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PC-OC (2018)04

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 74th meeting of the PC-OC
under the Chairmanship of Mr Erik Verbert (Belgium)
19-21 June 2018**

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.

The Committee expressed its profound sadness at the loss of its member and former Chair, Mr Eugenio Selvaggi (Italy), and paid tribute to him and his outstanding contribution to the Committee's work since 1994. The PC-OC welcomed the decision taken by the Secretary General to award Mr Selvaggi posthumously with the Pro Merito Medal of the Council of Europe.

2. Points for information

The PC-OC took note of:

- the words of welcome and information provided by Mr Carlo Chiaromonte, Head of Division and Secretary to the CDPC and to the CDCT. Mr Chiaromonte mentioned the preparation by the Secretary General of concrete proposals to reform the Council of Europe, referring to the financial difficulties faced, and invited the PC-OC to reflect about possibilities to improve the efficiency of its working methods. The proposals would be discussed by the Committee of Ministers in May 2019.
- the information provided by Mr Chiaromonte on the activities of the CDPC, and in particular:

- the approval of the draft Recommendation on restorative justice prepared by the PC-CP which will be submitted to the Committee of Ministers for adoption;
 - the mandate given to the PC-CP to update the European Prison Rules;
 - the organisation, foreseen for the first half of 2019, of a high-level conference on prison overcrowding to which the PC-OC will be associated;
 - the first meeting of the CDPC working groups on smuggling of migrants which will take place on 21-23 June. One group will address preventive measures and a second one practical measures to improve international co-operation;
 - the implementation of the Action Plan against Transnational Organised Crime including the planned organisation of a conference on Joint Investigation Teams.
- the information by Mr Kristian Bartholin, co-Secretary to the CDCT. The CDCT, which replaces the CODEXTER, had its first meeting on 16-18 May 2018. Particular mention was made of the Council of Europe Counter-Terrorism Strategy (2018-2022) to be adopted by the Committee of Ministers in July 2018 as well as on the efforts undertaken to agree on a definition of terrorism;
 - its terms of reference for 2018-2019;
 - the information provided by Ms Gabriela Bláhová (Czech Republic) who has participated, on behalf of the PC-OC, in the meetings of the Working group of the Pompidou Group since 2015. The group finalised an electronic handbook on controlled delivery on 6 June. This online handbook, designed for law enforcement and the judiciary across borders, will help make “controlled deliveries” of illicit drugs more efficient. The handbook is restricted and will be available to a network of contact points in each Member State.
 - the information given by Mr Alexander Seger, Head of the Cybercrime Division, on the activities of the Cybercrime Committee (T-CY) and in particular the drafting of a second Additional Protocol to the Budapest Convention with the aim to have quicker access to electronic evidence while ensuring adequate protection of personal data. The next meeting of the T-CY combined with the Drafting Plenary of the Second Additional Protocol will take place from 9-11 July 2018. The main elements under discussion are emergency MLA, language and the use of video-conferences. Ms Gabriela Bláhová will continue to represent the PC-OC at the meetings of the T-CY.
 - information on the exchange of views with representatives from INTERPOL in the PC-OC Mod, further to the PC-OC’s previous discussion on the Resolution and Report by the Parliamentary Assembly on Abusive recourse to the INTERPOL system, and further information by Ms Maud Olinet, Counsel, Office of Legal Affairs ICPO-INTERPOL.
 - Resolution 2218 (2018) and the report adopted by the Parliamentary Assembly of the Council of Europe on fighting organised crime by facilitating the confiscation of illegal assets;
 - the information provided on the negotiation and conclusion of bilateral treaties of relevance to the work of the PC-OC;
 - the information provided by the Secretariat on the latest signatures and ratifications of the different treaties within the remit of the PC-OC;

3. Presentation and content of the PC-OC website

The PC-OC took note of the information that the Secretariat is modernising the presentation of the restricted website including the lists of contact persons as well as the forum. The new restricted website will be available before the autumn. The PC-OC also agreed on some improvements to be made to its public website, including, for example, a list of previous Chairs and secretaries of the Committee.

a. Country information and contact persons

The PC-OC noted that only 26 out of the 49 Parties to the Convention on laundering, search, seizure and confiscation of proceeds of crime (ETS no. 141) had provided country information on national procedures related to the implementation of this Convention.

