COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 22 November 2017 PC-OC (2017)10
[PC-OC/Docs 2017/ PC-OC (2017) 10]
http://www.coe.int/tcj

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 73rd meeting of the PC-OC under the Chairmanship of Mr Erik Verbert (Belgium) 20-22 November 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 published online.

2. Points for information

The PC-OC took note of:

- The words of welcome and information provided by Mr Jan Kleijssen, Director, Directorate of Information Society and Action against Crime, on recent developments in the Council of Europe. He mentioned that the functioning of the European Convention on Human Rights is one of the priorities of the Danish Chairmanship of the Committee of Ministers. He furthermore underlined the agreement concluded on 8 November 2017 between the Council of Europe and eight leading technology firms and six associations (including Apple, Facebook, Google, Microsoft) in order to ensure co-operation in areas such as the protection of children , freedom of expression, the right to privacy, education for democratic citizenship, countering cybercrime and terrorism. Mr Kleijssen also mentioned the budgetary difficulties faced by the Council of Europe which was likely to lead to a reduction in activities. Attention was also drawn to the draft Recommendation of the Committee of Ministers concerning children with imprisoned parents, which will be examined by the CDPC next week. One of its provisions states that it is in the best interests of the child to stay in contact with

the imprisoned parent and this should be taken into account when deciding on a transfer. When discussing a future recommendation on the application of the Convention on the Transfer of Sentenced Persons, the PC-OC might also consider this aspect. Finally, Mr Kleijssen welcomed the planned discussion on the e-transfer tool, which would become ever more essential in the future.

- The information provided by Mr Carlo Chiaromonte, Secretary to the CDPC and to the CODEXTER, on:

- a draft recommendation concerning restorative justice in criminal matters which will be examined by the CDPC;
- the creation of a drafting group so as to update Recommendation Rec (2005) 9 of the Committee of Ministers on the protection of witnesses and collaborators of justice;
- the organisation in 2018 or 2019 of a high-level conference on prison overcrowding;
- the creation of a common working group of the CDPC and CODEXTER to implement the conclusions of the Malaga Conference on Terrorism and Organised Crime which took place in Malaga on 21 and 22 September 2017. The working group would address in particular the promotion of Joint Investigation Teams (JITs);
- the creation of two expert groups on the smuggling of migrants, further to the conference held in June. One group would address prevention and the other international co-operation on this issue.

- The information provided by Ms Gabriela Bláhová (Czech Republic) who participated, on behalf of the PC-OC, in the 6th meeting of the Working Group of the Pompidou Group, held in The Hague. The Group is preparing an electronic handbook on controlled delivery and a network of contact points in each member State. The Group expects to finalise the electronic handbook next year.

- The information by Mr Alexandru Frunza (T-CY Secretariat) on the activities of the Cybercrime Committee and in particular the drafting of a second Additional Protocol with the aim to give quicker access to electronic evidence while ensuring adequate protection of personal data.

- The information provided on the negotiation and conclusion of bilateral treaties of relevance to the work of the PC-OC.

- The information by Mr Merlin Feratovic (the Netherlands) on the outcome of the Conference held on 16-19 October in Doorn (the Netherlands) regarding the proposal to create a new multilateral treaty for MLA, extradition and domestic prosecution of the most serious international crimes (genocide, crimes against humanity, and war crimes). The meeting gathered 103 participants from more than 40 Co-Sponsoring States. Participants from the sponsoring states, as well as renowned experts voiced their support for this initiative. The core group of sponsoring countries (Argentina, Belgium, Mongolia, the Netherlands, Senegal and Slovenia) started working on a preliminary draft text. Further documentation on the initiative, such as the list of Co-Sponsoring States or the conclusions of the conference can be requested at the following e-mail address: MLA-initiative@minvenj.nl.

- The information provided by the Secretariat on:

- the latest signatures and ratifications of the different treaties within the remit of the PC-OC;
- the publication on the PC-OC website of the HELP course on international co-operation in criminal matters, with a special emphasis on human rights.

3. Presentation and content of the PC-OC website

Mr Zimin (the Russian Federation) made some proposals to improve the website. The PC-OC agreed with these proposals and decided to ask the Secretariat to take these into account.

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 18) noting that country information related to the Convention on laundering, search, seizure and confiscation of proceeds of crime (ETS no. 141) was still lacking for almost half of the 49 Parties.

The PC-OC decided to:

- invite experts who had not yet done so to send in their country information on national procedures related to the implementation of ETS No.141 as soon as possible;
- also reiterate its call to all experts from Parties to the Conventions on extradition, mutual assistance and transfer of sentenced persons to regularly check the accuracy of the contact persons appearing on the restricted website of the PC-OC and to inform the Secretariat of any changes.

