



Strasbourg, 23 November 2021
[PC-OC/Docs PC-OC 2021/ PC-OC (2021)14E]
<http://www.coe.int/tcj>

PC-OC (2021)14

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 80th meeting of the PC-OC
under the Chairmanship of Mr Erik Verbert (Belgium)**

Hybrid Meeting held 22-23 November 2021

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 Ms Hanne Juncher, Head of the Action against Crime Department. On the occasion of the 80th meeting and the 40th anniversary of the PC-OC, she recalled that the Committee had played a crucial role in the development of standards and promotion of good practice in the field of international co-operation in criminal matters. She outlined that today the importance of the work of the PC-OC was still uncontested, not least because this Committee is composed of practitioners with a day-to-day experience in its sphere of competence and that this expertise will be crucial to finding solutions to the many new challenges facing international co-operation in criminal matters.

Ms Juncher further informed the PC-OC about:

- the draft terms of reference for the PC-OC 2022-2025 which will be adopted by the Committee of Ministers during their meeting on 22-24 November 2021;

- the new Resolution CM/Res(2021)3 governing the work of committees established by the Committee of Ministers which will enter into force in January 2022;
- the events organised by the Hungarian Presidency of the Council of Europe: the Conference of Ministers of Justice “Digital technology and artificial intelligence – New challenges for justice in Europe” held on 5 October 2021, Gödöllő, Hungary, as well as of the high-level experts’ “Roundtable on New Means of Communication for International Co-operation in Criminal Matters” which was held online on 4 October 2021;
- the present and future standard setting activities of the CDPC in particular in the area of the protection of the environment through criminal law and concerning criminal liability related to the use of artificial intelligence for vehicles and automated driving. The preparation of new recommendations on victims of crime and on the protection of witnesses and collaborators of justice will also be on the agenda;
- the adoption by the Committee of Ministers of the Second Additional Protocol to the Cybercrime Convention which will be opened for signature in the coming months.

The PC-OC also took note of :

- various developments on the Committee’s website notably as regards the information on judicial networks, on authorities in charge of judicial records as well as information for prisoners sentenced abroad;
- the latest update of the index and summaries of case-law of the European Court of Human Rights
- recent signatories and ratifications of treaties within its remit;
- information provided on the latest bilateral treaties concluded in the area of international co-operation in criminal matters.

3. European Convention on Mutual Assistance in Criminal Matters

a. Discussion on the nature and elements of a binding instrument regarding co-operation with the European Public Prosecutor’s Office

The PC-OC discussed, in the presence of Ms Ana Gomez (Treaty Office), Mr Fabio Giuffrida (European Commission) and Mr Florin Razvan Radu (EPPO) the nature and elements of a binding instrument regarding co-operation with the European Public Prosecutor’s Office (EPPO) on the basis of the Convention on Mutual Assistance in Criminal Matters and the additional Protocols thereto.

It recalled that the unilateral declarations, issued to date by 13 EU Member States, did not provide a solid legal basis for co-operation with the EPPO given that some Parties had no domestic legal basis to work with a non-State authority and EU body such as the EPPO. It was noted that the absence of objections to the declarations did not guarantee acceptance and that the EPPO had already faced the first refusals for co-operation with a Party to the Convention for this very reason. The PC-OC, referring to its earlier decisions at its 78th and 79th meetings, recalled the need to ensure a legal basis for co-operation with the EPPO, by creating a binding instrument to which the EU should accede.

Account was also taken of the findings of the PC-OC Mod who had identified the elements in need of amendment and finally recommended the development of a *Treaty concerning the application of the Convention and additional protocols thereto for the co-operation with the EPPO*.

Taking into account the advice of the Treaty Office, the PC-OC confirmed the conclusion of the PC-OC Mod that the possible solution to develop a *Protocol* is legally problematic because :

- 1) An *Additional* Protocol is only open to Parties to the Convention CETS n° 030. Since the EU is not a Party to CETS n° 030, the EU would not be able to accede to an Additional Protocol;
- 2) An *Amending* Protocol would amount to a long list of articles, changing most of the articles of the Convention CETS n° 030 and its two Additional Protocols. Document PC-OC (2021)11 lists all the

changes to be made in 144 footnotes. Moreover, an Amending Protocol would require ratifications by *all Parties* (and the EU), which means that its entry into force would take many years.

As a consequence, the PC-OC concluded that the *only option* to provide a solid legal basis to address the problem of Parties who are not able to co-operate with the EPPO would be the conclusion of a treaty, preferably named an “agreement” between the EU and the Parties to the Convention *on the application* of the Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto for the co-operation with the EPPO. This agreement would be a relatively short binding instrument that could enter into force after just a few ratifications including the EU.

An early entry into force of such binding instrument is essential given the current need for co-operation with the EPPO.

