



Strasbourg, 24 May 2017
[PC-OC/Docs 2017/ PC-OC (2017) 06]
<http://www.coe.int/tcj>

PC-OC (2017)06

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 72nd meeting of the PC-OC
under the Chairmanship of Mr Erik Verbert (Belgium)
22-24 May 2017

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the PC-OC adopted the agenda as reflected in Doc PC-OC (2017) OJ1, adding under item 11, any other business, the discussion of its draft terms of reference for 2018-2019.

2. Points for information

The PC-OC took note of:

- The words of welcome and information provided by Mr Ivan Koedjikov, Head of the Action against Crime Department, on recent developments in the Council of Europe. He underlined in particular the discussion, during the 127th session of the Committee of Ministers on 19 May in Nicosia (Cyprus), of the Report on the State of Democracy, the Report on the Action Plan against terrorism and the priorities of the Czech Chairmanship of the Committee of Ministers;
- The information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and to the CODEXTER, on:

- the recent adoption by the Committee of Ministers of the Council of Europe Convention on Offences related to Cultural Property. The treaty was opened for signature in Nicosia (Cyprus) on 19 May, during the 127th Session of the Council of Europe's Committee of Ministers;
 - the organisation in Strasbourg, on 23 June 2017, of a conference on the smuggling of migrants;
 - the possible organisation of a conference to discuss concrete ideas to combat prison overcrowding;
 - the work of the CDPC related to victims of criminal offences, including the possible update of the Council of Europe Convention on the Compensation of Victims of Violent Crime;
 - the organisation in Malaga (Spain) on 21 and 22 September 2017 of a conference on the links between transnational organised crime and terrorism;
- The information provided by Ms Gabriela Bláhová (Czech Republic) who participated, on behalf of the PC-OC, in the 5th meeting (Bucharest, 11-12 April 2017) of the Working group of the Pompidou Group, which is in charge of preparing a handbook on controlled delivery. The Working group, composed of experts from EUROJUST, Europol, Interpol, OSCE and SELEC, will have its 6th meeting in The Hague on 17–18 July. The Group expects to present the electronic version of the Handbook on controlled deliveries by 1 September 2017. Ms Blahova will present the Handbook to the PC-OC at its next plenary meeting;
- The information provided on the negotiation and conclusion of bilateral treaties of relevance to the work of the PC-OC;
- The presentation by Mr. Kevin C. Hughes, Legal Advisor to the Prosecutor of the UN-ICTY on regional judicial co-operation in war crimes matters in the countries of the former Yugoslavia, which was followed by an exchange of views. Mr Hughes underlined that international co-operation in this area is extremely difficult and that the individual judges and prosecutors involved are in need of support and training to apply the legal instruments available and to find solutions adapted to the complexity of the cases they are confronted to;
- The presentation by Mr Fraser Bryans, representative of the European Organisation of Prison and Correctional Services (EuroPris), on the work of its organisation and the useful information that can be found on the EuroPris' website, thanking him for allowing the publication of his presentation on the PC-OC website;
- The information provided by the Secretariat on:
- the latest signatures and ratifications of the different treaties within the remit of the PC-OC;
 - the decision by the Committee of Ministers to invite Brazil and Ghana to accede to the Convention on the Transfer of Sentenced Persons as well as the request by Sri Lanka to join the European Convention on Mutual Assistance in Criminal Matters;
 - the finalisation, with the assistance of the Chair of the PC-OC, of the HELP course on international co-operation in criminal matters, with a special emphasis on human rights, for distance learning courses for legal professionals in Poland, Portugal, Romania and the Russian Federation;
 - the change of dates of the next PC-OC plenary, which will now be held on 20- 22 November 2017, taking into account the dates of the 49th plenary meeting of the EJC, to be held in Estonia later in that week.

3. Presentation and content of the PC-OC website

a. Country information and contact persons

The PC-OC considered the “Inventory of country specific information available on the PC-OC websites” (PC-OC(2012) 09 rev 17) and noted with satisfaction that almost all Parties had filled in and updated the revised templates for country information on extradition, mutual assistance in criminal matters and, as

regards European Parties, on transfer of sentenced persons. It noted however that country information related to the Convention on laundering, search, seizure and confiscation of proceeds of crime had been provided by only 22 Parties.

Underlining the usefulness for practitioners of this type of country information, the PC-OC decided to:

- reiterate its request to experts who hadn't done so to update or send in their country information as soon as possible.

