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PC-OC Mod (2020)05

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 29th 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)
22-24 January 2020**

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 of the Counter-Terrorism Divisions. He mentioned that artificial intelligence would feature among the priorities of Council of Europe future work, involving the work of a dedicated multidisciplinary Committee, the Ad hoc Committee on Artificial Intelligence (CAHAI), mandated to examine the feasibility of a legal framework for the development, design and use of artificial intelligence based on the fundamental values of the Council of Europe. Artificial intelligence, as regards the question of criminal liability for autonomous cars will also be one of the priority activities for the CDPC. Other priority activities for the CDPC will include the protection of the environment through criminal law and the smuggling of migrants. The CDPC furthermore decided to organise a thematic session on the development of international co-operation in criminal matters with third countries, focusing both on legal and practical issues and obstacles. Mr Chiaromonte also presented Ms Louise Riondel, a new staff member of the Criminal Law Division.

The PC-OC Mod finally took note of the terms of reference of the PC-OC for 2020-2021 as well as of the latest ratifications and signatures of the Council of Europe treaties within their remit.

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 approved the latest update proposed by Mr Miroslav Kubicek (Czech Republic) and expressed its gratitude for his excellent work and commitment. The working group also agreed on proposals to improve the presentation of the document by the insertion of hyperlinks to related judgments mentioned in the summaries.

It was decided to:

- publish the 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 a future update of 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).

b. Country information

The working group underlined that continued efforts were required to obtain reliable and updated country information from all States on the national procedures regarding the implementation of the Conventions they are Parties to, the contact details of the officials in charge of their implementation as well as information on bilateral treaties regarding international co-operation in criminal matters.

The PC-OC Mod decided to reiterate the request to States to provide and regularly update this information.

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

a. Ways to interconnect judicial networks: consultation with representatives from AIAMP and EJN

The PC-OC Mod had an exchange of views with Ms. Rosa Ana Morán Martínez, representing the Iberamerican Association of Prosecutors (AIAMP) and Mr Ola Löfgren, Secretary to the European Judicial Network (EJN). Underlining the need to interlink operational networks for the benefit of international judicial co-operation, participants agreed on a provisional open ended catalogue of networks as well as on a questionnaire to be answered in order to complete the list with further information. There was also support for the proposal that judicial networks could post a common, completed and agreed catalogue of networks, including a description of their tasks, participating members and a contact address on their respective websites. The need for a meeting between the networks to discuss this proposal and further ways of co-operation was also acknowledged.

It was decided to:

- Instruct the Secretariat, in consultation with AIAMP, EJN, IberRed and UNODC, to finalise the catalogue of networks and questionnaire and to prepare a paper on ways to interconnect judicial networks for further discussion at the next plenary meeting;
- Invite representatives of the above networks to participate in the next plenary meeting.

5. European Convention on Mutual Assistance in Criminal Matters

a. Consideration of proposals for further developments in MLA and follow up to the special session celebrating the 60th anniversary of the Convention

The PC-OC Mod considered in depth the discussion paper prepared by the Secretariat on possible further developments in mutual legal assistance (MLA) in criminal matters [Doc PC-OC] 2019)08rev].

Among the practical measures proposed to facilitate MLA, the PC-OC Mod discussed with the EJN the possibilities of elaborating an 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. The PC-OC Mod agreed that as a first step it would be necessary to take stock of the competent judicial authorities in each State Party to the Second Additional Protocol and proposed to ask the Parties to the protocol:

- to list the contact persons authorised to receive MLA requests, indicating, where applicable, the type of request concerned;
- whether the States concerned have an electronic register of the judicial authorities concerned.

The working group decided to:

- instruct the Secretariat to consult the PC-OC plenary on their proposal, asking the members to send comments by 17 March 2020;
- ask the Secretariat, in consultation with the Chair and the Vice-Chair, to integrate these comments into the small questionnaire;
- send the questionnaire to all members Party to the Second Additional Protocol inviting them to reply by 24 April 2020;
- discuss the outcome at the next plenary meeting.

As regards possibilities to enable secure electronic communications, the PC-OC Mod took note of the different platforms established by the EU, and foreseen by INTERPOL and the COMJIB to enable such communications, agreed that the development of a Council of Europe platform was not envisaged and decided to closely follow the developments and experiences of the existing and planned platforms.

When discussing accession to the MLA Convention by third countries, experts agreed that in order to avoid a multitude of bilateral treaties, ways should be found to facilitate accession of these countries to the MLA Convention. It was also highlighted that, since third States are not Parties to the European Convention of Human Rights, human rights and procedural safeguards should be taken into account.

The PC-OC Mod decided to instruct the Secretariat to prepare a draft provision amending Article 28 of the Convention so as to facilitate the accession by third countries.

The PC-OC Mod also considered possibilities to insert provisions on cross-border enforcement of criminal judgments in an additional protocol to the MLA Convention. It was agreed that before continuing this discussion it would be necessary to identify which legislative measures would be needed and to make an assessment of the application of the European Convention on the International Validity of Criminal Judgments [ETS n°70] on the basis of a short questionnaire.

The PC-OC Mod decided to:

- instruct the Secretariat to prepare a short questionnaire in written consultation with the PC-OC Mod and send it to the PC-OC experts for reply by 17 April.
- resume discussion on this issue on the basis of an analysis of the replies received at the next plenary meeting.

As regards the proposal to develop new provisions on emergency MLA, the working group agreed that it was important to take into account the future provisions of the Second Additional Protocol of the Budapest Convention on this subject.

