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PC-OC (2018)11

**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 75th meeting of the PC-OC  
under the Chairmanship of Mr Erik Verbert (Belgium)  
14-16 November 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.

**2. Points for information**

The PC-OC took note of:

- The information provided by the Secretariat on the organisation in Strasbourg, on 24 and 25 April 2019, of a high-level conference on prison overcrowding, to which the PC-OC will be associated, and on the work of the Committee on Counter-Terrorism (CDCT) and in particular on the definition of the notion of terrorism for the purpose of the Council of Europe Conventions;
- The information provided by Ms Gabriela Bláhová (Czech Republic) who participated, on behalf of the PC-OC, in the meetings of the Cybercrime Committee (T-CY) and in the Drafting Plenaries 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 plenary meeting of the T-CY, combined with the third meeting of the Drafting Plenary of the Second Additional Protocol, will take place on 27-29 November 2018. The PC-OC will be consulted on the provisions

related to mutual legal assistance (MLA) as soon as the drafts are available at the end of November 2018. These concern draft provisions on the use of languages, emergency MLA and the use of videoconferences;

- Information on projects to enable electronic transmission of requests for international co-operation. Note was taken in particular of the update provided by Ms Charlotte Anne, representative of INTERPOL, on the progress made in respect of the INTERPOL E-MLA project, supported by the European Commission, as well as on the E-extradition tool. The Committee also noted the information provided on the Treaty of the Conference of Ministers of Justice of Iberoamerican States (COMJIB), on the Electronic Transmission of International Legal Cooperation Requests between Central Authorities which is expected to be opened for signature in 2019;
- The participation of Mr Erik Verbert, Chair of the PC-OC, in a hearing on 'Extradition requests and the abuse of process' to take place on 13 December 2018 in Paris, at the invitation of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly;
- 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 welcomed the modernisation of its collaborative space, the restricted website of the PC-OC, which improves the overview of contact persons per country and subject. The Committee also noted the new platform of the forum which facilitates the possibility to upload documents and to be notified when a new item is posted.

The PC-OC decided to encourage experts to make active use of the collaborative space, including the forum.

#### **Country information and contact persons**

The PC-OC noted that country information on national procedures related to the implementation of the Convention on laundering, search, seizure and confiscation of proceeds of crime (ETS no. 141) was still lacking for an important number of Parties.

The PC-OC decided to:

- reiterate its invitation to experts who hadn't done so, to send in their country information on national procedures related to the implementation of ETS No.141 as soon as possible;
- continue inviting experts to update or provide country information on the national procedures in respect of extradition, MLA and transfer of sentenced persons as well as information on contact persons and bilateral treaties of relevance to the Committee.

#### **a. Update of the index and summaries of relevant case law of the ECtHR**

The PC-OC took note of the latest proposals to update the index and summaries of the case law of the ECtHR by Mr Miroslav Kubicek (consultant, Czech Republic) as contained in Doc PC-OC Mod(2018)05.

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. Convention on the Transfer of Sentenced Persons**

##### **a. Consideration of a draft recommendation on the Transfer of Sentenced Persons**

The PC-OC considered the draft recommendation, contained in Doc PC-OC (2018) 7, as proposed by the PC-OC Mod, taking into account the draft elements for an updated Recommendation on the Transfer of Sentenced Persons (Doc PC-OC (2018)3rev).

The experts discussed and proposed some amendments to the text and decided to:

- adopt the text of the draft recommendation and the guidelines contained in Appendix 1 as amended on a provisional basis;
- invite experts to send their comments on the standard texts contained in Appendices 2 and 3 to the Secretariat by 11 February 2019 at the latest;
- ask the PC-OC Mod to finalise the text of Appendices 2 and 3 on the basis of the comments received;
- also ask the PC-OC Mod to prepare a commentary to the draft recommendation based on the discussions held, using their shared office space;
- resume discussion of the draft recommendation and consider the draft commentary proposed by the PC-OC Mod at its next plenary meeting.