The Committee also noted that, further to a call for an update of the contact persons figuring on the restricted website (the List of officials involved in the practical application of the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons as well as the Network of single points of contact), only a few updates had been received so far. Underlining the importance of having reliable and updated lists of contact persons, the PC-OC decided to:

- reiterate its call on all experts from Parties to the conventions concerned to regularly check the accuracy of the contact details provided and to send updates when necessary;
- recall the decision taken at its previous meeting that experts may send names of specialists on TOC to be added to the Network of single points of contact.

Regarding the list of bilateral treaties published on the public website the PC-OC decided to:

- align the French title with the one in English and add a note to the cover page indicating that the list mentions treaties that are currently applicable and that, for further information, contact should be made with the authorities concerned.

b. Update of the index and summaries of relevant case law of the ECtHR

The PC-OC took note of the latest update and improvement of the index and summaries of the case law of the ECtHR by the PC-OC Mod as well as the fact that Mr Miroslav Kubicek (Czech Republic) has accepted to ensure the future update, which will be made following the next meeting of the PC-OC Mod on 26-28 September 2017.

The PC-OC decided to invite experts to inform the Secretariat of any further decision by the ECtHR which could be of relevance for the future update of the index and summaries of case law by the PC-OC Mod.

c. Consideration of the possibility of publishing global and regional conventions on international co-operation on the website of the PC-OC

The PC-OC discussed and supported the proposal of the PC-OC Mod to introduce further links to treaties developed by other international organisations, such as ASEAN, OAS or COMJIB, and decided to instruct the Secretariat to introduce these links, as part of the existing structure of the website.

4. Implementation of the Action Plan on Combating Transnational Organised Crime (TOC)

a. Consideration of actions proposed and identification of priority actions for the PC-OC

The PC-OC considered the actions proposed in Doc PC-OC (2016)05 and presented by Mr Oscar Alarcon Jimenez, member of the Secretariat in charge of following the implementation of the Action Plan on TOC, and took into account the findings of the PC-OC Mod.

Mr Alarcon informed the PC-OC that Key area 1 (Enhancing international co-operation through networks), Action A2 of the Action Plan: "Discuss the setting up and use of secure communications for international cooperation" was presently being carried out by a project, involving Mr Per Hedvall (Sweden), to evaluate

the state of play of existing initiatives on this subject by Interpol (e-extradition) and the EU (E-codex). A paper on this subject should be ready in time for consideration by the PC-OC plenary in November.

As regards Action A4, key area 1 of the action plan, the PC-OC considered the Action plan's proposal to increase judicial co-operation and to reduce issues arising with non-co-operative States, by the introduction, in the different treaties concerned, of a binding rule for requested countries to send a confirmation of receipt of requests for co-operation and to establish a duty to consult between the requested and the requesting authorities. The PC-OC agreed, taking into account the replies received to a short questionnaire on this issue, that even in the absence of a confirmation of receipt, co-operation was usually smooth and consultation rarely refused.

In order to improve international co-operation and to reduce the risk of a request being refused, delayed or unanswered, the PC-OC decided to recommend that:

- requesting authorities should make use of the model request forms and guidelines;
- individual judges should consult the central authorities where a request for co-operation remained unanswered;
- the list of contact points on the PC-OC website should be regularly updated and developed, including, where appropriate, with a list of experts in TOC.

As regards Key area 1. Action B3: "Development/elaboration and support of model request forms", the PC-OC considered the possibility proposed by the PC-OC Mod of developing a model request for extradition requests and agreed that this could be envisaged, at a later stage.

As regards the other actions proposed in the document, such as the one in Key area 3 on Witness protection, or Key Area 4 on Administrative synergies and co-operation with the private sector, the PC-OC agreed with the idea that the Committee should be invited to send one or more representatives to the expert groups that will be established to address these issues.

b. Discussion on ways to identify reservations to Council of Europe treaties creating obstacles to the fight against TOC and to promote their update or withdrawal where possible

The PC-OC referred to the catalogue of reservations made to the European Convention on Extradition and the Additional Protocols thereto, the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto, the European Convention on the Transfer of Proceedings in Criminal Matters, the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime as well as the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto [PC-OC Mod (2016)05rev3] as well as the overview of these reservations prepared by the Secretariat [PC-OC Mod (2016)05rev3Add].

