. Any other business**

The delegations shared their recent experience pertaining to international co-operation in criminal matters, in particular as regards co-operation with the Russian Federation. It also took note of the information provided by the Ukrainian delegation regarding the latest situation concerning international co-operation, and exchanged experiences on recent developments in this respect.