The PC-OC Mod decided to propose to the plenary to gather good practice on MLA in emergency situations.

Concerning the proposal to draft provisions on asset recovery and sharing as well as on issues where MLA is hampered by variations in national criminal law and in particular liability of legal persons and offences dealt with in civil, administrative and criminal procedures, the PC-OC Mod referred to the vast material available through previous questionnaires, discussion papers and the report by Mr Polaine. Experts also highlighted the need to focus on issues related to international co-operation which are not covered by the COP 198.

In order to facilitate further discussions on this issue, the PC-OC Mod decided to instruct the Secretariat to prepare a discussion paper reflecting the outcome of the questionnaires, studies and proposals made in the last years and identifying areas where new standards could be developed for consideration by the plenary.

On the proposal to develop provisions in the MLA Convention on jurisdiction issues, the PC-OC Mod recalled the importance of the provisions contained in the European Convention on the Transfer of Proceedings in Criminal Matters [ETS n°73] and agreed that it would be advisable to start with an assessment of the application of this Convention as well as of the reasons for the low level of its ratification. The views of the PC-OC on the possibility to insert provisions on jurisdiction issues in an additional Protocol to the MLA Convention should also be sought.

The PC-OC Mod decided to:

- instruct the Secretariat to prepare a short questionnaire on these issues in written consultation with the PC-OC Mod and send it to the PC-OC experts for reply by 17 April;
- resume discussion on this issue on the basis of an analysis of the replies received at the next plenary meeting.

The working group also addressed the proposals made during the special session celebrating the 60th anniversary of the Convention contained in Doc PC-OC Mod (2020)02.

Regarding the proposal to facilitate the exchange of judicial records on the basis of Article 13 and 22 of the Convention, and taking into account the work underway to improve the existing model request for judicial records on the basis of Article 13, the PC-OC Mod decided to:

- propose to the plenary to invite Parties to provide the names, addresses and institutional e-mails of authorities to which requests on judicial records can be sent so as to allow their publication on the public website of the PC-OC;
- ask the Secretariat to develop a standard form to facilitate the sending of judicial records on the basis of Article 22, taking into account the replies to the questionnaire.

Referring to the workshop on videoconferences, the PC-OC Mod decided to propose that the plenary invite experts to send examples of good practice on the use of this possibility.

Finally, the PC-OC Mod decided to invite all PC-OC experts to provide, if they wish so, concrete proposals to update the MLA Convention.

b. Co-operation with the European Public Prosecutor's Office on the basis of the European Convention: exchange of views with Mr Jörg Polakiewicz, Director, Directorate of Legal Advice and Public International Law

The working group had an exchange of views with Mr Polakiewicz on the Commission's proposal to introduce the European Public Prosecutor (EPPO) as a judicial authority for the purposes of the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols by means of a unilateral declaration under Article 24 of the Convention. The PC-OC Mod noted that while Mr Polakiewicz concluded that this approach appears to be legally possible, actual co-operation of non EU Parties with the EPPO would still depend on the consent of these Parties. Experts agreed that this approach would in any case create a long period of legal uncertainty. They also considered that this uncertainty could be avoided by considering the possibility of an accession by the EU to the Convention, prior to such a declaration.

The PC-OC Mod decided to instruct the Secretariat to send to the PC-OC experts, by 24 April at the latest, a draft additional Protocol including an amendment to Article 28 of the Convention so as to allow accession of the EU for further consideration at the next plenary meeting.

6. European Convention on Extradition

Considering the absence of its rapporteur on extradition, Mr Erik Verbert (Belgium), the PC-OC Mod decided, to postpone discussion on the update of the publication from 2007 on Extradition European Standards and the draft guidelines to the model request for extradition.

The PC-OC Mod discussed questions raised by Mr Adil Abilov (Azerbaijan) concerning national proceedings on extradition in the context of legislative reforms considered in Azerbaijan.

7. Exchange of views with the T-CY Protocol Drafting Group on draft provisions on MLA in the Second Additional Protocol to the Budapest Convention

During an exchange of views with the T-CY Protocol Drafting Group, the Chair of the PC-OC reiterated the Committee's views that for reasons of consistency between Council of Europe instruments and for the practitioners involved in their implementation, any difference between standards governing similar measures, such as hearings by videoconference, in the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters and the draft second additional protocol to the Budapest Convention should be well explained.

As regards the draft provision on hearings by videoconferences, the absence of any mention of procedural safeguards in the draft provision was regarded as problematic. Acknowledging that many Parties to the Budapest Convention are non-European, it was recommended to explicitly refer to universally accepted principles on the right to a fair trial such as those contained in Article 14 of the International Covenant on Civil and Political Rights.

The Chair also commented on a draft "chapeau text for the Explanatory report for provisions that apply in the absence of other agreements", which had recently been submitted to the PC-OC Mod and conveyed some proposals for amendment as discussed in the PC-OC Mod.

The PC-OC Mod took note of the information that it will be consulted on further draft provisions related to MLA in the future.

8. European Convention on the International Validity of Criminal Judgements

The PC-OC Mod addressed a question raised by Ms Andrada Bavejan (Lithuania) in a discussion paper concerning the practical application of the Convention. Experts shared the opinion that the notion of offences as defined in Article 1b of the Convention was very narrow and would need to be updated in the light of modern needs and developments in the case law of the European Court of Human Rights.