



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 15 November 2019
[PC-OC/Docs 2019/ PC-OC (2019)12EN]
<http://www.coe.int/tcj>

PC-OC(2019)12

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 77th meeting of the PC-OC
under the Chairmanship of Ms Barbara Goeth Flemmich (Austria)
13-15 November 2019**

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 Mr Carlo Chiaromonte, Head of the Criminal Law Division and of the Counter Terrorism Division, on recent developments in the Council of Europe and in particular, the election of the new Secretary General, Ms Marija Pejčinović Burić, former Deputy Prime Minister and Minister of Foreign and European Affairs of Croatia, who took up her functions on 18 September 2019 and the end of the financial crisis given that all member states of the Council of Europe have now paid their obligatory contributions to the Ordinary Budget for 2019. Information was furthermore provided on the appointment of Mr Gianluca Esposito as Head of the Action against Crime Department.

The expectation as regards the role of the PC-OC, whose terms of reference will be adopted by the Committee of Ministers on 19 November. Mr Chiaromonte underlined that this Committee will continue to play a central role in overlooking and improving international co-operation in criminal matters and will continue to cooperate with other Committees involved in countering specific crimes so as to provide advice and ensure coherence of the Council of Europe action in this area.

The hope that the special session to celebrate the 60th anniversary of the European Convention on Mutual Assistance in Criminal Matters will create the opportunity to give a new impetus for change, taking into account the reality of MLA today, the growing needs for efficiency, the shortcomings and the opportunities provided by the rapidly developing technology. It was underlined that the political will to improve international cooperation in criminal matters has been demonstrated during the recent Conference of CoE Ministers of Justice organised under the aegis of the French Presidency.

- The comprehensive information provided by Mr Alexander Seger (Head of the Cybercrime Division) on the progress made in the drafting of the second additional protocol of the Budapest Convention which was expected to be finalised by the end of 2020. He indicated that the comments provided by the PC-OC on the draft provisions on the use of languages, emergency MLA and the use of videoconferences had been presented to the Drafting Group meeting on 16 October and that the next plenary meeting of the T-CY and the Drafting Plenary will take place on 18-20 November 2019 and the next consultations on the Draft Second Additional Protocol during the Octopus Conference on 21-22 November. As regards draft MLA provisions on issues covered by the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters, he indicated that it was not always possible to align the norms due to particularities of the subject matter and the legal requirements of the Parties to the Budapest Convention. Mr Seger recalled that the MLA provisions in the Budapest Convention would only apply in the absence of other existing norms and would not apply to the Parties to the Convention on Mutual Assistance in Criminal Matters. In order to ensure the best possible coherence with pre-existing Council of Europe norms and to provide further explanations, the T-CY and the PC-OC Mod would have a joint meeting on 24 January to discuss MLA provisions foreseen in the draft second additional protocol of the Budapest Convention.
- The information by the Chair, further to the intervention by Ms Laurence Fontana Jungo (Switzerland), that the question on how to enable co-operation of non-EU member States with the European Public Prosecutor's Office (EPPO) on the basis of the European Convention on Mutual Assistance in Criminal Matters, will be further discussed on 28 November 2019 at the COPEN Group meeting in Brussels. A number of PC-OC members raised questions about the possibility mentioned by the European Commission of addressing this question by declaring the EPPO as a national judicial authority and expected that further consultations between the European Commission and the Council of Europe would provide clarity about the legal consequences of such declaration for the application of the Convention.

- The information provided by experts 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

Country information and contact persons

The PC-OC underlining the importance of the regular update of country information and contact persons and decided to:

- reiterate its invitation to experts who hadn't done so, to send their country information on national procedures in respect of extradition, MLA, seizure and confiscation as well as transfer of sentenced persons as soon as possible;
- also reiterate its call to update or provide 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 updates, agreed with the improvements to the index and summaries proposed by the PC-OC Mod and expressed its gratefulness to Mr Miroslav Kubicek for his contribution and commitment to this work.

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;
- ask the PC-OC Mod to update and improve the index and summaries in time for the next plenary meeting.

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

a. Information by national delegations on the follow up given to the letters sent by the Chair of the PC-OC to review and limit reservations and declarations to Council of Europe treaties within the remit of the PC-OC

Recalling the decision taken at their 73rd 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 Committee took note of the outcome reported.

The PC-OC decided to:

- keep this item on the agenda and invite experts to continue informing the plenary of the follow up given to the letters at its upcoming meetings.
- b. Consideration of the study by Mr Martin Polaine (Consultant) on the feasibility and possible added value of preparing a new binding instrument as regards international co-operation on the management, the recovery and sharing of assets and proposals for follow up**

Further to the presentation of the study by Mr Martin Polaine and discussions held during the last plenary meeting, the PC-OC considered the follow up to be given, taking into account the findings of the PC-OC Mod and the proposals by the Secretariat presented by Mr Gianluca Esposito.