Some experts indicated that it would be useful to make an inventory of needs by the Parties and practical problems encountered by the EPPO before embarking into the negotiation of such agreement while most felt that the problem was already clearly identified and that it was urgent to obtain a mandate for negotiations:

The PC-OC decided to:

- share its findings with the CDPC;
- invite the CDPC to ask the Committee of Ministers to provide the Committee with a mandate to negotiate “a treaty/agreement between the EU and the Parties to the Convention on the application of the Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto for co-operation with the EPPO”
- invite the CDPC to consider such a mandate to take into account the needs of the Parties and the practical problems encountered by the EPPO.

b. Preparation of a special session on international co-operation on asset recovery

Further to the decision taken during the last plenary meeting to organise a special session on asset recovery in consultation with the COP 198 during its meeting in May 2022, the PC-OC considered the topics proposed by the PC-OC Mod and had an exchange of views with Mr Lado Lalicic (Secretariat of the COP198).

The Committee was pleased to hear the positive reaction from the COP198 during their meeting on 17 and 18 November who was ready to organise this as a joint event.

The Committee agreed with the topics proposed by its working group: non-conviction-based confiscation, compensation of victims, recovery of cryptocurrencies, freezing of evidence regarding assets versus seizure of proceeds of crime, asset sharing and asset recovery from legal persons. The Committee also proposed some additional topics including the reversal of the burden of proof, the return of assets to victims, confiscation of equivalent value and the identification of assets situated abroad.

The PC-OC decided to:

- invite the PC-OC Mod and the Secretariat to finalise the programme in consultation with the COP 198.

c. Proposals for provisions in a future Additional Protocol

The PC-OC discussed proposals for provisions to be inserted into a future Additional Protocol and recalled that it had retained the proposals concerning:

- an update of “channels of communication” to allow for electronic communication
- the “ne bis in idem” principle

The Committee furthermore considered the proposal presented by Mr Pyotr Litvishko (Russian Federation) at the last meeting of the PC-OC Mod to regulate Consular legal assistance in criminal matters, taking into account the conclusion of the PC-OC Mod that further information on the use of this practice would be needed and that a survey or short questionnaire could be considered.

The Committee also discussed Mr Litvishko's proposal to develop additional standards on the use of special investigative techniques (SIT), taking into account the discussions held in the PC-OC Mod and its proposal to introduce provisions related to the interception of telecommunications.

The PC-OC, considering that more information would be needed to establish the position and needs of Member States in these areas and to decide on the possible development of new standards, including by PC-OC guidelines, decided to:

- ask the PC-OC Mod to prepare short questionnaires on the proposals by the Russian Federation, in co-operation with Mr Litvishko and the Secretariat, to be sent out in time before the next plenary meeting.
- also invite experts to send further proposals for the update of the Convention to the Secretariat.

4. European Convention on Extradition

a. Exchange of experiences of extradition proceedings with non-European States

The PC-OC had an exchange of views on extradition proceedings with European and non-European States whereby mention was made of difficulties in communication, competing requests, assurances in respect of reciprocity, specialty, re-extradition and prison conditions, proceedings on the basis of reciprocity or comity, extradition of nationals, consequences of interim measures by the ECtHR and the duration of detention pending extradition proceedings.

The PC-OC, recognising the importance of these exchanges on practical problems in international co-operation in criminal matters decided to continue these discussions in future meetings.

b. Other

The PC-OC agreed with the interesting proposal made by Mr Aviad Eliya (Israel) to discuss issues related to the post-surrender phase, including in particular the respect of the specialty principle, and gratefully accepted his proposal to prepare a short discussion paper on this issue.

The PC-OC decided to include the discussion on the post-surrender phase on the agenda of its next plenary meeting, including the possibility to develop guidelines on this issue.

5. Elections

The PC-OC elected Ms Joana GOMES FERREIRA (Portugal) as its Chair and Mr Adil ABILOV (Azerbaijan) as its Vice Chair for a term of one year starting in 2022.

Due to the election of two members of the PC-OC Mod as Chair and vice Chair, substitute members Ms Marina SPILIOPOULOU (Cyprus) and Mr Pyotr LITVISHKO (Russian Federation) became full members of the PC-OC Mod.

The Committee elected Mr Erik VERBERT as first substitute member to the PC-OC Mod and Ms Félicienne MUYTJENS (Netherlands) as second substitute.

As a result of these elections the PC-OC Mod will be composed by the Chair and the vice-Chair of the PC-OC and the following members:

- Ms Gabriela BLAHOVA (Czech Republic)

- Ms Liv Kristina EGSETH (Norway)
- Mr Juhani KORHONEN (Finland)
- Mr Pyotr LITVISHKO (Russian Federation)
- Ms Amanda SHIELS (United Kingdom)
- Ms Tetiana SHORSTKA (Ukraine)
- Ms Marina SPILIOTOPOULOU (Cyprus)

- Mr Erik VERBERT (Belgium), first substitute member
- Ms Félicienne MUIJTJENS (Netherlands), second substitute member.

The Committee expressed its gratitude to Mr Erik Verbert for his excellent work for the PC-OC as its Vice-Chair and ad interim Chair.

The PC-OC also expressed its gratitude to Ms Anita van de Kar for her outstanding work and commitment as secretary to the committee and wished all the best for her post- PC-OC activities.

6. Next meetings

The PC-OC took note that the plenary meeting of the PC-OC in 2022 would be held from 18 to 20 May and from 15 to 17 November. The meetings of the PC-OC Mod would take place from 15 to 17 March and from 27 to 29 September 2022.