The PC-OC decided to:

- reiterate its invitation to experts who have not already done so to send in their country information on national procedures related to the implementation of ETS No.141 as soon as possible.

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

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

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)

a. Examination of the outcome of the work of the PC-OC working groups to limit reservations to Council of Europe treaties within the remit of the PC-OC

The Committee took note of the work accomplished by groups A and C in identifying declarations or reservations to Council of Europe treaties related to extradition, transfer of sentenced persons and transfer of proceedings in criminal matters that are out-dated or create obstacles for co-operation in the fight against TOC and of the difficulties encountered by working group B to finalise its work as regards mutual assistance in criminal matters.

The PC-OC decided to:

- thank Ms Yael Bitton (Israel) and Ms Armenuhi Harutyunyan (Armenia) for their willingness to assist working group B in finalising its work by the end of July;
- to prepare, for the next plenary, letters to be signed by the Chair (as in Doc PC-OC(2017)08-rev) and addressed to PC-OC experts, inviting their authorities to consider updating or withdrawing declarations or reservations that are out-dated or create obstacles for co-operation, attaching the reservations/declarations identified by the working groups.

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

The PC-OC further addressed the proposal to develop a binding instrument on international co-operation as regards the management, the recovery and sharing of assets. The Committee took note of the information provided by Mr Lado Lalicic, Secretariat of the COP 198, about the decision by this Committee to proceed with a horizontal evaluation of the implementation of Article 25 of the Warsaw Convention, which addresses asset sharing in its paragraph 3, and that a questionnaire had been sent out to this effect. The outcome of the questionnaire would be evaluated during the plenary meeting of the COP 198 in October 2018.

The PC-OC, also considering the outcome of its survey on national legislation, model agreements and practice related to asset sharing [PC-OC-Mod(2017)08-rev2], agreed with the findings of the PC-OC Mod and decided to:

- resume discussion on this agenda item once the COP 198 has finalised its assessment of the implementation of Article 25 of the Warsaw Convention and invite the COP 198 to present its conclusions to the plenary;
- take into account Resolution 2218 (2018) and the report adopted by the Parliamentary Assembly of the Council of Europe on fighting organised crime by facilitating the confiscation of illegal assets;
- ask the Secretariat to publish relevant material, such as the 2013 FATF methodology, including a glossary, on the PC-OC website and explore the possibility of posting relevant information available on the restricted website of the COP 198 on the restricted website of the PC-OC.

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 and proposals for follow up

The PC-OC considered the 34 replies received (Doc PC-OC Mod(2017)04rev2), the summary and overview of replies (Doc PC-OC Mod (2017)04 rev2ADD) and the findings and proposals by the PC-OC Mod .

The Committee agreed with the findings of the PC-OC Mod and welcomed the update of the inquiry conducted in 2012 on legal and technical aspects of the use of video conferences in mutual legal assistance in criminal matters.

The PC-OC decided to:

- ask the Secretariat to update the compilation of replies and the summary with the additional replies received;
- inform the CDPC of these findings;
- ask the PC-OC Mod to consider the replies received to the inquiry on the use of videoconferences and report to the plenary.

b. Consideration of the survey 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 (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.

The Committee took into account the sixteen contributions received to the survey on national experiences in this regard [Doc PC-OC Mod 2017)05 rev2], the findings of the PC-OC Mod in this regard and the work undertaken by the CDPC on model provisions concerning administrative sanctions, including by the development of a questionnaire.

The PC-OC decided to agree with the proposal made by the PC-OC Mod to resume discussion on this item once the CDPC had finalised its work on administrative sanctions.

c. Other

The PC-OC also heard a question raised by Ms Céline Tripiana (France) concerning the application by Parties of Articles 13 and 22 of the Convention on Mutual Assistance in Criminal Matters concerning exchange of information from judicial records.

