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PC-OC Mod (2022)02

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 32nd 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)**

Meeting held in hybrid format (Room G2, Agora Building and KUDO) on 27-29 September 2022

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 the Chair and the Secretariat, including:

- the list of decisions of the 81st meeting of the CDPC (14-15 June 2022), and in particular the adoption of a Feasibility Study on the Protection of the Environment through Criminal Law which underlines the need for a new Council of Europe Convention in this field, as well as the ongoing work on victims' rights and migrant smuggling;
- the request from Brazil to be reinvited to accede to the Council of Europe Convention on the Transfer of Sentenced Persons;
- the expressions of interest by other third countries to accede to conventions under the PC-OC's purview.

The PC-OC also took note of the information provided by the Chair and various delegations regarding bilateral treaties which have been recently concluded or for which negotiations are ongoing, as well as changes to domestic legislation of interest to the PC-OC.

3. 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 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, decided to approve the proposals, with the addition of cases which have recently become final, and to publish the updated version of the index and summaries of the case-law on its website.

4. Draft policy paper on the accession of non-Member States to Council of Europe conventions on international co-operation in criminal matters

The PC-OC Mod examined a draft policy paper prepared by the working group set up during the 81st plenary meeting of the PC-OC, composed of Joana Gomes Ferreira (Chair, Portugal), Adil Abilov (Vice-Chair, Azerbaijan) and Johannes Martetschläger (Austria), with the assistance of Raquel Tavares (expert). Ms Tavares was present online during the meeting and explained the various drafting choices made by the working group for this document, which sets down a procedure and criteria for the PC-OC to assess requests by third States to accede to Council of Europe Conventions on international co-operation in criminal matters, and indicates reliable sources of information to base this assessment on.

The Committee warmly thanked Ms Tavares and the working group for the preparation of this document, which it approved with amendments. It decided to invite the PC-OC to examine and adopt this text at its next plenary meeting, in view of its submission to the CDPC.

5. European Convention on Mutual Assistance in Criminal Matters

a. Review of the questionnaire on co-operation with the EPPO and discussion on further steps

The PC-OC Mod examined the replies by 14 non-EU States Parties to the European Convention on Mutual Assistance in Criminal Matters to a questionnaire regarding possibilities for co-operation with the European Public Prosecutor's Office (EPPO) under this Convention, based on unilateral declarations made by EU Member States, as well as their stance towards negotiating a new instrument in order to provide a clear legal basis for such co-operation. The discussion took place with the participation of Fabio Giuffrida (European Commission) and Florin Razvan Radu (EPPO).

The PC-OC Mod noted that the positions were evenly split between those that considered that the unilateral declarations were sufficient to co-operate with the EPPO and those that did not, whereas the overwhelming majority of responses expressed support for or a neutral stance towards the possibility of negotiating a new instrument.

The Swiss delegation informed the PC-OC Mod that Switzerland intends to amend its internal legislation to be able to co-operate with the EPPO, while specifying that this would not solve the problem of the application of the European Convention on Mutual Assistance in Criminal Matters to this co-operation, which would still require an additional legal basis.

The PC-OC Mod also took note with interest of the information provided by the EPPO on the conclusion of working agreements with five non-EU Member States (Albania, Georgia, Republic of Moldova, Montenegro and Ukraine) which are expected to facilitate the application of the Council of Europe Convention on Mutual Assistance in Criminal Matters to co-operation between the EPPO and these States. It also took note of the position expressed by the representative of the European Commission that, while in the short term the priority was to enable co-operation with the EPPO on the basis of unilateral declarations, in the medium and long term a new, self-standing legal instrument that would provide a solid legal basis could still have an added value.

Taking into account the positions expressed by different delegations in their replies to the questionnaire, as well as in the previous meetings of the PC-OC and the CDPC, and noting the shift in attitudes since the adoption of the current terms of reference of the PC-OC, the PC-OC Mod considered that it would be unrealistic, under the current circumstances, to expect to reach an agreement on a new instrument on this matter within the timeframe initially envisaged. Having weighed up various options, the PC-OC Mod decided to recommend to the PC-OC to consider instead conducting a study to assess the opportunity and feasibility of negotiating such an instrument, and to make a proposal to the CDPC in consequence. The delegations agreed that this feasibility study should remain as broad in scope as possible and thoroughly examine all the options available to enable and facilitate co-operation between the EPPO and non-EU States Parties to the European Convention on Mutual Assistance in Criminal Matters.

In parallel, the PC-OC Mod considered that representatives of the EPPO should be invited to the upcoming plenary meeting of the PC-OC, in order to provide the PC-OC delegations with more clarity about the functioning and competences of the EPPO, including the nature of the cases it is dealing with and the involvement of national authorities in its operations. It instructed the Secretariat to make the necessary arrangements to that effect.

b. Discussion on proposals for provisions to be included in a future additional Protocol

The PC-OC Mod had an exchange of views on the proposals presented by the UK delegation in a discussion paper, involving possible amendments to the provisions of the European Convention on Mutual Assistance in Criminal Matters as regards the use of videoconferencing, modernisation of channels of communication and the confidentiality of MLA requests. The PC-OC Mod warmly thanked the UK delegation for this discussion paper and welcomed the proposals contained therein. It noted that there was broad agreement among the delegations present in favour of these proposals, with the exception of proposal 3.a, which in the opinion of delegations required more reflection. It invited delegations wishing to do so to send information in writing to the Secretariat by 14 October, to be transmitted to the UK delegation, in order to allow it to refine these proposals before the next plenary meeting.

The PC-OC Mod decided to propose to the PC-OC plenary to take note of these proposals with a view to their inclusion in its future work on an additional Protocol to the Convention. Considering that the issue of channels of communication would merit an in-depth analysis of past proposals and existing practices, which would involve technical expertise, it recommended that the PC-OC set up a working group to deal with this matter. It also instructed the Secretariat to seek information about the outcome of the e-MLA initiative by INTERPOL which had been previously presented to the PC-OC.

6. European Convention on Extradition

a. Discussion on developing guidance on good practices regarding the post-surrender phase

The PC-OC Mod pursued the discussion started at the 81st plenary meeting of the PC-OC on the basis of a discussion paper presented by the Israeli delegation on this matter. The PC-OC Mod considered that the outcome of this exercise should take the form of soft guidance to States Parties to the European Convention on Extradition, while considering that issues such as the rule of speciality, re-extradition and communication regarding the length of time already served can also be usefully included within its scope. It recommended to the PC-OC to set up a working group composed of its members to draft this guidance and present it to the PC-OC Mod.

b. Update of the Publication: “Extradition: European Standards”

The PC-OC Mod took note of and approved the proposal by the Secretariat to entrust the updating of this publication to Raquel Tavares (expert), with a view to reviewing this work in the course of 2023.

c. Other issues

The PC-OC Mod took note of information provided by the Chair concerning a statement of the European Criminal Bar Association on mutual recognition of extradition decisions, followed by a brief discussion. It decided to bring this statement to the attention of the PC-OC for information.

7. Draft agenda of a special session with the COP198 on international co-operation on asset recovery

In the presence of the Secretary to the COP198, the PC-OC Mod discussed the format and content of a joint session with this Committee to be organised on 17 November, between 11 a.m. and 6 p.m.. It approved the proposals presented, with comments, and instructed the Secretariat to proceed with the organisation of this joint session. It encouraged its delegations to involve national experts in the field of asset recovery in their preparations for this event, which can also be followed online, and called for an expression of interest for participation in panels on behalf of the PC-OC by 21 October.