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PC-OC Mod (2021)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 31st 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)**

Meeting held by Videoconference on 7-9 September 2021

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, with the exception of item 6 on extradition which was postponed.

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

The PC-OC Mod took note of the information provided by the Secretariat, including:

- the list of decisions of the 79th meeting of the CDPC (28-30 June) and in particular that the Steering Committee:
 - approved the text of the draft Recommendation regarding the assessment, management and reintegration of persons accused or convicted of a sexual offence and its explanatory report and decided to submit it to the Committee of Ministers for adoption;
 - approved the draft terms of reference of the CDPC Drafting Committee on the elaboration of a legal instrument on AI and criminal law related to vehicles and automated driving and agreed to set up a working group to draft a recommendation on the rights of victims taking into account the rights and position of offenders and other persons involved in the criminal law process;

- discussed and welcomed the progress made in the work by its Working Group on the Environment and Criminal Law (CDPC-EC) notably that an outline of a feasibility study of a possible new Council of Europe future convention on the protection of environment through criminal law will be soon completed as well as of its subordinate Committees, the PC-CP and the PC-OC.
- the organisation by the Hungarian Presidency of the Council of Europe of a “Roundtable on new means of communication for international cooperation in criminal matters” to take place on 4 October by videoconference;
- the latest signatures and ratifications of treaties within the competence of the PC-OC.

The PC-OC also took note of the information by Mr Adil Abilov (Azerbaijan) about the organisation in July of an interesting Council of Europe seminar in Uzbekistan related to MLA, in which he and Mariana Radu (Romania) participated. Uzbekistan would be interested in joining the CoE Convention.

Ms Joana Ferreira (Portugal) informed about various interesting extradition procedures held during the summer with countries such as India, China, Nepal and Brazil. The PC-OC Mod agreed that she would provide further details during the plenary.

3. Development of the website

a. Judicial Networks

The PC-OC Mod considered and approved the open-ended catalogue of judicial networks with some amendments and decided that it should be published on the PC-OC website in a separate section. Note was also taken of initiatives underway to establish permanent contacts between the Secretariats of the networks.

b. Information for prisoners sentenced abroad

As a follow up to the adoption by the Committee of Ministers of Recommendation CM/Rec (2020)3 to member States on the practical application of the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto, Parties to the Convention had been invited to translate, adapt and complete the model texts contained in appendix 2 and 3 to the Recommendation. The PC-OC Mod took note that up to now very few contributions had been received. It was recalled that this information was important for prisoners sentenced abroad as well as for prison administrations detaining foreign inmates.

The PC-OC Mod underlined the importance of publishing this important information on the PC-OC website and decided to:

invite Parties to the Convention on the Transfer of Sentenced Persons to send this information as soon as possible.

c. Authorities responsible for criminal records

Further to the adoption of the model form for the exchange of judicial records at the last plenary meeting, Countries had been invited 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. Here too many replies were still missing.

The PC-OC Mod agreed that this publication on the public website would greatly facilitate the application of Article 22 but also of Article 13 and 15§3 of the European Convention on Mutual Assistance in Criminal Matters.

The working group decided to invite countries to send this information as soon as possible.

4. Update of the index and summaries of the Case law of the European Court of Human Rights

The PC-OC Mod discussed the proposals for an update of this important document presented by Mr Miroslav Kubicek (Consultant, Czech Republic).

The PC-OC Mod expressed its gratitude to Mr Kubicek for his excellent and generous contribution to the work of the Committee and decided to approve the proposals made and publish the updated version of the index and summaries of the Case law on its website.

5. European Convention on Mutual Assistance in Criminal Matters

a. Discussion on elements for an amending protocol regarding co-operation with the European Public Prosecutor's Office (EPPO)

The PC-OC Mod examined, in the presence of Mr Fabio Giuffrida (European Commission) and Mr Florin Razvan Radu (EPPO), the provisions of the Convention and the additional protocols thereto in view of their application in co-operation with the EPPO.