The PC-OC agreed that this was a relevant question and decided to discuss this at its next plenary session.

6. European Convention on Extradition

a. Special Session

On 20 June, the PC-OC held a special session to celebrate the 60th anniversary of the Convention and devoted to the memory of Mr Eugenio Selvaggi.

During a ceremony, the Deputy Secretary General, Ms Gabriela Battaini-Dragoni, presented the Council of Europe Pro Merito Medal, posthumously awarded to Mr Eugenio Selvaggi, to his son, Nicola Selvaggi.

The session, opened by Mr Jörg Polakiewicz, Director of the Directorate of Legal Advice and Public International Law, and introduced by a speech by Mr Vincent Glerum, Counsellor at the Tribunal of Amsterdam, focussed on the development of the case law of the European Court of Human Rights of relevance to extradition proceedings and the use of diplomatic assurances.

The PC-OC decided to:

- publish the interventions and the conclusions by the rapporteurs on the discussions held on the PC-OC website;
- ask the PC-OC Mod to make proposals for follow-up.

b. Examination of draft guidelines on timely information to Parties requesting extradition on the detention or measures of restriction imposed on the person sought

The PC-OC considered the draft guidelines contained in Doc PC-OC(2018)03 and decided to:

- ask the PC-OC Mod to finalise the draft, on the basis of the discussions held, for further consideration, at the next plenary.

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

The PC-OC exchanged information on the application of the Petruhhin judgment by the CJEU. The Committee took note with interest of the information by Ms Joana Ferreira (Portugal) and Mr Juhani Korhonen (Finland).

7. Convention on the Transfer of Sentenced Persons

a. Examination of a preliminary draft recommendation on the transfer of sentenced persons

The PC-OC considered in depth part of the elements proposed in Doc PC-OC(2018)02 for the drafting of a single and comprehensive recommendation to replace and complete the existing recommendations by the Committee of Ministers (Recommendation R 88 (13) and R (92) 18 on the practical application of the Convention on the Transfer of Sentenced Persons and Recommendation R(84) 11 concerning information about this Convention). Due to the lack of time available to consider all elements proposed, the PC-OC decided to:

- invite experts to send their comments to the Secretariat by the end of July at the latest;
- ask the Secretariat, in consultation with Ms Barbara Goeth-Flemmich (Austria) and Ms Tetiana Shorstka (Ukraine), to prepare a draft recommendation based on the discussions held and the comments received;
- ask the PC-OC Mod to consider the draft and make a proposal to the plenary.

b. Discussion on the possible establishment of an E-transfer tool, taking into account projects by INTERPOL and IberRed related to electronic transmission of requests and proposals for follow-up

The PC-OC resumed its discussion on the possible establishment of an e-transfer tool, taking into account the major benefits that could be provided by such tool for sentenced persons as well as doubts as to how such a tool could be developed and hosted by the Council of Europe.

It heard with interest the information provided by Ms Charlotte Anne, INTERPOL, about the EU funded e-MLA project, developed by a working group, which will finalise its proposals by the end of 2018. It is hoped that funding enabling the technical development of the e-MLA tool as well as of INTERPOL's e-extradition tool will be made available.

It furthermore took note of the information provided by IberRed concerning the opening for signature in November of a Treaty on electronic transmission of international co-operation requests between central authorities, at the Ibero-American Summit of Heads of State and Government in Guatemala

The PC-OC decided to follow closely the development of the e-MLA project by INTERPOL and to invite a representative from IberRed to present the above Treaty at an upcoming meeting.

8. Elections

a. Election of a member of the PC-OC Mod and one or two substitutes

The PC-OC decided to elect Ms Amanda Shiels (UK) as member of the PC-OC Mod, Ms Joana Ferreira (Portugal) as first substitute member and Ms Liv Christina Egseth (Norway) as second substitute member.

b. Election of a rapporteur in respect of the Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

The PC-OC decided to elect Ms Gabriela Bláhová as its rapporteur in respect of the Convention on Mutual Assistance in Criminal Matters