

Strasbourg, 1 December 2017

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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

LIST OF DECISIONS

73rd PLENARY SESSION

Strasbourg, 28 November – 1 December 2017

Council of Europe
Agora Building
Room G3

The European Committee on Crime Problems (hereinafter the CDPC), meeting in Strasbourg under the Chairmanship of Dr. Hans-Holger Herrfeld (Germany), decided:

1. **Opening of the meeting**

- to take note of the opening address by Mr Jan Kleijssen, Director of the Information Society and Action against Crime Directorate, Directorate General of Human Rights and Rule of Law, who underlined the most recent developments in the Council of Europe (hereinafter, CoE) and the Directorate since the last CDPC plenary session of March 2017, notably: a) the agreement - in the form of an exchange of letters- between the CoE and certain technology firms and associations in order to promote an open and safe internet, making it possible to invite them to participate in meetings; b) the passing over of the Chairmanship of the Committee of Ministers of the CoE from the Czech Republic to Denmark and great importance that the Danish Chairmanship attaches to the European human rights system, in particular the influence that the European Court of Human Rights increasingly has on policy areas of critical importance to member States and their citizens; c) in the field of terrorism, the conclusions of the 2nd International Conference on Terrorism and Organised Crime, jointly organised by the Criminal Law and Counter-Terrorism Divisions of the CoE in co-

operation with the City Hall and the University of Malaga (21 and 22 of September 2017), which highlight the need to both develop and implement appropriate, specialised investigative tools capable of coping with the evolution in criminal conduct and the intention to set up a joint working group of CODEXTER and CDPC experts aimed at dealing with topics of common interest; d) the worldwide importance of certain CoE conventions (e.g. Cybercrime convention, Data Protection convention). Finally, Mr Kleijssen thanked the Chair of the CD-PC, Dr. Hans-Holger Herrnfeld, for his role in many of the important achievements of the CDPC;

2. Adoption of the draft agenda

- to adopt the agenda without amendments (the information provided by the Secretariat – item 17–, the list of participants and the agenda appear in Appendices I, II and III respectively);

3. Activities and priorities of the CDPC for 2018-2019

- to identify topics that will be dealt with during its next two years' meetings that cover all the tasks assigned to it by the CM in the Terms of Reference;
- in respect of the question of substantive criminal law challenges posed by advances in robotics, artificial intelligence and smart autonomous machinery, including self-driving cars, drones and other forms of robots capable of causing physical harm independent of human operators, to instruct the Secretariat to make a first assessment of the situation in States by inviting them to respond a very short questionnaire in order to have an overview presenting the status of play of criminal legislation in this field;

4. Activities related to transnational organised crime (TOC): Action Plan

- to take note of the information provided by Mr Jesper Hjortenber, CDPC co-ordinator on Transnational Organised Crime (hereafter, TOC), and Mr Oscar Alarcón-Jiménez, Secretariat, on the most recent developments in the implementation of the Action Plan on TOC, in particular:

a. Review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators

- to congratulate Prof. Lorena Bachmaier-Winter and Mr Iwan Waltenburg, scientific experts, for their excellent work carried out in drafting the interim report [CDPC (2017) 21 Rev] assessing the replies to the questionnaire on the review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators of justice;
- to take note of the presentation made by the scientific experts on the main elements for reviewing the Recommendation and to have an exchange of views with them on this interim report:
 - Prof. Bachmaier-Winter highlighted the major legal and practical challenges faced by the 30 member States that replied the above-mentioned questionnaire when implementing the Recommendation Rec (2005) 9 and also presented both an in-depth assessment of the answers received to concrete questions and also the overall findings;
 - Mr Waltenburg observed that the main challenges in the witness protection field are the difficulties for the person to integrate other countries' language, culture and social structures, differences in legal rules between the sending and the receiving country, and the criminal background of the witnesses;
 - Both experts highlighted that respondents stated that the CoE's recommendation is largely used by member States but also by a number of some third countries for implementing the different witness protection programmes.
- on the basis of this exchange, to endorse the proposal made by the Bureau to proceed with the review of Recommendation Rec (2005)9 and to approve the draft Terms of reference of a drafting working group;

- that those member States interested in participating in this working group contact the Secretariat by the end of December if they intend to propose a candidate;
- given the reduced composition of this working group, to agree that those member States not participating in this working group should also be informed on the ongoing discussions and be invited to provide written contribution in the course of the negotiation;

b. Status of implementation of the Action Plan on TOC

- to take note of the information provided by Mr Verbert on the Action B1 (Review provisions on international co-operation in CoE conventions and relevant reservations/declarations to them/these conventions) of the Key Area 1 and in particular that a letter, addressed to the PC-OC expert of each country, will invite the expert concerned to ask the appropriate authority of the Party concerned to reconsider the reservations and declarations made in respect to the treaties in question, in view of their possible update or withdrawal. More information is included in Appendix I;