Experts agreed with the PC-OC Mod that it would be important to identify those reservations and declarations that create obstacles to efficient co-operation, including as regards the fight against TOC. The PC-OC examined the proposal to create several groups of persons within the PC-OC to identify such reservations or declarations and contact the Parties concerned to see whether any update or withdrawal of these reservations or declarations would be possible. Account was taken of the information by the Treaty office that reservations may not only be withdrawn but also partially withdrawn or modified to this effect.

The PC-OC agreed on the working methods and decided to:

- create three working groups, each devoted to a group of treaties, who would share their work in written consultation under the guidance of a co-ordinator:
 1. Group A dealing with the extradition treaties will be composed by Ms Joana Ferreira (Portugal), Ms Katia Panova (Bulgaria), Ms Barbara Goeth (Austria) and Mr Eugenio Selvaggi (Italy);

2. Group B dealing with the treaties on mutual legal assistance including ETS N°141 , composed by Ms Gabriela Gonzalez Cofré (Chile), Ms Céline Guillet (France), Ms Marianu Radu (Romania) and Ms Antonella Sampo-Couma (Monaco);

3. Group C dealing with the treaties on the transfer of sentenced persons, as well as on the Convention on the Transfer of Proceedings, composed by Mr Aviad Elya (Israel, co-ordinator); Ms Tetiana Shorstka (Ukraine); Ms Malgorzata Skoczelas (Poland) and Ms Paula Wolff (USA).

- ask the Secretariat to provide each of the groups with guidelines and a template to be completed by 1 September;
- ask the PC-OC Mod to consider the results and report to the plenary.

c. Examination of proposals to promote the interconnection of existing judicial networks

The PC-OC discussed the Overview of judicial networks and proposals for their interconnection, prepared by Ms Esther George (consultant, UK) and took note of the important steps already undertaken by the EJM in this field, including by the creation of a platform of networks.

The PC-OC welcomed the proposal to invite the secretariats of the most important judicial networks, but also including police networks, to a meeting in Paris in October this year and decided to:

- follow with interest the outcome of this meeting;
- publish the list of networks on the website of the PC-OC.

d. Discussion with the Secretariat of the COP198 on the implementation of the Action Plan as regards search, seizure and confiscation of proceeds of crime and asset sharing

The PC-OC had an exchange of views with Mr Lado Lalicic, Secretary to the COP 198, as regards the implementation of Key area 5 (Recovery of assets) of the Action Plan on TOC, and in particular the issue of asset sharing, also taking into account the findings of the PC-OC Mod. The experts agreed that the possible development of a model agreement or binding standards in this field would require further study, in close co-operation with the COP 198 and using the expertise of the CARIN network.

The PC-OC decided to:

- ask experts to send examples of legislation, model agreements on asset sharing and practice in this field to the Secretariat by 1 September 2017;
- invite a representative of the CARIN Network to participate in the upcoming meeting of the PC-OC Mod;
- ask the PC-OC Mod to consider the question further and make proposals for follow up to the plenary.

5. European Convention on Mutual Assistance in Criminal Matters

a. Adoption of a questionnaire on the application of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters

The PC-OC adopted the draft questionnaire proposed by the PC-OC Mod with some amendments, as contained in Doc PC-OC Mod(2017)1rev2 and decided to:

- invite the experts to reply to the questionnaire by 22 August 2017;
- ask the PC-OC Mod to consider the replies received and make proposals for follow up.

b. Discussion on MLA for the purpose of proceedings against legal entities

The PC-OC discussed the paper proposed by Mr Eugenio Selvaggi (Italy) [Doc PC-OC (2017)01] on MLA in criminal matters and liability of legal persons and had an exchange of views on the practical experience of experts in this field.

The Committee decided to:

- invite experts to report on their experience with in and outgoing requests for MLA regarding legal entities to the Secretariat by 22 August 2017, so as to prepare a survey;
- ask the PC-OC Mod to consider the survey and inform the plenary of its findings;
- resume discussion on this item, as well as on the related discussion paper by Mr Vladimir Zimin (Russian Federation), at its next plenary meeting.

6. Convention on the Transfer of Sentenced Persons

a. Discussion on possible amendments to the Convention (ETS No. 112) in a Second Additional Protocol

The PC-OC agreed with the findings of the PC-OC Mod that no consensus could be found, neither for a proposal to modify the Convention as regards translation requirements, nor, taking into account the global nature of this instrument, for a shifting of the costs of the transfer from the administering to the sentencing state.

