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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 78th meeting of the PC-OC
under the Chairmanship of Mr Erik Verbert (Belgium)
6-8 October 2020**

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the PC-OC took note of the opening remarks by Mr Jan Kleijssen, Director, Information Society and Action against Crime Directorate, on recent developments in the Council of Europe. He congratulated Ms Barbara Göth-Flemmich on her appointment as Director General for Criminal Justice within the Ministry of Justice of Austria, and thanked the Vice-Chair, Mr Erik Verbert, for assuming the responsibility of chairing this meeting. Mr Kleijssen also addressed specific challenges posed by the current sanitary crisis and the PC-OC's crucial role in facilitating and improving international co-operation in criminal matters in such context. Finally, he reiterated the need to improve the efficient functioning of the European Convention on Mutual Assistance in Criminal Matters, notably with regards to facilitating cooperation with the European Public Prosecutor's Office and easing accession by third countries.

The PC-OC adopted the [agenda](#) as published online.

2. Points for information

The PC-OC took note of:

- The expectation as regards the role of the PC-OC, whose terms of reference for 2020-2021 were adopted by the Committee of Ministers. Mr Gianluca Esposito, Head of the Action against Crime Department, 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 publication on the PC-OC website of a catalogue of interim measures taken by central authorities regarding requests for extradition, mutual assistance and transfer of sentenced persons in the context of the COVID-19 crisis. This document is prepared by the UNODC in cooperation with the CoE, the EJM, IberRed and SEEPAG, and updated on a regular basis;
- The organisation of a Conference on International Cooperation in Criminal Matters: Extradition and Mutual Legal Assistance on 5 May 2021, under the aegis of the German Presidency. Ms Solveig Volquardsen (Germany) took the floor to present the draft agenda of the conference and inform experts on the preparation of the event, which will take place during the next plenary meeting of the PC-OC;
- The follow up to be given to the Recommendation CM/Rec 2020(03) on the practical application of the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto. The Secretariat informed the Committee that all Parties would shortly be invited via email to translate/complete/adapt the appendices and publish them on relevant websites;
- The 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. Mr Seger informed the Committee that in the context of the COVID-19 pandemic, over 150 activities were carried out online since February, and that the 6th T-CY Protocol Drafting Plenary was held on 22-25 September. Mr Seger welcomed the continued cooperation between the T-CY and the PC-OC. The PC-OC Rapporteur to the Protocol Drafting Group, Ms Gabriela Bláhová (Czech Republic), reported on her participation in the aforementioned meeting and reiterated her dedication to representing the Committee and following the T-CY Protocol Drafting Group's work, especially on MLA issues;
- 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 conventions within the remit of the PC-OC.

3. Presentation and content of the PC-OC website

a. Country information and contact persons

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

- instruct the Secretariat to play a proactive role in updating the information on the website, notably by inviting all delegations to review and, if necessary, update their information by email on at least an annual basis.
- reiterate its call to update or provide information on contact persons and bilateral treaties of relevance to the Committee.

b. 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 (Czech Republic), for his contribution and commitment to this work.

The PC-OC decided to ask the PC-OC Mod to continue updating and improving the index and summaries.

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

The Committee took note of the fact that the Action Plan on Combating Transnational Organised Crime (TOC) for 2016-2020 is coming to an end. It was proposed to compile activities undertaken in the framework of the implementation of the Action Plan within the PC-OC in a final report.

The PC-OC decided to instruct the Secretariat to draft a report on the activities carried out by the Committee in the framework of the Action Plan on Combating Transnational Organised Crime (TOC), for presentation at the next plenary meeting.

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 conventions 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 invite experts who have not yet done so, to inform the Secretariat of the follow up given to the letters.

b. Proposals for the interconnection of judicial networks

The PC-OC took note of the discussions held within the PC-OC Mod with representatives of AIAMP and the EJM on ways to interconnect judicial networks. The experts reviewed the open-ended catalogue of public international judicial networks and bodies, and discussed the content of the discussion paper prepared by the Secretariat in consultation with judicial networks. Representatives from AIAMP and EJM as well as experts reiterated the important role of networks in facilitating international cooperation, and welcomed the proposals made by the Secretariat in the discussion paper.

The PC-OC decided to:

- approve the publication of the open-ended catalogue of public international judicial networks and bodies on its website, and invite the Secretariat to encourage its publication on the websites of the relevant networks.
- instruct the Secretariat to continue discussions with relevant networks regarding possible future common activities to be developed with a view of improving and widening cooperation.
- instruct the Secretariat to ensure the catalogue is regularly updated, so as to present accurate information.

5. Cooperation with the European Public Prosecutor's Office

The PC-OC took note of the information by the Chair and Mr Gianluca Esposito regarding the need for a sound legal framework enabling cooperation with the European Public Prosecutor's Office, and agreed on the basis that the PC-OC is the best suited forum to address this issue.

Switzerland raised the question of the legality of declaring the EPPO as judicial authority under Article 24 of the MLA Convention, and whether doing so would have a declaratory force only, or if it would de facto create obligations for other Parties to recognise the EPPO as such, and in such a case what process third states must follow to oppose to such a declaration, if needed. Switzerland inquired as to whether the Council of Europe could prepare a legal analysis on this issue.

Regarding the increasing interest from non-Council of Europe Member States to accede to the MLA Convention and other instruments under the remits of the PC-OC, experts discussed the possibility to ease their accession process by expressing its view on the matter and providing an expert opinion on each request to the Committee of Ministers.