5. Council for Penological Co-operation (PC-CP) – Exchange of views with the Chair, Mr Vivian Geiran

- to have an exchange of views with Mr Vivian Geiran (Ireland), Chair of the PC-CP, and to take note of the activities carried out by the PC-CP since the last CDPC meeting in March and to thank the committee as well as Mr Geiran personally for his excellent work as Chair;
- after the excellent presentation by Mr Jörg Jesse (Germany) on questions related to prison staff, to have an exchange of views with him and to take note of the conclusions of the last Conference of Directors of Prison and Probation Services entitled “Staff Recruitment, Training and Development”, in particular of indents 3 and 4 of the operative part, and that these conclusions will be brought to the attention of the CM of the CoE and be informed that the 23rd CoE Conference of Directors of Prison and Probation Services will take place on 19 - 20 June 2018 in Jõhvi (Estonia) on the topic “*Working together effectively: Management and co-operation models between prison and probation services*”; to thank Mr Jörg Jesse for his valuable work with the PC-CP as Vice-Chair;
- to agree with the proposal to request that the PC-CP prepares an outline on subjects and specific issues which could be developed in future guidelines elaborated by the CoE on prison staff matters and in particular the training of prison staff, taking into account notably the relevant European Prison Rules;
- to submit this document at the next CDPC plenary meeting for further discussion and decisions;

a. Restorative justice

- after beginning the examination of the revised recommendation submitted by the PC-CP, to postpone the final approval of this text considering that more in-depth reflection on several issues contained in this revised recommendation are needed;
- to instruct the Bureau to consider the most appropriate way to achieve this objective and make a concrete proposal for the next CDPC plenary meeting;

b. Children of imprisoned parents

- to thoroughly examine the draft recommendation concerning children of imprisoned parents [PC-CP (2017) 7 Rev 6] and its explanatory report [PC-CP (2017) 13 Rev 5];
- to make a number of amendments to the draft texts;
- to instruct the Secretariat to transmit to the CM the recommendation for final adoption and the explanatory report to this recommendation for information;

- to take note that the delegation from Netherlands make a statement reserving its position until the meeting of the GR-J;

c. Revision of the commentary to the European Prison Rules

- to welcome the work already done by the PC-CP as well as the work to be continued on the revision of the commentary to the European Prison Rules;
- as far as the proposals made by the PC-CP to extend its mandate in order to start working on the possible revision of some of the Rules, to request that the PC-CP prepares a document for further consideration by the CDPC containing concrete information and elements with regard to which Rules could be reviewed and the reasons for doing so;
- to present this document at the next plenary meeting of the CDPC so that the CDPC can take a final decision on this issue and on giving a concrete mandate to the PC-CP;

d. Presentation of SPACE by Prof. Marcelo Aebi

- to take note of the presentation of the Council of Europe Annual Penal Statistics (SPACE) by Prof. Marcelo Aebi, Deputy Director of the School for Criminal Sciences at the University of Lausanne, and to congratulate him on the excellent work carried out;

6. Prison overcrowding

- to take note of the information provided by the Chair of the CDPC sub-group on prison overcrowding, Ms Marjorie Bonn (the Netherlands), and of the executive summary of the second meeting of this sub-group held on 7 June 2017 in The Hague and to thank her in particular and as well as the members of this sub-group for their excellent work;
- to endorse the idea of organising a high-level CoE Conference in 2019 on the issue, involving all relevant actors such as ministries of justice and the interior, police, prison and probation services, judges and prosecutors;
- to encourage the sub-group to study in more detail a multi-disciplinary approach for this possible conference and to prepare the relevant working documents and a draft agenda;

7. Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC) – Exchange of views with the Chair, Mr Erik Verbert

- to hold an exchange of views with Mr Erik Verbert (Belgium), Chair of the PC-OC, on the latest activities carried out by the committee and to thank the committee for its excellent work. Particular attention was drawn to:
 1. The implementation of the Action Plan on Transnational Organised Crime by the PC-OC [PC-OC 2016)05]. See the different actions under the relevant item (see Appendix I).
 2. Developments on the Convention on the Transfer of Sentenced Persons including by an update or consolidation of existing recommendations and the possible establishment of an e-tool.
 3. The European Convention on Mutual Assistance in Criminal Matters in particular the assessment of the application of the 2nd additional Protocol and the discussion of the issue of MLA for the purpose of proceedings against legal entities.
 4. The European Convention on Extradition: the publication of the replies received to a question asked on the use of alternatives to detention in extradition cases and the consideration of developing guidelines on this issue by the PC-OC.

5. In relation with the summaries of relevant case-law of the ECtHR, the updating of the PC-OC document on this regard.

- to take also note of the finalisation of the online training course on international co-operation in criminal matters with a special emphasis on Human Rights;

8. Revision of the model provisions; issues of administrative sanctions

- to take note of the presentation by the Chair of the CDPC on the draft amendments to the model provisions, modified taking into account the discussions and decisions taken during the negotiations on the Cultural Property Convention;
- to consider the general issue of the use of administrative sanctions in criminal law conventions and to endorse the proposal made by the Bureau to instruct the Secretariat, with the help of two experts:
 - to draft a questionnaire addressed to member States on the question of administrative sanctions and applicable procedures;
 - to analyse the responses to the questionnaire received from the CDPC delegations and, on the basis of these responses, prepare a working document for further discussion in the CDPC;

