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PC-OC Mod (2017)09

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 24th meeting of the restricted Group of experts
on international co-operation (PC-OC Mod) enlarged to all PC-OC members
under the Chairmanship of Mr Erik Verbert (Belgium)
26-28 September 2017**

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the agenda was adopted as reflected on the website.

2. Points for information of relevance to the work of the PC-OC

The PC-OC Mod took note of the information provided by Mr Carlo Chiaromonte, Head of the Criminal Law and Counter-Terrorism Divisions as regards:

- the Conference on Terrorism and Organised Crime which took place in Malaga on 21 and 22 September 2017;
- on-going discussions with EUROJUST and the JIT Secretariat on future activities to promote the ratification and use of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters for the establishment of Joint Investigation Teams (JITs);
- the agenda of the upcoming Bureau meeting of the CDPC, and in particular the implementation of the Action Plan against Transnational Organised Crime, as well as the work undertaken by the Working Group on prison overcrowding;
- the adoption, on 5 July 2017, by the Committee of Ministers of the Council of Europe, of the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced

Persons. The Protocol will be opened for signature on the occasion of the 73rd plenary meeting of the PC OC, on 22 November 2017.

The PC-OC Mod also took note of:

- the finalisation of the online course on international co-operation in criminal matters developed in co-operation between the PC-OC and HELP, with a major contribution by Mr Erik Verbert. A link to the course will be made available on the website of the PC-OC;
- 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

a. Country information and contact points

The PC-OC Mod considered the inventory of country specific information available on the website of the PC-OC. It noted that country information as regards ETS N°141 was still missing for a number of Parties.

The PC-OC Mod decided to instruct the Secretariat to continue inviting experts, prior to each plenary meeting, to update or provide country information as well as contact points, including where appropriate contact details of officials specialised in transnational organised crime.

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

The PC-OC Mod considered the proposals made by Mr Miroslav Kubicek (Consultant, Czech Republic) for the update of the index and summaries of case law of the ECtHR as contained in Doc PC-OC Mod (2017)06.

The PC-OC Mod thanked Mr Kubicek for his excellent work and decided to:

- approve the proposals made and ask Mr Kubicek to update the document with the latest decisions, as well as with further proposals for updates made by members of the PC-OC Mod and to improve the existing document according to his proposals;
- publish the update on the website and ensure translation into French as soon as possible.

c. List of bilateral treaties

The PC-OC Mod considered the updated list of bilateral treaties, as well as the links introduced to the websites of the UN, the OAS and the ASEAN for global and regional treaties on criminal matters.

It decided to continue inviting PC-OC experts to update the list.

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

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

The PC-OC Mod noted that the work undertaken by the three working groups A, B and C engaged in the identification of reservations and declarations that are possibly outdated and/or create obstacles to efficient co-operation, in particular as regards the fight against TOC, was progressing well, while recognising the complexity of the exercise.

The PC-OC Mod discussed in greater depth the questions raised as regards the working methods. It considered that, with the help of the co-ordinators of each group, the working groups should aim at producing, in respect of each State Party, an agreed list of reservations and/ or declarations identified as potentially outdated and/or creating obstacles for efficient co-operation in the treaty concerned. These lists would be appended to a letter, addressed to the PC-OC expert of each country, inviting the expert

concerned to ask the appropriate authority of the Party concerned to reconsider the reservations and declarations made in respect to the treaties in question, in view of their possible update or withdrawal. The letter would explain the background of the review exercise and draw particular attention to the list identified by the working groups. The letters would be signed by the Chair of the PC-OC and, in respect of the country of origin of the Chair, by the vice-Chair.

The PC-OC Mod decided to:

- ask the Secretariat to prepare a draft letter for consideration by the plenary;
- ask the co-ordinators to report on the outcome of the exercise, or the progress made, to the plenary.

b. Preparation of a meeting to promote the interconnection of international judicial networks

The PC-OC Mod discussed the proposal by the Secretariat to prepare this meeting by sending out a short questionnaire to the Secretariats of the selected networks. [Doc PC-OC Mod (2017)07].

The PC-OC Mod agreed with this proposal, proposed a few amendments and decided to instruct the Secretariat to send the letter and questionnaire out in due time before the meeting.

c. Discussion on the practice and legislation on asset sharing. Exchange of views with a representative of the CARIN Network

The PC-OC Mod considered the 11 contributions to the compilation of national legislation, model agreements and practice related to asset sharing as well as the model agreements by the UN and the G8 [Doc PC-OC Mod(2017)08] and agreed that more contributions would be required to allow an assessment of the situation.

