



Strasbourg, 7 March 2024
[PC-OC/PC-OC Mod/Docs PC-OC Mod 2024/ PC-OC Mod (2024)04]
<http://www.coe.int/tcj>

PC-OC Mod (2024)04

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 35th meeting of the restricted Group of experts
on international co-operation (PC-OC Mod) enlarged to all PC-OC members
chaired by Joana Gomes Ferreira (Portugal)**

**(Room G6, AGORA)
5-7 March 2024**

1. Opening of the meeting and adoption of the agenda

The PC-OC Mod took note of the apology of the Chair of the PC-OC, Adil Abilov (Azerbaijan). The meeting was consequently chaired by Joana Gomes Ferreira (Portugal), vice-Chair of the PC-OC. After the opening of the meeting, 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 welcomed Eva Pastrana, new Head of the Criminal Law Division and Secretary to the CDPC. It took note of the information provided by the vice-Chair, the Secretariat and delegations, including:

- the adoption of the new draft terms of reference of the PC-OC for the period 2024-2027;
- the follow-up given to the PC-OC's opinion on the possible accession of the Republic of Chile to the European Convention on Extradition;
- bilateral treaties recently concluded or for which negotiations are ongoing;
- proposals presented by Poland to the UN International Law Commission's Draft articles on Prevention and Punishment of Crimes Against Humanity regarding the introduction of a separate provision on the rights of the child, and a request by Poland for support from PC-OC delegations in this respect. The PC-OC Mod thanked the Polish delegation and instructed the Secretariat to send the information provided by Poland to all delegations for information.

The PC-OC Mod was informed that the European Union is currently considering the possible promotion by the EU vis-à-vis third countries of several Council of Europe conventions, including some conventions under the PC-OC's purview. It considered that it would be useful for the PC-OC to be consulted in this context, in particular with a view to helping to identify the optimal ways in which such promotion could be integrated in the framework set out by its policy paper regarding accession of third states. It invited the PC-OC to consider this point at its next plenary meeting in May.

3. European Convention on Mutual Assistance in Criminal Matters

a. Draft Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

The PC-OC Mod examined the draft Third Additional Protocol to the Convention and its Second Additional Protocol, pertaining to channels of communication, hearing by video conference, the use of technical recording devices in the territory of another Party, time limits for the execution of MLA requests and laying of information.

The PC-OC Mod amended this document in the light of written comments received from delegations. It decided to complement it with a new provision on letters rogatory for the interception of telecommunications, on the basis of the Recommendation No. R (85) 10 of the Committee of Ministers of the Council of Europe on the same subject, as well as with a corresponding amendment of Article 20 of the Convention relating to costs. It considered that the future Third Additional Protocol should allow for the possibility of making a reservation regarding the provisions relating to the use of technical recording devices and the interception of telecommunications.

Taking note of the concerns raised by a number of delegations regarding the possible introduction of a 180-day time limit in the Convention, it decided to include an alternative provision regulating the issue of time limits for the consideration of the plenary of the PC-OC.

Having considered a proposal to amend Article 21 of the Convention, the PC-OC Mod was of the view that such an amendment would not present sufficient added value to warrant inclusion in the draft Third Additional Protocol, and therefore invited the PC-OC plenary to remove it from the final draft.

The PC-OC Mod decided to submit the document as amended for consideration at the next plenary meeting of the PC-OC in May 2024. It further instructed the Secretariat to circulate the amended draft to all delegations as soon as possible, in order to allow for sufficient time for internal consultations before the next plenary meeting.

The PC-OC Mod examined and amended the draft explanatory report to the draft Third Additional Protocol. It decided to instruct the Secretariat to revise this document in the light of the changes and additions made to the draft Protocol in co-operation with the delegations at the origin of the proposals, and to submit it to the PC-OC plenary for consideration at its next meeting.

a. Draft questionnaire regarding confidentiality

The PC-OC Mod thanked the UK delegation for its proposals regarding a draft questionnaire regarding the concept of confidentiality in the context of MLA and held an exchange of views on the basis of this draft. Several delegations expressed the view that such a questionnaire would have more added value if the questions better reflected the specificities of continental legal systems from the outset. The UK delegation thanked the other delegations for their insight and comments.

The PC-OC Mod welcomed the proposal of the UK delegation to redraft this questionnaire, in co-operation with other delegations on a bilateral basis, and make a revised proposal to the PC-OC plenary in May 2024.

4. Supervision of conditionally sentenced or conditionally released offenders

The PC-OC Mod examined the replies of delegations to questions contained in a discussion paper prepared by Mariana Radu (Romania) on the enforcement of suspended sentences and parole. While agreeing that it would be useful to gather further information on this issue, the PC-OC Mod noted that a number of delegations expressed the view that they would not envisage a normative initiative in this field. It decided to invite delegations who have not replied to the questionnaire to do so before 27 April and the PC-OC to continue its examination of this point.

5. Future workplan of the PC-OC

The PC-OC Mod held a discussion on the future workplan of the PC-OC, bearing in mind the terms of reference of the Committee for the period 2024-2027. The PC-OC Mod considered to bring the following proposals to the attention of the plenary of the PC-OC:

- to hold a special session on the transfer of proceedings in criminal matters in 2025. In this connection, the PC-OC Mod took note of the request by the Secretariat for the identification of an expert who could assist with the preparation of this special session;
- to develop the future work of the PC-OC on confidentiality in MLA proceedings into a practical guidance for practitioners, in order to help bridge the gap between common law and civil law systems regarding this question;
- to consider a follow-up to its previous work regarding the review of reservations and declarations to the Council of Europe conventions on international co-operation in criminal matters;
- to develop practical guidance relating to the use of electronic signature;
- to consider the role of the Council of Europe conventions in the context of international co-operation relating to core international crimes, and the articulation between these conventions and the Ljubljana-the Hague Convention;
- to set a timeline for a co-ordinated review and update of country information available on the PC-OC's website;
- in addition to its continuous work on its case-law compendium, to consider the development of short thematic factsheets on the case-law of the European Court of Human Rights relating to international co-operation.

The PC-OC Mod further considered that the PC-OC Secretariat could start collecting indicators regarding the use of the conventions within its remit, such as the number of requests under individual conventions or indicators of frequency of use, as a first step from countries which already collect such information.

6. Exchange of experiences relating to international co-operation

The PC-OC Mod discussed several cases brought to its attention by delegations, relating notably to the issue of the need for recalculating penalties when the extradition decision excludes one of the offences requested and when the penalties have already been combined in the legal system of the requesting state. It also discussed a case where the application of the Convention on the Transfer of Sentenced Persons and its Additional Protocol was complicated by the fact that the person left the territory of the requested Party while proceedings were ongoing, and subsequently extradited from a third country to the requesting Party to serve the original sentence.

7. Update of the publication “Extradition: European standards”

The PC-OC Mod took note of the information provided by the Secretariat on the ongoing work by Raquel Tavares (expert) regarding the update of this publication.

8. Any other business

The PC-OC Mod took note of a concept note provided by the Co-operation Programmes Division, Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards of the

Directorate General Human Rights and Rule of Law (DGI) of the Council of Europe, relating to a possible visit of a delegation of representatives from the International Legal Cooperation Department of the Office of the Prosecutor General of Ukraine in May 2024. It considered that a meeting between this delegation and PC-OC delegations could be envisaged in the margins of the next plenary meeting, preferably on 16 May.