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

The PC-OC was pleased to note the publication of the latest update of the index and summaries of the case law of the ECtHR by the PC-OC Mod, following proposals by Mr Miroslav Kubicek (consultant, Czech Republic).

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.

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

The PC-OC had an exchange of views with Mr Branislav Bohacik, Chair of the Conference of Parties to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198, COP 198), on issues of common concern related to the implementation of the Action Plan on TOC.

Mr Bohacik informed the Committee of the activities of the COP 198, including the review of reservations, the monitoring of elements in the Convention that are not monitored by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), such as asset sharing and the recent initiative to develop interpretative notes on the application of certain articles of the Convention, including Article 25 on asset recovery for the benefit of victims. Mr Bohacik also mentioned the development of country reports and templates on Financial Intelligence Units.

The PC-OC agreed that further co-operation with the COP 198 and the Moneyval Secretariat would be essential for the implementation of the Action Plan and decided to ask the Secretariat to ensure the sharing of all relevant documents between both committees.

a. Presentation of the work of the PC-OC working groups to identify declarations or reservations to Council of Europe treaties within the remit of the PC-OC that are out-dated or create obstacles for co-operation in the fight against TOC. Consideration of the draft letter to PC-OC experts to invite their authorities to consider updating or withdrawing such declarations or reservations.

The Committee discussed the working methods to adopt and approved the approach proposed by the PC-OC Mod to address this issue as a peer review. They also considered and approved the draft letter as contained in Doc PC-OC(2017)08 rev to be sent to PC-OC experts to invite their authorities to consider updating or withdrawing declarations or reservations that are outdated or create obstacles for co-operation, in particular in the fight against TOC. They agreed that the experts receiving the letter should undertake the necessary internal steps to consult with the different authorities concerned and report back to the plenary on the outcome of the review exercise.

The PC-OC held an exchange of views with the co-ordinators of the working groups on the progress made in their task and the difficulties encountered. The PC-OC agreed that the working groups should strive to reach consensus on the list of reservations or declarations to submit to the particular attention of each State.

The PC-OC decided to:

- ask the co-ordinators to submit the lists of reservations/declarations in respect of each state to the Secretariat by 1 February 2018;
- ask the PC-OC Mod to follow the progress and implementation of the working method adopted and report to the plenary.

b. Consideration of the proposal to prepare a binding instrument as regards international co-operation on the management, the recovery and sharing of assets

The PC-OC considered, in consultation with the Chair and Secretariat of the COP 198, the proposal by the PC-OC Mod to develop a binding instrument on international co-operation as regards the management, the recovery and sharing of assets, taking into account the discussion paper by Mr Vladimir Zimin (the Russian Federation) on possible subjects to be covered (Doc PC-OC(2017)09), as well as the 19 contributions received to the survey on legislation, model agreement and practice in asset sharing(Doc PC-OC Mod(2017)08rev).

This survey and previous inquiries conducted by the COP 198 revealed that States had little experience in asset sharing. Management of seized properties had been discussed in Moneyval and FATF reports.

The PC-OC decided to:

- invite experts who had not yet done so to send their contributions to the survey to the Secretariat by 15 January 2018;
- share the discussion paper by Mr Vladimir Zimin and other related PC-OC documents with the COP 198;
- ask the PC-OC Mod to discuss this proposal further, taking into account further relevant information documents to be obtained from the Secretariat of Moneyval and the COP 198.

c. Preparation of a meeting to promote the interconnection of existing judicial networks

The Secretariat informed the PC-OC that the meeting involving the secretariats of the most important judicial and police networks had been postponed due to budgetary restrictions. The preparatory letter approved by the PC-OC Mod, which includes a short questionnaire, would be sent out as soon as the date is known.

5. European Convention on Mutual Assistance in Criminal Matters

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

The PC-OC considered the 27 replies received (Doc PC-OC Mod (2017)04rev), the summary and overview of replies (Doc PC-OC Mod (2017)04ADD rev) as well as the findings and proposals by the PC-OC Mod.

The Committee agreed with the PC-OC Mod that this Protocol, by broadening the range of situations in which mutual assistance may be requested and by making the provision of assistance easier, quicker and more flexible, is of particular relevance to the efficient co-operation in the fight against transnational organised crime between EU States and non-EU member States. It welcomed therefore that Austria had recently ratified and that Azerbaijan, Greece, Monaco and Korea are considering doing so.