The experts also had an exchange of views with Mr Gary Balch, Deputy Chief Crown Prosecutor in the UK and representative of the CARIN Network. He indicated that, in his experience, asset sharing was a useful incentive to promote international co-operation for asset recovery since such forms of co-operation were demanding as regards resources. Costs attached to the management of recovered assets needed to be deducted from the asset sharing agreement and dealt with separately. The same applies to proceeds of embezzlement and stolen objects which should be returned to the victim if the victim can be identified. He highlighted that most asset sharing agreements concerned small amounts and that there was a risk in over-engineering model agreements which should preferably be as simple as possible. He furthermore indicated that the authorities involved in asset-sharing agreements were usually different from those involved in MLA requests and, referring to the list of national confiscation regimes published on the CARIN website, suggested that it could be useful to establish a list of these authorities in each Council of Europe member State.

The PC-OC Mod discussed the elements advanced by Mr Balch and agreed that while the issue of asset-sharing needed further consideration, international co-operation for recovery itself was still lacking a common legal basis to address important issues such as non-conviction based confiscation, management of assets, return of property to victims and other questions that are not, or not sufficiently, addressed by existing Council of Europe instruments. It concluded that, given the importance of asset recovery, in particular for the fight against transnational organised crime, it would be worthwhile considering the possible development of a new binding instrument regulating these issues, either as an additional protocol to an existing treaty or as a convention.

The PC-OC Mod decided to:

- invite the plenary to consider, in consultation with the COP 198, the possibility of developing a binding instrument addressing international co-operation as regards the management, the recovery and sharing of assets;

- invite Mr Vladimir Zimin to produce a paper listing possible issues which such an instrument could address;
- invite experts who had not yet replied to the request for information on national legislation, model agreements and practice related to asset sharing to do so by 1 November 2017.

5. 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

Further to the Special Session on the implementation of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters held during the 71st plenary meeting, the PC-OC Mod. examined the 21 replies received as well as their summary [PC-OC Mod(2017) 4 and 4 Add], including 4 replies from non-Parties and 17 replies from Parties to the Protocol (which has 36 Parties). It agreed that more replies would be needed to enable an assessment of the implementation of this instrument.

The PC-OC Mod recalled that this Protocol, by broadening the range of situations in which mutual assistance may be requested and by making the provision of assistance easier, quicker and more flexible, is of particular relevance to an efficient co-operation in the fight against transnational organised crime. Considering that a wider ratification of the Protocol would contribute to making MLA more efficient, it noted with satisfaction that Austria is planning to ratify the Protocol

As regards the implementation of the Protocol by the Parties who replied, the PC-OC Mod noted that many countries made reservations to the provisions allowing for the use of special investigative techniques (Articles 17,18, and 19) while the experience in joint investigation teams (Article 20) is limited for a majority of Parties who answered .

It also noted that some parties indicated that the possibility for direct communication between judicial authorities (Article 16) was hampered by the absence of an Atlas for non EU Parties to the Protocol and proposed that this issue that could be addressed in the future meeting on the interconnection of judicial networks.

The PC-OC Mod agreed that further discussion on the holding of video conferences (Article 9) would be useful, and proposed to make an 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 information [PC-OC (2012)01 Rev2].

The PC-OC Mod decided to:

- share its proposals with the plenary;
- invite countries who had not yet replied to the questionnaire to do so by 1 November 2017.

b. Consideration of the survey on MLA for the purpose of proceedings against legal entities

Further to the question raised in discussion papers submitted 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 PC-OC had decided to invite experts to report on their experience in this regard so as to prepare a survey.

The PC-OC Mod examined the 11 contributions received to the survey (Doc PC-OC Mod (2017) 05), which didn't indicate any problem or clarification with regard to the issues raised in the discussion papers and decided to:

- reiterate the invitation to experts to report on their experience as regards the execution of MLA requests for the purpose of proceedings against legal entities, both as requesting and requested state, taking into account the discussion papers mentioned above;
- address the issue further once a sufficient number of contributions have been received.

6. Convention on the Transfer of Sentenced Persons

a. Discussion on possibilities to draft new guidelines on the transfer of sentenced persons, including an update of existing recommendations and proposals for follow-up

Further to the decision taken by the PC-OC not to update the Convention on the Transfer of Sentenced Persons, due to a lack of consensus, the PC-OC Mod considered the content of Recommendations R 88 (13) and R (92) 18 by the Committee of Ministers on the practical application of the Convention on the Transfer of Sentenced Persons as well as Recommendation R(84) 11 concerning information about this Convention.

