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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 79th meeting of the PC-OC
under the Chairmanship of Mr Erik Verbert (Belgium)**

Meeting held by Videoconference 4-6 May 2021

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 words of welcome and opening remarks by Mr Jan Kleijssen, Director of the Information Society and Action against Crime Directorate.

He underlined the importance of the work started by the PC-OC on the cooperation with the European Prosecutor's Office (EPPO). The Committee of Ministers agreed with the proposal to consider the development of a solid legal basis for this cooperation in a future protocol to the Convention on Mutual Assistance in Criminal Matters. Mr Kleijssen welcomed the presence of Mr Peter Csonka (European Commission) and Mr Florin Razvan Radu (EPPO) for an exchange of views on this issue.

Mr Jan Kleijssen also welcomed the work of the PC-OC to facilitate the application of the Conventions within its remit by the adoption of practical tools, such as those on the exchange of judicial records and extradition.

Mr Jan Kleijssen furthermore informed the Committee that:

- as from 2022 the Council of Europe will work on the basis of a quadrennial Programme (2022-2025) and 2 biennial budgets (2022-2023, 2024-2025) so as to ensure improved visibility, stability and certainty of its work. This exercise involves defining shorter and longer-term priorities and working methods for all intergovernmental committees and reflecting these in their new terms of reference;
- the draft 2nd Additional Protocol to the Budapest Convention is planned to be finalised in time for the celebration of the 20th anniversary of the Convention in November this year. He thanked the PC-OC for its involvement during the drafting process and the opinion provided.

- the Ad hoc Committee on Artificial Intelligence (CAHAI) has been tasked to examine the feasibility and potential elements of a legal framework for the development and application of artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law. After having produced a feasibility study at the end of 2020, the CAHAI is now examining the ways in which the legal gaps identified in the feasibility study can be addressed in the form of legally binding or non-binding international instruments, based upon a multi-stakeholder consultation. The Secretariat will provide the PC-OC with a link to the consultation. The CAHAI is expected to deliver its final report to the Committee of Ministers by the end of this year;
- the CDPC is elaborating an instrument on AI and criminal law related to vehicles and automated driving;
- the CDPC is furthermore examining the feasibility of creating a new legal instrument on the protection of the environment.

The agenda was adopted as reflected on the website.

2. Points for information

The PC-OC took note of the information provided by the Secretariat on the recent update of the PC-OC website as regards country information and contact points. Experts are invited to communicate any changes to the Secretariat so as to keep this information accurate.

As regards future developments, the website will contain two new webpages:

- a page with information to persons sentenced abroad about the possibilities and conditions for transfer, as a follow up 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;
- a page including an open-ended catalogue of judicial networks.

The Committee also heard the information by Mr Jakub Pastuszek (Czech Republic), who represented the PC-OC in the T-CY, on the last steps to be taken by the T-CY to finalise the draft Second Additional Protocol to the Budapest Convention and the explanatory report thereto. The texts, and in particular the explanatory report will be finalised on 28 May and will take into account the opinions by the PC-OC and other Committees. The Committee thanked Mr Jakub Pastuszek for having drafted the opinion on this text which the PC-OC adopted by written consultation.

3. European Convention on Mutual Assistance in Criminal Matters

a. Co-operation with the European Public Prosecutor's Office (EPPO)

The PC-OC had an exchange of views with Mr Peter Csonka (European Commission) and Mr Florin Razvan Radu (EPPO) on the co-operation of Parties to the European Convention on mutual assistance in criminal matters with the EPPO and in particular on the ways to establish a solid legal basis for this cooperation by the development of an additional protocol to achieve this aim, its desired scope and effects.

