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PC-OC Mod (2023)08

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 34th 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)**

**Office of the Prosecutor general, Lisbon, Portugal
26-28 September 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 Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167), and the signature and ratification of the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 222) by Portugal;
- information about the new draft terms of reference of the PC-OC for the period 2024-2027;
- the possible establishment of a Committee (PC-RAC) to draft an 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) until the end of 2025, with an enhanced role of the PC-OC in that Committee;
- bilateral treaties recently concluded or for which negotiations are ongoing.

The PC-OC Mod held a discussion on the application of its policy paper on the accession of non-member States to conventions under its purview, notably regarding the opinion the PC-OC will adopt during its plenary meeting in November 2023 on the possible accession of the Republic of Chile to the European Convention on Extradition. It also noted the interest expressed by two other non-member States in acceding to the European Convention on Mutual Assistance in Criminal Matters.

The PC-OC Mod held an exchange of views regarding its possible future work in the coming years, notably regarding transfer of proceedings and supervision of offenders. It considered that it would be useful for the PC-OC to have a broader discussion regarding its work plan and invited all delegations to prepare for an exchange on this issue during the next plenary meeting in November.

3. European Convention on Mutual Assistance in Criminal Matters

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

The PC-OC Mod held a discussion on this issue on the basis of an Outline for a feasibility study for a new instrument regarding co-operation with the EPPO using the Convention, as well as a number of supporting documents including replies to two questionnaires, opinions by the Directorate of Legal Advice and Public International Law of the Council of Europe and information submitted by the EPPO itself.

The PC-OC Mod had an exchange with Mr Fabio Giuffrida (European Commission) about the outcome of the meeting of the Working Party on Judicial Cooperation in Criminal Matters (COPEN) of the Council of the European Union which took place on 26 September 2023. Mr Giuffrida informed the PC-OC Mod of the conclusion of COPEN that there was currently no common support for a self-standing instrument among the EU Member States.

The PC-OC Mod considered that the draft Feasibility Study should be completed with this information, in accordance with the precise wording of the conclusions of COPEN to be communicated by the European Commission. It further considered that the Study should be submitted for adoption to the PC-OC plenary with the conclusion that a self-standing instrument is not feasible at this stage, given that support from the EU would be indispensable for such an endeavour. It considered that this question could be re-examined if there is a change in the position of the EU Member States in the future.

The PC-OC Mod instructed the Secretariat to complete the Feasibility Study on this basis, under the supervision of the Chair and Vice-Chair of the PC-OC.

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

The PC-OC Mod examined the draft Third Additional Protocol to the Convention and its Second Additional Protocol, pertaining to channels of communication, hearing by video conference, confidentiality, the *ne bis in idem* principle, use of technical recording devices in the territory of another Party, co-ordination of prosecutions, and time limits for the execution of MLA requests. It amended this document and decided to submit it for consideration at the next plenary meeting of the PC-OC.

Regarding the issue of confidentiality, the PC-OC Mod noted that the majority in the group favoured keeping the current approach to confidentiality in the Convention unchanged. It nevertheless considered that further discussion on this issue would be useful at the plenary level.

As regards the *ne bis in idem principle*, the PC-OC Mod agreed that this new ground for refusal must be strictly limited to cases where the person has been finally judged by the requested State in respect of the same acts.

Concerning the use of technical recording devices, the PC-OC Mod decided to delete paragraph 5 of the new provision regarding the obligation to take legislative and other measures, while complementing the text with the requirement to make declarations regarding competent authorities.

As regards the co-ordination of proceedings, the PC-OC Mod noted that, while the suggested provision was not considered problematic, several delegations questioned its added value in the future Third Additional Protocol. The PC-OC Mod considered a discussion on this question would be useful when the document is examined by the PC-OC plenary.

Regarding the introduction of time limits for the execution of MLA requests, the PC-OC Mod agreed on the need to speed up the execution of MLA requests and considered the proposed 180-day limit as a reasonable reference point for the vast majority of cases. It nevertheless noted two diverging trends, with some delegations strongly supporting strict time limits while others favoured an approach allowing for more discretion and flexibility, owing to concerns relating to feasibility. The PC-OC Mod invited the PC-OC plenary to pursue discussions on this issue, with the added benefit of the presence of the delegation which made this proposal.

Regarding the possible revision of Article 21 of the Convention, the PC-OC Mod considered that this proposal needed to be examined in the presence of the delegation which put it forward.

4. European Convention on Extradition

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

The PC-OC Mod examined the draft 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, who remotely participated in its meeting, for his contribution to the PC-OC's work.

The PC-OC Mod amended the document and its appendix (template for an agreement on temporary surrender) and decided to submit it to the PC-OC for adoption at its next plenary meeting.

b. Update of the publication "Extradition: European standards"

The PC-OC Mod took note of the information provided by Ms Raquel Tavares (expert) on this ongoing work and thanked her for her contribution.

5. Any other business

The PC-OC Mod discussed the proposals for an update of the index and summaries of the case-law of the European Court of Human Rights by Mr Miroslav Kubicek (Consultant). The PC-OC Mod expressed its gratitude to Mr Kubicek for his excellent and generous contribution to the work of the Committee, decided to approve the proposals and to publish the updated version of the index and summaries of the case-law on the website following approval by the PC-OC.

The PC-OC Mod expressed its deep gratitude to the Chair and the Office of the Prosecutor General of Portugal for their warm hospitality.