The PC-OC considered that further replies would be necessary to assess the implementation of the Protocol and decided to:

- invite experts who had not yet replied to do so by 22 January 2018;
- ask the PC-OC Mod to consider the replies received and propose actions for follow up.

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

The PC-OC resumed its discussion on the questions raised in the discussion papers by Mr Vladimir Zimin (the Russian Federation, Doc PC-OC Mod (2014)08) and Mr Eugenio Selvaggi (Italy, Doc PC-OC (2017)01) on whether the existing Council of Europe instruments on MLA provide a sufficient basis for the satisfactory execution of MLA requests for the purpose of proceedings against legal entities, taking into account the 15 contributions received to the survey on national experiences in this regard (Doc PC-OC Mod 2017)05 rev).

The Committee noted that the contributions received did not reveal any particular problem related to requests for MLA related to legal persons, but some experts felt that this might be related to limited experience in this field. The PC-OC agreed that it might be interesting to address this issue from the perspective of the requesting State.

The Committee decided to:

- invite experts who had not yet done so to send their contributions to the survey by 15 January;
- ask the PC-OC Mod to assess the contributions received and to discuss this issue further also from the perspective of the requesting State.

6. Convention on the Transfer of Sentenced Persons

a. Discussion on possibilities to draft new guidelines on the transfer of sentenced persons, including an update of existing recommendations and proposals for follow up

Further to the decision taken not to update the Convention on the Transfer of Sentenced Persons, due to a lack of consensus, the PC-OC considered the content of Recommendations R 88 (13) and R (92) 18 by the Committee of Ministers on the practical application of the Convention on the Transfer of Sentenced Persons as well as Recommendation R(84) 11 concerning information about this Convention.

The Committee also considered the two options proposed by the PC-OC Mod: either to draft a new recommendation to update and complement the existing ones, or to draft a comprehensive recommendation to replace them. Experts expressed no preference for either of the options but agreed that an update would be necessary. The Committee considered the table of proposals for the update contained in Doc PC-OC(2014)10 and felt that further input would be needed.

The PC-OC decided to:

- invite experts to provide further proposals as to issues to be addressed in the new recommendation to the Secretariat by 15 January 2018;
- ask the Secretariat to update the table contained in Doc PC-OC(2014)10 on the basis of proposals received;
- ask the PC-OC Mod to discuss this issue further and make a proposal 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 [PC-OC Mod (2017) 02rev3], the legal opinion from the

Treaty Office [Doc PC-OC(2017)03] and the information received by Iberred on the preparation of a treaty on electronic transmission of international co-operation requests between central authorities. The treaty is almost finalised and will lead to the creation of a new secure platform (Iber@) allowing for the recognition of the validity of requests via electronic transmission between central authorities. It will apply to all treaties involving central authorities and will be open to accession by third states.

The PC-OC noted that the large majority of the 28 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 PC-OC also agreed that it would be a major asset if prisoners or their representatives could have access to the tool. Some experts expressed doubts about the possibility of the Council of Europe hosting such a tool and indicated that INTERPOL might be a possible host. It was recalled that Mr Per Hedvall (Sweden) would attend a first meeting next week on the e-MLA project by INTERPOL on behalf of the Council of Europe.

The Committee decided to ask the PC-OC Mod to continue discussions on this issue.

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 26 replies received to the question asked by Mr Vladimir Zimin (the Russian Federation) related to the use of alternatives to detention pending extradition as well as the time limits applicable.

The Committee agreed with the findings of the PC-OC Mod that detention for the purpose of extradition is the principle, yet, given the increasing length of extradition proceedings, the use of alternatives to detention is becoming more important and that a combination of measures of restriction is probably the most efficient way to avoid escape. Experts also agreed that, pending the decision on extradition but also once the decision to extradite has been taken, national legislation should allow for the application of adequate measures to avoid escape of the person sought and to ensure his/her surrender. The Committee agreed that at all stages of the extradition proceedings until surrender requested Parties should promptly inform the requesting Party about any change from detention to other restrictive measures of a person whose extradition is requested. The development of guidelines on this issue should be considered.

The PC-OC decided to:

- publish the replies on the website as a useful tool;
- ask the PC-OC Mod to discuss the possibility of developing guidelines on the provision of timely information to the Parties requesting extradition on the detention or measures of restriction imposed on the person sought;
- address this issue again should the drafting of a fifth additional protocol to the Convention be discussed.

b. Possible consequences of the Petruhhin and related judgments of the CJEU

The PC-OC further discussed the consequences of the Petruhhin judgment by the CJEU and the related Schotthöfer order for the execution of extradition requests, taking into account the conclusions of the EJN plenary meeting organised in Malta (June 2017). This judgment requires EU member States receiving an extradition request from a third State in respect of an EU citizen from another EU member State to inform the authorities of the latter State so as to enable it to issue a European Arrest Warrant (EAW). The PC-OC discussed in particular whether this requirement would also apply to simplified extradition procedures where the person concerned consents to his/her extradition or when the extradition request concerns EU citizens from countries that allow extradition of their nationals. Experts from non-EU countries also

mentioned that the Petruhhin requirement might entail the application of the reciprocity principle. In such a case the application of the European Convention on Extradition would be weakened.