Mr Peter Csonka welcomed the timely discussion on this issue as the EPPO is planning to become operational as from 1 June. He underlined that it will be essential for this new judicial body, covering 22 Member States, to request MLA to third Parties. The regulation on the EPPO (Council Regulation (EU) 2017/1939) provides in its Art. 104§3 that all agreements the EU has acceded to will be binding on the EPPO. The EU Commission reached out to the UNODC to ensure cooperation of the EPPO on the basis of the UN Conventions on Transnational Organised Crime (UNTOC) and Corruption (UNCAC). The Commission will furthermore ask a mandate to the Council of the EU to negotiate bilateral treaties with individual States.

While the EU is a Party to certain Council of Europe Conventions such as the Convention on Cybercrime and the Convention on Data Protection, this is not the case for the European Convention on Mutual Assistance in Criminal Matters since this convention does not allow for accession of the EU. In application of Art. 104§4 of the EPPO regulation, EU Member States should recognise the EPPO as a competent authority for the purposes of the implementation of the Convention. Until now 10 such standard notifications have been issued. Although such notifications are not legally binding on third States Parties to the Convention it was hoped that this temporary solution would enable the EPPO to cooperate pending the adoption of a protocol to provide a lasting and legally binding solution.

Mr Florin Razvan Radu (EPPO) equally underlined the importance for the EPPO to make full use of the opportunities to cooperate with the Parties to the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto, and to apply all investigative measures on the basis of the notifications, in a spirit of trust, cooperation and in the mutual interest of fighting crime. He recalled that the notifications were based on the succession theory whereby the 22 participating MS had conferred certain powers to the EPPO. He underlined the need to be pragmatic until a stronger legal basis will become effective by the adoption of a third protocol to the Convention.

Mr Florin Razvan Radu furthermore mentioned the enormous preparatory work undertaken by the EPPO to launch its operational phase in June.

During the discussion mention was also made of the hybrid nature of the European Delegated Prosecutors (EDP) who are part of the EPPO and at the same time national prosecutors. Mr Florin Razvan Radu explained that this “double hat” allowed the EDP to act under his national hat when needed, but this is a last resort option, for example when the requested Party did not accept to cooperate with the EPPO on the basis of the notification.

The exchange of views revealed that the European Commission and the EPPO supported the initiative to work on a protocol to the Convention to ensure a solid legal basis for this cooperation. Provisional agreement was also reached on the scope and the following main elements to be considered in the protocol:

- it should allow the accession of the EU to the Convention and additional protocols;
- the effects of this accession should be limited to the needs of the EPPO;
- account should thereby be taken of a possible evolution of the material competence of the EPPO;
- EPPO is an independent body and will apply MLA both as a requesting and, within its competence, as a requested authority;
- a clause for provisional application would be needed, pending the ratification by all Parties;
- check the provisions of the Convention and the additional protocols on their compatibility with the specific nature of the EPPO.

The PC-OC also considered the views of the PC-OC Mod on the proposal to combine in the future protocol cooperation with the EPPO with other elements to update the Convention and agreed that this would take too much time and that cooperation with the EPPO should be dealt with as a priority.

The PC-OC decided to:

- develop as a priority a protocol concerning cooperation with the EPPO;
- ask the PC-OC Mod to continue its consideration of the elements to be included in such protocol on the basis of the discussions held, in cooperation with the Treaty Office and the European Commission.

b. Proposals for future provisions and developments

The PC-OC considered various proposals for a future update of the 1959 Convention in an additional protocol.

As regards the proposals discussed in the previous meeting to introduce 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 shared the views of the PC-OC Mod that certain issues of asset recovery and confiscation should not enter into the scope of the Convention since they are regulated by other Council of Europe Conventions and in particular by the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism which falls within the remit of the COP 198.

Given the need to discuss problems arising around these issues in international cooperation and before deciding on the feasibility of introducing new provisions related to asset recovery (the liability of legal persons, co-operation with civil and administrative authorities dealing with criminal offences, MLA as regards non-conviction based confiscation, the restitution of stolen assets to victims and states, etc), the PC-OC decided to:

- ask the PC-OC Mod to prepare the organisation of a special one-day session on international cooperation on asset recovery in close consultation with the COP 198, to be held in the spring of 2022.