Experts considered two options: either to draft a new recommendation to update and complement the existing ones, or to draft a comprehensive recommendation to replace them. In any case, the recommendation would also cover the practical application of the additional Protocol as amended, as well as other subjects such as nationality issues, mentally-ill prisoners and the application of the so-called “Dutch clause” in extradition proceedings. Previous proposals made to improve the functioning of the Convention could also be taken into account.

The PC-OC Mod decided to submit this proposal to the plenary.

b. Discussion on the possible establishment of an E-transfer tool; exchange of views with a representative from Iberred and proposals for follow-up

The PC-OC Mod further discussed the possibility of establishing an E-Transfer tool, taking into account the findings of the plenary in this regard.

The experts also heard a presentation by Ms Andrea Murillo, representative of Iberred, as regards the preparation of a treaty on electronic transmission of international co-operation requests between central authorities. The treaty is almost finalised and will lead to the creation of a new secure platform (Iber@) allowing for the recognition of the validity of requests via electronic transmission between central authorities. It will apply to all treaties involving central authorities and will be open to accession by third states. The treaty foresees that data protection will be regulated by the law applicable to the State of the seat of the Iberred Secretariat, in this case Spain, and therefore EU norms on data protection will apply. The cost of the new platform will be shared among the States parties to the new treaty and is expected to be moderate. The new working methods are expected to ensure transmission of requests in a way that is quicker, safer and allows for a better management of the requests.

The PC-OC Mod considered this initiative to be very interesting and agreed that it should be followed closely. Attention was also drawn to similar initiatives by Interpol as regards e-extradition and e-MLA.

The PC-OC Mod decided to:

- share its findings with the plenary;
- post Ms Murillo’s presentation on the agenda of the next plenary meeting of the PC-OC;
- invite a representative of Interpol to present the current status of the e-extradition and e-MLA projects.

7. European Convention on Extradition

a. Discussion on Measures of restriction in extradition cases: the use of alternatives to detention

The PC-OC Mod continued its discussion on the issue of alternatives to detention pending extradition, taking into account the replies to a question posed by Mr Zimin (Russian Federation).

The experts agreed that given the increasing length of extradition proceedings, the use of alternatives to detention is becoming more important and that a combination of measures of restriction is probably the most efficient way to avoid escape. In this respect, the PC-OC Mod underlined that, pending the decision on extradition but also once the decision to extradite has been taken, national legislation should allow for the application of adequate measures to avoid escape of the person sought and to ensure his/her surrender. The PC-OC Mod also considered that this issue could be addressed in case the elaboration of a fifth additional protocol to the convention will be discussed.

Given the interest in sharing information on the use of alternatives to detention, the PC-OC Mod decided to:

- invite PC-OC experts who did not yet reply to Mr Zimin's question to do so by 1 November 2017;
- propose to the plenary that the replies be published on the PC-OC website as a useful tool.

b. Possible consequences of the Petruhhin judgment of the CJEU

The PC-OC Mod further discussed the consequences of the Petruhhin judgment, which could affect the swift and efficient execution of extradition requests. It concluded that there were still various, unanswered, questions attached to its practical application, as well as other related judgments by the CJEU, such as the decision rendered on 6 September 2017 in the case *Schothöfer* C473/15.

The PC-OC Mod decided to:

- propose to the plenary that developments and future decisions by the CJEU in this area be closely followed.

c. The role of Interpol in extradition cases

The PC-OC Mod discussed the role of Interpol in extradition cases as well as the Resolution and Report by the Parliamentary Assembly on "The abusive recourse to the Interpol system: the need for more stringent legal safeguards", and decided to:

- invite a representative of Interpol to the next plenary meeting for an exchange of views on this issue.

d. The impact of prison conditions on extradition proceedings

The PC-OC Mod discussed the important impact of prison conditions on extradition, including overcrowding and the lack of budgetary means to address this issue.

Referring to the CDPC Working Group on prison overcrowding, the information contained in the SPACE prison statistics as well as the existence of EU funds to improve prison conditions in third countries, it was decided to invite the Secretary of the Council for Penological Co-operation (PC-CP) to provide further information and to take part in an exchange of views with the PC-OC on this subject

8. Any other business

The PC-OC Mod, recalling the 60th anniversary of the European Convention on Extradition, decided to propose to the plenary that a special session on extradition be organised during its first meeting in 2018 and to invite a judge from the European Court of Human Rights to speak about the development of case law in this field.