The working group identified, on a provisional basis, elements which would need to be adapted in view of their application in relation to a non-State authority. These included the preamble and elements such as "jurisdiction", "territory", "Ministry of Justice", "(applicable) law" and "judicial authority" of the requesting/ed Party as well as the word "Party" itself. It was also noted that a chapter with definitions should be considered.

The group agreed that for some provisions the EPPO would only have a requesting role, for example in Chapter III (Service of writs and records of judicial verdicts - Appearance of witnesses, experts and prosecuted persons) and IV (Judicial records) while Chapter VII (Exchange of judicial records) would not be applicable at all.

The working group noted that the new legal instrument would only be relevant for non-EU Parties to the Convention and that the Additional Protocols had not been ratified by all of those State Parties.

The PC-OC Mod also underlined the importance of having an early application of the new instrument, recalling that provisions for provisional application in a protocol will, in principle, only apply to Parties to the Convention.

The working group noted that numerous amendments would be needed to adapt the Convention and its additional protocols to co-operation with the EPPO, while the existing text is perfectly adapted to interstate co-operation.

The PC-OC Mod, underlining the risk of diminishing the clarity of the Convention for interstate co-operation by introducing numerous amendments as well as the need to ensure an early application of the instrument, decided to:

- recommend the PC-OC to consider the development of a self-standing treaty, rather than a protocol, concerning the application of the Convention and additional protocols thereto on the co-operation with the EPPO
- invite the Treaty Office to participate in the upcoming plenary meeting to advise on this issue.

b. Discussion on proposals for future developments in an additional protocol

The PC-OC Mod had an exchange of views on the proposals presented by Mr Pyotr Litvishko (Russian Federation) in his discussion paper concerning Consular legal assistance in criminal matters (Doc PC-OC Mod(2021)03) and the possible added value of developing a legal framework in this regard.

The PC-OC Mod concluded that further information on the use of this practice would be needed and decided to invite the plenary to discuss the issue further and consider making a survey or short questionnaire.

The working group also discussed the proposals by Mr Litvishko regarding the need for additional regulation on special investigative techniques (SIT) as set out in a second discussion paper (Doc PC-OC Mod(2021)04).

The PC-OC Mod noted that for the Russian Federation, and probably some other State Parties, the existing regulation, including the provisions on SIT in the Second Additional Protocol, does not provide a sufficient legal basis to give a positive reply to MLA requests seeking SIT based evidence gathering by the domestic authorities. Mr Litvishko indicated that the Second Additional Protocol only addresses requests for jointly undertaken SIT (cross-border).

The PC-OC Mod also noted that the interception of telecommunications is not regulated in the Convention nor the Additional Protocols. It is however regulated, as an interpretative decision, in Rec. R (85)10 concerning letters rogatory for the interception of telecommunications.

The PC-OC Mod, recalling that the execution of requests for SIT was also hampered by the reservations issued by many Parties, decided to invite the plenary to:

- further consider the proposal to develop the existing regulation so as to facilitate the execution of SIT related MLA requests by Parties in need of a treaty basis;
- also consider the introduction of provisions related to the interception of telecommunications.

c. Preparation of a special session on international co-operation on asset recovery

The PC-OC Mod discussed the possible topics to be addressed in a Special Session on asset recovery, in the presence of Mr Igor Nebyvaev, Executive Secretary of MONEYVAL, Secretary to the COP198.

The PC-OC Mod decided to propose that the Plenary consider the following topics:

- Non-conviction based confiscation
- Compensation of victims
- Recovery of cryptocurrencies
- “Freezing of evidence regarding assets” versus “seizure of proceeds of crime”
- Asset sharing
- Asset recovery from legal persons

The PC-OC Mod agreed that the Secretariat continue its consultations with the COP 198 about a possible programme, workshops and speakers on the above topics.