##### **b. Other**

The PC-OC also discussed a question, raised by Ms Céline Tripiana (France), concerning the possible application of the Convention to sentenced persons who were not yet executing their prison sentence. Experts noted that the definition of the word “sentence” in the Explanatory report to the Convention reflects the idea that some Parties accept a wide interpretation of the scope of the Convention, referring to its title, by allowing its application to sentenced persons who are not yet in custody.

#### **5. Implementation of the Action Plan on Combating Transnational Organised Crime (TOC)**

##### **a. Presentation 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 and discussion on follow up**

The Committee took note of the findings of the working groups as reflected in Doc PC-OC(2018)10rev and heard the presentations by Ms Joana Ferreira (Portugal, Group A) , Ms Mariana Radu (Romania Group B) and Mr Aviad Eliya (Israel, Group C) on the working methods used to identify declarations or reservations to Council of Europe treaties related to extradition, mutual assistance in criminal matters, seizure and confiscation of proceeds of crime, 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.

The PC-OC furthermore had a discussion on the best way to ensure follow up to the letters that had been sent out to the PC-OC experts, recalling the decision taken at their 73<sup>rd</sup> meeting “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 decided to:

- invite experts to inform the plenary of the follow up given to the letters at its next meeting;

- ask the Secretariat to prepare a report on the action undertaken and the results obtained in order to update or limit declarations and reservations in the context of the Action Plan on combating TOC to be adopted by the PC-OC in its last meeting in 2020 for submission to the CDPC.

**b. Proposal to prepare a binding instrument as regards international co-operation on the management, the recovery and sharing of assets and discussion on follow up**

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, and Ms Claudia Elion, Secretariat of the COP 198, about the outcome of the horizontal evaluation of the implementation of Article 25 of the Warsaw Convention, which addresses the issue of returning confiscated goods to the requesting Party for the purpose of compensating victims or returning property to the legitimate owners in its paragraph 2 and asset sharing in its paragraph 3. The report would be made available to the PC-OC before the end of November.

The Committee also considered the possibility of organising, in the future, a second special session devoted to international co-operation for the purpose of seizure and confiscation.

The PC-OC decided to:

- ask the Secretariat to appoint a consultant to undertake a study on the added value and feasibility of the proposal, taking into account all relevant legal instruments of, inter alia, the Council of Europe, the United Nations, the European Union, as well as 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 and other relevant discussion papers, studies and assessments made, including by the COP 198 and the PC-OC;
- resume discussions on the proposal on the basis of the study.

**6. European Convention on Extradition**

**a. Follow up to the special session on extradition**

The PC-OC considered the outcome of the special session on extradition held at its previous meeting and reflected in Doc PC-OC(2018)05. The Committee shared the opinion of the PC-OC Mod that such thematic sessions are very useful in highlighting and discussing important issues of common concern in daily practice and that they help in finding solutions to problems encountered and are a useful source of inspiration for future standard-setting activities.

As a follow up, the Committee discussed the need to update the publication from 2007 on "*Extradition European Standards*" and recalled its decision to prepare a model request form on extradition.

The PC-OC also agreed with the PC-OC Mod that a special session should be organised in November 2019 devoted to the Convention on Mutual Assistance in Criminal Matters which will be celebrating its 60<sup>th</sup> anniversary.

The Committee decided to:

- thank Mr Verbert for his proposal to prepare an update of the publication "Extradition European Standards" as well as a draft model request;
- ask the PC-OC Mod to consider these texts;
- also ask the PC-OC Mod to consider themes to be discussed at the special session on the Convention on Mutual Assistance in Criminal Matters and make proposals for the organisation of this event.

**b. 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 proposed by the PC-OC Mod, agreed on some amendments and decided to adopt and publish them under the title “*PC-OC Guidelines on the provision of information regarding detention or other measures of restriction imposed in extradition proceedings*” [Doc PC-OC(2018)02 rev3].