In order to streamline and accelerate transfer procedures and avoid unnecessary translation and costs, the Committee also discussed the proposal to develop guidelines, which could be incorporated into a future recommendation, also taking into account other concerns identified.

The PC-OC, taking into account the existing recommendations, Rec N° (88) 13 and Rec N°(92)18 concerning the practical application of the Convention on the Transfer of Sentenced Persons as well as Rec N° (84)11 concerning information about the Convention on the Transfer of Sentenced Persons, decided to:

- ask the PC-OC Mod to explore possibilities of drafting new guidelines on the transfer of sentenced persons, including an update or consolidation of the existing recommendations, and make proposals to the plenary.

b. Examination of the replies received to the questionnaire concerning the possible establishment of an E-transfer tool and proposals for follow-up

The PC-OC resumed its discussion on the possible establishment of an e-transfer tool, taking into account the replies received to the questionnaire as well as the legal opinion presented by Ms Ana Gomez from the Treaty Office. The PC-OC noted that the large majority of the 27 replies received to the questionnaire were positive to the idea of developing an e-tool so as to speed up transfer procedures and increase their transparency, sharing the view that secure electronic communication will become usual practice in the future. The Committee noted with interest the information by Ms Gabriela Gonzalez (Chile) on the development of an Iberamerican treaty on electronic communications.

The Committee agreed however that further inquiries would be necessary to ensure that countries would be willing to accept e-communication by finding appropriate answers to questions related to security, data protection and costs concerning the e-transfer tool and decided to:

- invite experts that hadn't replied yet to the questionnaire to do so before the next meeting;
- ask the PC-OC Mod to continue discussions on the basis of the replies received;
- invite a representative of Iberred to participate in the meeting of the PC-OC Mod and in the next plenary to share their experience in the field of e-communications.

7. European Convention on Extradition

a. Discussion on Measures of restriction in extradition cases: the use of alternatives to detention

The PC-OC considered the 15 replies received to the question asked by Mr Vladimir Zimin related to the use of alternatives to detention pending extradition as well as the time limits applicable.

The PC-OC decided to invite experts who had not yet replied to do so and to resume the discussion of this question at its next meeting.

b. Other

Ms Eleni Loizidou (Cyprus) raised three questions regarding extradition proceedings: the consequences of the Petruhhin judgment of the EU Court of Justice, the role of Interpol as well as prison conditions.

The PC-OC discussed the consequences of the Petruhhin judgment for extradition procedures and decided to continue discussions on this important issue at the upcoming meetings, and to take up the remaining questions at the next meeting.

8. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS N°141)

a. Presentation by a representative from Kazakhstan on national procedures for the application of the Convention

The PC-OC heard a presentation by and had an exchange of views with representatives of the Department on international co-operation of the General Prosecutor's Office of Kazakhstan on the application of the Convention ETS N°141 as well as on the structure of the judicial system and reforms made to the functioning of the judicial and penitentiary systems. The Committee took note of the information that Kazakhstan wished to become a Party to the Convention on Mutual Assistance in Criminal Matters.

The PC-OC decided to publish the presentation on the website of the PC-OC.

9. Cybercrime: Discussion with a representative from the T-CY on the follow up to the assessment report on MLA and the report on evidence in the cloud

The PC-OC heard a presentation by Ms Marie Agha-Wevelsiep, T-CY Secretariat, on recent developments in the work of the T-CY and in particular the content of and follow-up to the assessment report on MLA. The PC-OC took note that, at its next plenary meeting on 7-9 June 2017, the T-CY would examine terms of reference with a view to drafting an additional Protocol to the Budapest Convention.

The PC-OC underlined that close co-operation between the T-CY and the PC-OC will continue to be necessary in particular on the issue of electronic evidence. If the decision is taken to develop an additional Protocol, the PC-OC decided to express its readiness to co-operate with the working group in charge of preparing this additional Protocol.

10. Election of 1 member of the PC-OC Mod and 1 or 2 substitutes

Further to the resignation of Ms Malgorzata Skoczelas (Poland) the PC-OC decided to elect Ms Gabriela Bláhová (Czech Republic) as member of the PC-OC Mod and to elect Ms Céline Guillet (France) as substitute member.

11. Draft terms of reference 2018-2019

The PC-OC discussed its draft terms of reference for 2018-2019 and decided to endorse the text as reflected in doc PC-OC(2017)05 rev.

Finally, the PC-OC, noting that Ms Kari Meling (Norway) is leaving the Committee, thanked her for her excellent contribution and commitment to the Committee's work.