The PC-OC decided to ask the CDPC and Committee of Ministers to give it a mandate (i) to prepare a draft binding instrument concerning cooperation with the EPPO under the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto, and (ii) to propose an increased advisory role of the PC-OC relating to the requests by Non-Member States of the Council of Europe to join international instruments under the PC-OC remits.

6. European Convention on Mutual Assistance in Criminal Matters: proposals for future developments

a. Facilitating the exchange of judicial records

The PC-OC reviewed the draft standard form to facilitate the sending of judicial records on the basis of Article 22 prepared by the Secretariat with the assistance of Mr Yann Taraud (France). Experts commented on necessary amendments to be made to the form in order to enable the efficient exchange of judicial records.

The PC-OC decided to:

- ask the PC-OC Mod to amend the form, taking into consideration the changes proposed by experts during the plenary meeting.
- review the updated form at the next plenary meeting for adoption and publication on the website of the PC-OC.

b. Facilitating direct communication by the development of an Atlas

The Committee took note of the responses to the questionnaire on the possibility of elaborating a joint Atlas to enable direct communications between judicial authorities on the basis of Article 4, paragraphs 3 to 6 of the Second Additional Protocol to the Convention. It was agreed that developing and subsequently updating an atlas would be a titanic undertaking, and that including information regarding direct communication on the already existing country information page of the website offered the best alternative.

Therefore, the PC-OC decided to instruct the Secretariat to include information regarding direct communication between judicial authorities within the country information section of the PC-OC website.

c. Inserting provisions on jurisdiction issues

The PC-OC took note of the replies received to the questionnaire on jurisdiction issues. In view of the low number of responses, and in the absence of consensus, experts expressed the opinion that there is currently no sufficient basis for negotiations on this issue. It was furthermore reiterated that the European Convention on the Transfer of Proceedings in Criminal Matters [ETS n°73] is a useful tool, which unfortunately has a relatively low level of ratification.

The PC-OC decided to encourage the Parties to sign, ratify and apply the European Convention on the Transfer of Proceedings in Criminal Matters [ETS n°73].

d. Inserting provisions on cross-border enforcement of criminal judgments

The PC-OC took note of the replies received to the questionnaire on cross-border enforcement of criminal judgments. In view of the low number of responses, and in the absence of consensus, experts expressed the opinion that there is currently no sufficient basis for negotiations on this issue. It was furthermore reiterated that the European Convention on the International Validity of Criminal Judgments [ETS n°70] is a useful tool, which unfortunately has a low level of ratification.

The PC-OC decided to encourage the Parties to sign, ratify and apply the European Convention on the International Validity of Criminal Judgments [ETS n°70].

e. Inserting provisions on asset recovery and sharing as well as on liability of legal persons and offences dealt with in civil, administrative and criminal procedures

The PC-OC reviewed the discussion paper prepared by the Secretariat reflecting on the outcomes of previous questionnaires, studies and proposals on these topics. Experts noted that the issues at stake are of great importance, and that they wished to continue working on the proposals of the discussion paper.

The Committee decided to refer this matter to the PC-OC Mod for the preparation of further proposals to be presented during the next plenary meeting.

f. Further proposals

Experts discussed the topic of keeping or extending electronic transmissions of requests on a regular basis, considering their use during the pandemic was considered a successful experience, and proposed to put the topic on the agenda of the next plenary meeting, for further discussion.

The PC-OC decided to put the topic of electronic transmissions on the agenda of the next plenary meeting.

7. European Convention on Extradition

Experts discussed the impact of the COVID-19 pandemic on extradition proceedings and the length of procedures. Many experts also acknowledged that while national lockdowns and travel restrictions often complicated procedures, cooperation was very fruitful during this exceptional time. Ms Solveig Volquardsen

(Germany) informed experts that the topic would be on the draft agenda of the 5 May 2021 conference. The EJM and AIAMP informed the plenary that they had drafted similar documents and authorised their publication on the PC-OC website, after translation from Spanish in the case of the AIAMP document.

The PC-OC decided to:

- thank the EJM and AIAMP for sharing their documents.
- ask the Secretariat to publish the documents on the PC-OC website following translation, if necessary.

a. Consideration of guidelines to the draft model request form for extradition

The PC-OC took note of the information provided by Mr Verbert on delays regarding the drafting of the guidelines to the draft model request form for extradition due to the COVID-19 pandemic. Experts from Portugal, Azerbaijan, the United Kingdom and the Russian Federation offered their assistance for the preparation of the document.

The Committee decided to present and discuss the draft guidelines to the PC-OC Mod and review them during the next plenary meeting, in view of their adoption.

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

Experts discussed the consequences of the Petruhhin and related judgments of the Court of Justice of the European Union and presented new cases of relevance to the topic. Several practical points were raised regarding in which cases to inform the State of nationality of the person concerned, as well as cases where said person has dual citizenship. The EJM informed that an analysis of the consequences of the Petruhhin judgment was being prepared and is intended to be presented to the European Commission in December 2020.

The PC-OC decided to continue to discuss the Petruhhin and related judgments and their consequences, and to share links to relevant cases discussed during the meeting.

c. Other

Experts decided to put the topic of diplomatic assurances on the agenda of the next plenary meeting.

8. Dates of meetings in 2021

The PC-OC took note of the information regarding the organisation of its next plenary meeting on **4-7 May 2021**, taking into account the Conference on International Cooperation in Criminal Matters: Extradition and Mutual Legal Assistance on 5 May 2021, under the aegis of the German Presidency.

It was decided that a PC-OC Mod meeting should be organised before the plenary meeting, possibly in March, keeping in mind scheduling difficulties linked to the pandemic and subsequent current impossibility to meet in person.