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

The PC-OC further discussed the consequences of the Petruhhin judgment, taking into account the discussion paper by Mr Verbert regarding an upcoming judgment of the CJEU concerning a request for extradition of a EU citizen, Mr Raugevicius, by a non EU member State for the purpose of the execution of a sentence, and considering the judgment itself which was rendered on 13 November 2018.

Experts agreed that the judgment on the Raugevicius case (Case C-247/17) was limited to cases where the EU citizen had permanent residence in the EU member State. The Committee underlined that impunity needed to be avoided and agreed that the rulings by the CJEU still left several unanswered questions as regards the legal obligations of EU member States receiving an extradition request concerning a national of another EU member state from a non-EU member State for the purpose of the execution of a sentence as well as for prosecution.

The PC-OC decided to follow closely further developments on this important issue.

**7. European Convention on Mutual Assistance in Criminal Matters**

**a. Discussion on the application of Articles 13 and 22 of the Convention concerning exchange of information from judicial records**

Further to the question raised by Ms Céline Tripiana (France), at its previous meeting, 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 considered a discussion paper on this issue [Doc PC-OC (2018)08] and had an exchange of views with Mr Yann Taraud, Head of the Office of specialised records and international exchanges of the French National Judicial Records and his colleague, Ms Agathe Hitchon.

Discussions revealed that the application of Articles 13 and 22 seemed often to be insufficient in particular as regards the level of information provided. Many questions were raised on the use made of information received and on aspects such as the validation in national records of extracts from foreign records, data protection and translation. The possibility of developing a template and guidelines on this important issue was also mentioned.

The PC-OC agreed that further information was needed before taking any action and decided to ask the PC-OC Mod to prepare a short questionnaire on the application of Articles 13 and 22 of the Convention on Mutual Assistance in Criminal Matters.

**8. Exchange of views on possibilities to improve the efficiency of working methods of the PC-OC**

The PC-OC discussed possibilities to improve the efficiency of its working methods, taking into account the present reform process in the Council of Europe as well as the findings of the PC-OC Mod.

Experts shared the opinion that the Committee fulfils an essential task in evaluating the application of 13 fundamental and widely ratified treaties on international co-operation in criminal matters and in proposing practical and legal solutions to problems raised in their application.

In this context it is proposed to continue improving the working methods adopted over the last few years and in particular as regards:

- the practical measures to facilitate the application of conventions on international co-operation in criminal matters, adopted by the PC-OC during their 61<sup>st</sup> meeting;
- its transversal approach in co-operating with other Council of Europe Committees (such as the T-CY, COP 198 and the Pompidou Group) and with other bodies (such as the EJM, IberRed and INTERPOL);
- the organisation of special sessions devoted to a particular Convention or theme of relevance;
- the development of the website so as to make it more useful and user-friendly for practitioners;
- an increased use of the forum to exchange information and questions of common concern;
- an increased use of the possibility to draft documents on the collaborative space of its website in between meetings.

The PC-OC also felt that information available in background papers on the agenda would not need to be repeated during meetings.

#### **9. Election of the Chair and the vice Chair of the PC-OC**

The PC-OC elected Ms Barbara Goeth-Flemmich (Austria) as its Chair and Mr Verbert as its Vice-Chair for a term of one year, starting in 2019.

The Committee thanked the outgoing Chair, Mr Verbert, as well as the outgoing vice-Chair, Ms Laurence Fontana Lungo (Switzerland) for their outstanding contribution and commitment to the work of the PC-OC.

The Committee noted that, as a result of the nomination of a member of the PC-OC Mod as Chair, Ms Joana Ferreira (Portugal), first substitute member of the PC-OC Mod, becomes a member of the PC-OC Mod.

The PC-OC decided to elect the additional substitute member for the PC-OC Mod at its next plenary meeting.

#### **10 Any other business**

##### **Dates of meetings in 2019**

The PC-OC decided to hold its plenary meetings in 2019 on 27-29 May and on 13-15 November. The meetings of the PC-OC Mod will take place on 5-7 March and 24-26 September 2019.