The PC-OC also considered other proposals for new provisions made by the PC-OC Mod as well as those contained in the overview of proposals made in the past [Doc PC-OC(2021)02] and retained those concerning :

- an update of "channels of communication" to allow for electronic communication;
- the "ne bis in idem" principle.

The PC-OC decided to ask the PC-OC Mod to continue the examination of the different proposals, based on the discussions held and to present their conclusions to the plenary

c. Review of the draft standard form to facilitate the exchange of judicial records

The PC-OC considered the draft standard form as proposed by the PC-OC Mod and discussed ways to promote and facilitate the exchange of judicial records as foreseen by Article 22 of the European Convention on Mutual Assistance in criminal Matters.

The PC-OC decided to:

- adopt the standard form with some amendments and publish it on the website as a new tool,
- invite experts to send the names of the national authorities involved in the judicial records as well as their postal and electronic addresses (institutional e-mails) for publication on the public website of the PC-OC.

On 5 May 2021, the PC-OC took part in a Conference organised by the Federal Ministry of Justice and Consumer Protection of Germany, under the aegis of the German Presidency of the Council of Europe, on "Strengthening international cooperation in criminal matters: Extradition and Mutual Legal Assistance".

The Conference addressed the functioning of the EPPO and the cooperation with non-EU States and proposed three workshops related to extradition: a. the effects of the conditions of detention in the requesting state on extradition, b. the effects of the caselaw of the European Court of Justice on extradition and c. lessons learned from the Covid 19 pandemic.

The PC-OC experts highly appreciated this excellent Conference and were pleased to note that the interventions made will be published on the Committee's website.

4. European Convention on Extradition

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

The PC-OC considered the draft guidelines and model request form for extradition as proposed by Mr Erik Verbert in consultation with the PC-OC Mod and decided to:

- adopt the guidelines and model request with amendments;
- post the guidelines and model request on the website of the PC-OC.

5. Future activities and meetings

Referring to the future quadrennial programme of activities, the PC-OC had an exchange of views on future activities to be implemented from 2022 to 2025.

It noted the proposal to address the issue of the use of special investigative techniques as well as the use of consular legal assistance in criminal matters. Reference was furthermore made to the decisions taken on future actions under items 3a and 3b.

The PC-OC decided to:

- resume the discussion on future actions at its next plenary meeting;
- have the 31st meeting of the PC-OC Mod on 7-9 September and the 80th plenary meeting of the PC-OC on 23-25 November 2021.

6. Elections

The PC-OC decided to postpone elections of its Chair and vice-Chair until its next plenary meeting.

The PC-OC noted that since the departure of Mr Vladimir Zimin (Russian Federation), the substitute member Mr Adil Abilov (Azerbaijan) had become member of the PC-OC Mod.

The PC-OC elected Mr Pyotr LITVISHKO (Russian Federation) as its second substitute member.

As a result, the PC-OC Mod is composed by the Vice-Chair, Mr Erik Verbert, and the following members and substitute members:

- Mr Adil ABILOV (Azerbaijan)
- Ms Gabriela BLAHOVA (Czech Republic)
- Ms Liv Kristina EGSETH (Norway)
- Ms Joana GOMES FERREIRA (Portugal)
- Mr Juhani KORHONEN (Finland)
- Ms Amanda SHIELS (United Kingdom)
- Ms Tetiana SHORSTKA (Ukraine)

- Ms Marina SPILIOTOPOULOUS (Cyprus), first substitute member
- Mr Pyotr LITVISHKO (Russian Federation) second substitute member

7. Any other business

Referring to the departure of Mr Vladimir ZIMIN (Russian Federation) from the PC-OC and the PC-OC Mod, the Committee thanked Mr Vladimir Zimin for his longstanding and active commitment, his numerous contributions and valued initiatives to promote its work and wished him all the best for the future.