9. Victims Compensation

- to take note of the presentation by Ms Anna Wergens on the outcome of the questionnaire sent to all CDPC delegations;
- considering the outcomes of the replies received, not to take any steps at this point to update the Convention on the Compensation of Victims of Violent Crimes;
- instruct the Secretariat to promote the Convention and prepare a working document containing possible activities to be envisaged to improve the functioning of the convention;

10. Links between Organised Crime and Terrorism

- to thank the co-organisers of the Conference on Terrorism and Organised Crime (Malaga, September 2017), namely the City Hall and the University of Málaga, for their valuable support, to express its gratitude to the Spanish Minister of Justice for having addressed all the participants and his support at the conference and to take note of the conclusions of the Malaga Conference;
- take note that the CODEXTER Bureau and the CDPC Bureau agreed on the setting up of a joint working group of experts (CDPC-CODEXTER) aimed at discussing future common topics and actions for both committees to ensure a valuable follow-up to the Malaga Conference;
- instruct the Secretariat to start planning the first meeting of the working group as soon as possible in 2018;

11. Terrorism

- to take note of the information provided by Mr Kristian Bartholin, Deputy Head of the Counter-Terrorism Division, on the most recent activities carried out in the field of counter-terrorism, including the preparation of the new recommendation on "Terrorists acting alone" and that the Recommendation CM/Rec(2017)6 on "special investigation techniques" was adopted by the Committee of Ministers on 5 July 2017;
- to thank the French representative of the CDPC for having ensured that the CDPC follow the negotiations in the drafting Committee on Terrorists Acting Alone;

12. Smuggling of migrants

- to examine the document prepared by the Secretariat, [CDPC (2017) 26] and agree to set up two focused working groups composed of a limited number of experts dealing with a) preventive measures and b) practical measures to improve international co-operation;
- to instruct the CDPC Bureau to follow this topic closely, in particular the specific issues to be dealt with by the two working groups;

13. Elections

- to proceed with the elections of the Chair and the vice-Chair of the CDPC and the members of the CDPC Bureau. On this regard:
 - the Chair of the CDPC is Mr Sławomir Buczma (Poland), elected for one year renewable; the vice-Chair of the CDPC is Ms Helena Lisuchova, (Czech Republic) elected for one year renewable;
 - the new elected members of the Bureau are: Ms Pauline Dubarry (France), Ms Barbara Göth-Flemmich (Austria), and Dr. Hans-Holger Herrnfeld (Germany) for two years renewable;
- to express its warmest thanks to:
 - Dr. Hans-Holger Herrnfeld for the excellent way in which he has chaired the committee over the last two years;
 - Mr Lorenzo Salazar (Italy), Ms Mariana Radu (Romania), Ms Linda Drazdiak (Norway) for their remarkable work as Bureau members;
- to elect Ms Anna Ferrari (Italy) and Mr Robert Friškovec (Slovenia) as new members of the PC-CP Working Group for two years, renewable once;

14. Cybercrime Convention Committee (TC-Y)

- to hold an exchange of views with Mr Alexander Seger, Secretary to the T-CY, on the recent works carried out in the Cybercrime field and in particular the drafting of the 2nd Additional Protocol to the Budapest Convention on Cybercrime;
- to request the Protocol Drafting Group to closely involve the CDPC/PCOC in respect of negotiations on provisions related to MLA matters;

15. European Commission against Racism and Intolerance (ECRI) – Exchange of views with the Chair, Mr Christian Åhlund

- to hold an exchange of views with the Chair of the European Commission against Racism and Intolerance (ECRI), Mr Christian Åhlund, who presented the ECRI General Policy Recommendation (GPR) No. 15 on combating hate speech, in particular the use of criminal legislation to combat racism and racial discrimination including hate speech, to welcome the presentation and to agree that there are common issues and interests to be developed in the future;

16. Gender Equality – Exchange of views with the Council of Europe Gender Equality Advisor, Ms Carlien Scheele

- to hold an exchange of views with Ms Carlien Scheele, CoE Gender Equality Advisor, on effective gender mainstreaming in all CoE policies and to take note of some specific elements to be considered in the field of gender equality in respect of the MEDICRIME Convention;

17. Information provided by the Secretariat

- to take note of the information provided by the co-Secretary of the CDPC, Mr Oscar Alarcón-Jiménez, on sub-items a. to c. (see Appendix I);

18. Any other business

- to take note of the information provided by the CoE DG1 web communication and collaboration Secretariat, Ms Simona Ghita, on the new CDPC website;
- to take note of the information provided by the Chair of the CDPC on the latest developments related to the European Public Prosecutor's Office (hereafter, EPPO), and decide to include the item of the relationship between EU and non EU member States on the agenda of future CDPC Plenary meetings;

19. Dates of the next meetings

- to hold its forthcoming plenary meetings:
 - 74th CDPC:
opening: on Tuesday, 5 June 2018 at 14.00
closing: on Friday, 8 June at 12.00
 - 75th CDPC:
on the week from 26 to 30 November 2018; dates and opening and closing times to be decided in the next plenary.