The PC-OC decided to:

- endorse the findings of the PC-OC Mod that the best way to ensure follow up would be by further developments in MLA. However, while recognising that most of the recommendations contained in the report were not within the competence of the PC-OC, issues such as asset recovery and asset sharing should also be considered by the PC-OC in the context of MLA;
- ask the PC-OC Mod to further examine the proposals made by the Secretariat and the plenary as regards improving the efficiency of mutual assistance in criminal matters, and report its findings to the plenary for further discussion.

c. Interconnecting judicial networks

The PC-OC heard the information from Mr Antonio Segovia Arancibia (Chile) on the activities of the Iberoamerican Association of Public Prosecutors (AIAMP) as well as of the activities of the judicial networks supported by the United Nations Office on Drugs and Crime presented by Mr Luis Francisco de Jorge Mesas, Crime Prevention and Criminal Justice Office, UNODC.

Referring to the Action plan on Transnational Organised Crime, the PC-OC also discussed various ways to interconnect judicial networks, including by the establishment of a common list of relevant networks at a global level and their publication on the websites of those networks, the organisation of common meetings or activities between networks, the organisation of periodical meetings of secretariats of the networks, the use of the secretariats of the networks as a channel to provide the contact details of interlocutors for operational communications between different networks etc. The PC-OC was pleased to note that AIAMP and the UNODC would be ready to cooperate in this direction.

The PC-OC decided to:

- invite the AIAMP, the EJM, IberRed and the UNODC to the next meeting of the PC-OC Mod and ask the PC-OC Mod to make proposals for follow up to be discussed at the next plenary.

5. Special session to celebrate the 60th anniversary of the European Convention on Mutual Assistance in Criminal Matters

This session, opened by the Chair, Ms Barbara Goeth Flemmich and by the Head of the Action against Crime Department, Mr Gianluca Esposito, was introduced by a keynote speech by Professor Otto Lagodny, University of Salzburg on the history of the Convention and present and future challenges.

Further topics discussed included:

- recent trends in the case law of the European Court of Human Rights of relevance to the Convention” presented by Mr Erik Verbert (Belgium) and
- the exchange of information from judicial records under Articles 13 and 22 of the Convention presented by Mr Yann Taraud, Head of office for specialised files and international exchanges, National Criminal Records (France).

The afternoon was devoted to two parallel workshops, one regarding the use of videoconferences, moderated by Ms Yael Bitton (Israel) and the other on joint investigation teams, moderated by Mr Slawomir Buczma (EUROJUST).

The day ended with a presentation of the outcome of the workshops by the rapporteurs, Mr Adil Abilov (Azerbaijan) as regards videoconferences and Ms Joana Ferreira (Portugal) as regards Joint Investigation Teams and the conclusions by the Chair.

The PC-OC decided to:

- publish the interventions and the conclusions of the workshops on its website;
- ask the PC-OC Mod to make proposals for follow up to the session taking into account the discussions held as regards the future developments of MLA.

6. European Convention on Extradition

a. Consideration of a model request form for extradition

The PC-OC considered the draft model request proposed by Mr Erik Verbert and the PC-OC Mod, made some proposals for amendment and discussed the issues to be addressed in the guidelines.

The PC-OC decided to agree with the draft model request, as amended, and to ask Mr Verbert to draft the guidelines with the assistance of the Secretariat.

b. Update of the publication from 2007 on Extradition European Standards

The PC-OC took note of the information by Mr Verbert as regards the draft update of the publication “Extradition European Standards” as well as of the discussions of the PC-OC Mod during its meeting in September.

The Committee decided to:

- thank Mr Verbert for his important initiative and Ms Amanda Shiels (UK), Mr Adil Abilov (Azerbaijan), Mr Vladimir Zimin (Russian Federation) and Mr Jason Carter (USA) for the assistance offered in the research and drafting of the update
- ask the PC-OC Mod to follow the elaboration of the update;
- resume discussion of this item at its next plenary meeting.

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

The PC-OC further discussed the consequences of the Petruhhin and related judgments of the CJEU, and decided to follow closely further developments on this important issue.

d. Other

The PC-OC also heard questions from Ms Solveig Volquardsen (Germany) regarding the need to expressly accept declarations issued by another Party as regards the territorial application of the Convention and as regards the application of the Convention further to an EU agreement with Iceland and Norway on the application of the European Arrest Warrant.

The Committee decided to instruct the Secretariat to consult the Treaty Office on these questions

The PC-OC also heard a proposal by Mr Aviad Eliya (Israel) to discuss the obligations of requesting states in extradition procedures and decided to keep this question on the agenda for discussion at a future meeting.

7. Election of the Chair and vice-Chair of the PC-OC

The PC-OC re-elected Ms Barbara Goeth Flemmich as its Chair and Mr Erik Verbert as its vice-Chair for a second mandate of one year.

8. Dates of meetings in 2020

The PC-OC decided to have its plenary meetings on 18-20 May and 17-19 November 2020. The meetings of the PC-OC Mod will take place on 22-24 January and 22-24 September next year.

9. Any other business

The PC-OC took note of the proposal by Mr Aviad Eliya (Israel) to invite the Head of the Central Authority in Thailand to discuss procedures as regards the transfer of sentenced persons.

It decided to discuss this proposal further at its next meeting.