In the absence of a conclusion, the PC-OC decided to continue following future developments and decisions by the CJEU in this area.

c. The role of INTERPOL in extradition cases: Exchange of views with representatives from INTERPOL

The PC-OC heard a presentation by Mr Günter Schirmer, Head of the Department of Legal Affairs and Human Rights, Secretariat of the Parliamentary Assembly of the Council of Europe on the recently adopted Resolution and Report by the Parliamentary Assembly on Abusive recourse to the INTERPOL system: the need for more stringent safeguards. The Committee also had an exchange of views with Mr Yaron Gottlieb, Assistant-Director and Ms Maud Olinet, Counsel, Office of Legal Affairs ICPO-INTERPOL on the functioning of INTERPOL's notices and diffusions system.

The Committee was informed about the recent reforms and additional safeguards introduced in the INTERPOL system to protect individuals against requests for red notices or diffusions introduced for political reasons. These reforms include in particular the strengthening of the Commission for the Control of INTERPOL files (CCF) as well as efforts by the Secretariat General to review compliance of requests with INTERPOL's Constitution and Rules. These reforms aim to reinforce the integrity of INTERPOL's notices system, in line with its Rules, and to ensure long-term effectiveness. INTERPOL asks for support and assistance from State authorities, in particular by providing INTERPOL with all relevant information on persons subject to red notices and diffusions, in particular, when they have obtained refugee status or where extradition has been refused, for example for human rights reasons.

The questions raised concerned, amongst others, the criteria for deleting red notices as well as the confidentiality of information provided to the CCF on suspects so as to ensure that prosecution will not be jeopardised.

The PC-OC, noting the important role of INTERPOL in extradition cases decided to:

- continue dialogue with INTERPOL to ensure the best possible co-operation and exchange of information;
- ask the Secretariat, in consultation with INTERPOL, to collect further information on the functioning of the notices, the diffusions system and the criteria used to review compliance of requests;
- invite INTERPOL to the next meeting of the PC-OC Mod for further discussion.

d. The impact of prison conditions on extradition. Information by the Secretariat on actions undertaken to improve prison conditions and reduce overcrowding

Further to previous discussions on the important impact of prison conditions on extradition and referring to the CDPC Working Group on prison overcrowding, the PC-OC took note of the presentation by Ms Tanja Rakusic-Hadzic, Head of the Criminal Law Co-operation Unit, on the different projects implemented by the Council of Europe to improve prison conditions in member States by capacity development including legislation, training and exchange of good practices.

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

e. Discussion on the proposal to celebrate the 60th anniversary of the Convention with a special session

The PC-OC agreed with the proposal by the PC-OC Mod to organise, at its next plenary meeting, a special session to celebrate the 60th anniversary of the European Convention on Extradition and to invite a Judge from the European Court of Human Rights for an exchange of views on the development of case

law in this field. The Committee agreed that the special session should cover one full day and address substantial as well as procedural questions.

The PC-OC decided to:

- invite experts to inform the Secretariat, by 15 January 2018, of their proposals for subjects to be covered, ideally with one proposal on a substantial issue and another on a procedural question;
- ask the PC-OC Mod to prepare the programme of the special session on the basis of the proposals received.

8. Elections

a. Election of the Chair and Vice-Chair

The PC-OC decided to re-elect Mr Erik Verbert (Belgium) as its Chair for a second term and Ms Laurence Fontana (Switzerland) as its Vice-Chair. The Committee wished to thank Ms Joana Ferreira (Portugal) for her excellent work as a Chair and Vice-Chair to the Committee.

b. Election of a rapporteur in respect of the Convention on Laundering, Search and Confiscation of Proceeds of Crime (ETS No. 141)

The PC-OC decided to elect Ms Mariana Radu (Romania) as its rapporteur in respect of the Convention on Laundering, Search and Confiscation of Proceeds of Crime.

9. Dates of meetings in 2018

The PC-OC decided to hold its plenary meetings on 19-21 June and on 14-16 November and the meetings of the PC-OC Mod on 20-22 February and 25-27 September 2018.