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PC-OCMod(2019)07

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 28th meeting of the restricted Group of experts
on international co-operation (PC-OC Mod) enlarged to all PC-OC members
under the Chairmanship of Ms Barbara Goeth-Flemmich (Austria)
24-26 September 2019**

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 Gianluca Esposito, recently appointed as Head of the Action against Crime Department, as regards the normalisation of the financial situation of the Council of Europe and the election of the new Secretary General of the Council of Europe, Ms Marija Pejčinović Burić, former Minister of Foreign and European Affairs and Deputy Prime Minister of Croatia. As regards the work of the PC-OC, Mr Esposito mentioned the importance of transversal work of the Committee considering the main missions of the Organisation in respect of standard setting, monitoring and co-operation activities. Particular mention was made of the preparation of the special session to celebrate the 60th anniversary of the European Convention on Mutual Assistance in Criminal Matters and the opportunity to use this event to improve its functioning in a number of areas identified. Mr. Esposito also referred to the preparation of the upcoming Conference of Ministers of Justice.

The working group also took note of the information given by Mr Carlo Chiaromonte, Head of the Criminal Law and of the Counter-Terrorism Divisions, as regards the priority activities in the CDPC and the CDCT.

He mentioned the activities of the CDPC on criminal law and artificial intelligence, in particular the case of autonomous vehicles, the smuggling of migrants and future consideration of crimes against the environment. As regards the CDCT, he mentioned the ongoing work on the feasibility of a Council of Europe definition of terrorism to amend or complete current Article 1 of the Convention on the Prevention of Terrorism.

a) Activities of the T-CY: development of a second additional protocol to the Convention on Cybercrime

The PC-OC Mod took note of the information provided by Ms Gabriela Blahova (Czech Republic) and the Secretariat as regards the progress made in the drafting of the second additional protocol to the Budapest Convention. The T-CY is currently focusing on the question of direct cooperation with providers and related data protection issues and will turn to the comments provided by the PC-OC on the draft provisions on the use of languages, emergency MLA and the use of video conferences later this year. The next meeting of the Drafting Plenary will take place on 18-20 November.

b) Recent signatures and ratifications

The PC-OC Mod also took note of the latest signatures and ratifications of the Council of Europe treaties within its remit and expressed its satisfaction that the level of ratification of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters had significantly increased in the last years. It was furthermore pleased to note the increased interest from non-member States of the Council of Europe to adhere to the Conventions within the remit of the PC-OC.

3. Presentation and content of the PC-OC website

a) Update of the index and summaries of relevant case law of the ECtHR

The PC-OC Mod considered and endorsed the latest update proposed by Mr Miroslav Kubicek (Czech Republic) and expressed its gratitude to Mr Kubicek for his contribution and commitment. The working group also made several proposals to improve the general presentation of the index and summaries, including links to similar cases in the summaries, an indication whether Grand Chamber Judgments had confirmed or modified previous case-law and an indication whether decisions had been taken unanimously.

It was decided to :

- take these proposals into account for the future update of the index and summaries of the case law of the ECtHR on the PC-OC website;
- ask the Secretariat to invite PC-OC experts to send proposals for further cases to be integrated in the index and summaries, including cases of relevance for the application of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141);
- invite Mr Kubicek to attend the next meeting of the PC-OC Mod.

b) Country information

The working group also took note of the fact that country information was still lacking for several States and in particular as regards the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS No 141).

The PC-OC Mod decided to reiterate the request to experts to provide and regularly update country information as well as contact details for the officials in charge of the implementation of the Conventions within the realm of the PC-OC.

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

a) Study by Mr Martin Polaine 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

The PC-OC Mod discussed the findings of the final report by Mr Martin Polaine (consultant) in the presence of Mr Gianluca Esposito, Head of the Action against Crime Department, and Mr Lado Lalicic, Secretariat of the COP 198, and agreed that his recommendation to prepare an additional protocol to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No.198) was not within the competence of the PC-OC. The working group furthermore noted that most of the topics covered by the recommendations were within the remit of the COP 198. The PC-OC Mod considered, however, that some of the proposals could be incorporated in the more general debate on possible improvements of the standards or practice as regards mutual assistance in criminal matters. The possibility to draw up a new Council of Europe Convention, open to non-member States, on some of the topics discussed in relation to mutual assistance in criminal matters was raised.

The PC-OC Mod decided to ask the Secretariat to prepare a paper including proposals on possible follow-up actions to the discussion, including some of the recommendations made in the study in so far as mutual assistance in criminal matters is concerned (e.g. recommendation 13), for consideration at the plenary.

5. European Convention on Mutual Assistance in Criminal Matters

a) Consideration of the replies received to the questionnaire on the application of Articles 13 and 22 of the Convention concerning exchange of information from judicial records and proposals for follow up

The PC-OC Mod, noting that only 12 States had replied to the questionnaire, agreed that more replies would be needed to draw any conclusions.

The PC-OC Mod decided to invite experts who had not yet responded to do so before 18 October 2019 so as to allow the plenary to discuss the issue further during the special session.

b) Preparation of the special session to celebrate the 60th anniversary of the Convention

The working group discussed the draft programme and organisation of the special session, based on the decisions of the PC-OC plenary, made several amendments and proposals and decided to instruct the Secretariat to:

- finalise the programme and the organisation of the session accordingly;
- send a reminder to experts who hadn't done so to update the replies to the questionnaire on videoconferences by 18 October 2019.

6. European Convention on Extradition

a) Update of the publication from 2007 on Extradition European Standards

The PC-OC Mod discussed the structure of the update with Mr Erik Verbert (Belgium) who had accepted the task to prepare the updated publication. Experts agreed that it should take into account the Third and the Fourth Additional Protocol, recent developments in the case law of the ECtHR as well as the consequences of the Petruhhin and related judgments. Recent discussions in the PC-OC should also be taken into account. It was noted that besides research also some technical assistance would be needed. The PC-OC Mod also expressed the wish to have not only an electronic but also a paper version of the update.

The working group thanked Ms Amanda Shiels (UK), Mr Adil Abilov (Azerbaijan) and Mr Vladimir Zimin (Russian Federation) for the assistance offered in the research and drafting of the update and decided to:

- ask Mr Verbert to send a draft structure to the members of the PC-OC Mod for comments by mid_October;
- ask the Secretariat to provide the technical assistance required.

b) Draft model request for extradition

The PC-OC Mod considered and adapted the draft model request for extradition, proposed by Mr Erik Verbert (Belgium), so as to turn it into a blank template, agreed on possible issues to be included in guidelines to the model request, including the initial example model request and decided to propose it to the plenary for consideration.

c) Possible consequences of the Petruhhin judgment of the CJEU

The PC-OC Mod discussed recent experiences in the application of the Petruhhin and connected judgments by the CJEU addressing the question how EU member States should react to a request for extradition from a non EU State for the purpose of prosecution or execution of a sentence in respect of a citizen from another EU member State. Noting that several prejudicial questions on this issue were still pending, the working group decided to continue following this issue very closely.