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CATS 43

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 19 May 2016
To: CATS
Subject: Summary of discussions

1. Adoption of the agenda

The agenda, set out in doc. CM 2621/1/16 REV 1, was adopted with the addition of an information point by the Council Legal Service under AOB.

2. Improving criminal justice in cyberspace

- a) Draft discussion paper for the Council (JHA)
- b) Draft Council conclusions on improving criminal justice in cyberspace and draft Council conclusions establishing the European Judicial Cybercrime Network doc 8769/16

Delegations exchanged views on the draft discussion paper with a view to preparing the debate of the Justice ministers at the June Council. They confirmed the pertinence of the issues presented given the challenges faced in criminal investigations in cyberspace, *i.e.* reviewing the possible connecting factors for enforcement jurisdiction in cyberspace and applying a differentiated approach to specific types of data. In general, delegations favoured having an open discussion at the Council allowing the examination of various options. Some highlighted the importance of defining an EU approach on those issues, also having in mind their global nature and the implications for international cooperation of the possible solutions.

Some delegations flagged that their national legislation already allows for a differentiated approach to different types of data. The link with the formal requirements of national criminal proceedings and the need in some cases to use MLA for obtaining all types of data was also highlighted.

A number of delegations considered it essential to involve service providers in the expert process to be launched by the Commission. Some delegations put forward the idea of appointing focal points for direct contacts with service providers at national level or in Europol or Eurojust. The Commission indicated that some of the deadlines included in the conclusions were very ambitious and it would depend on the technical aspects of the implementation as to whether they could be strictly adhered to.

Subject to some minor improvements and clarifications in the text, the relevant documents would be submitted to COREPER and Council with a view to adopting the two sets of draft Council conclusions and obtaining guidance from ministers for the future work of the Commission on improving criminal justice in cyberspace.

3. EU-US relations

a) Review of the 2010 EU-US MLA Agreement doc 8707/16

The Committee was informed by the Commission on the results of the review of the 2010 Agreement on mutual legal assistance between the European Union and the United States of America. The Committee agreed that the text as set out in the Annex to doc. 8707/16 should be submitted for endorsement to the Ministerial EU-US meeting on 1 and 2 June in Amsterdam. The Chair suggested that the Committee would at an appropriate time examine the follow-up to the recommendations as set out in the text. The Chair informed delegations of the issues that would be discussed during the above-mentioned meeting.

b) EU-US ministerial meeting on 1-2 June 2016

The Presidency informed the meeting of the items that would be addressed at the above-mentioned meeting.

4. International agreements that concern EU competences in the area of criminal law
– **state of play**
doc 5632/16

Delegations took note of the updated list of recent international agreements with relevance to criminal law. Several Member States reiterated their request to COM to present well in advance a comprehensive competence assessment when accession of the EU to such agreements is considered. The importance of early warning on incoming negotiations was underlined to allow also for coordinating the position of the EU and its Member States where relevant. The Council Secretariat was asked to keep the inventory updated. Listing relevant case law was also considered useful by delegations.

5. Migration crisis: aspects of judicial cooperation and fight against xenophobia: progress report
doc 8839/16

The Presidency, after having recalled the framework of the progress report, gave the floor to Eurojust which briefly outlined its actions, notably the increase of cases, the participation as support in hotspots, the work of the thematic group to draw up a cartography of the phenomena and an analysis of jurisprudence in the domain in each Member State, and also a tactical meeting held in February on the trafficking of human beings.

The Commission informed about its actions to prevent and fight xenophobia through dialogue with providers (code of conduct expected in 2017) and financial support to all the actors on the field.

During the debate, delegations expressed their support to Eurojust, highlighting that the operational cooperation was satisfactory.

A number of delegations explained their reserve regarding the posting of liaison magistrates in third countries without having more information in terms of needs, legal aspects, added value and cost. Eurojust was asked to provide a definition of needs with an analysis of options, taking into consideration the cost aspect.

Regarding the possible meeting of central authorities of Member States dealing with MLA issues, SE expressed the priority to choose the operational level more than the central authorities.

Delegations were invited to send their answer to the questions by 27 May 2016.

**6. Draft Council conclusions on the Eurojust Annual Report 2015
doc. 8768/16**

The Presidency, after referring to the traditional delivery by Eurojust of its Annual Report (doc 7492/16), briefly presented the draft Council conclusions. Eurojust highlighted the increase of cases, the increased use of coordination meetings and Eurojust' priorities during 2015 (terrorism, illegal migration and cybercrime).

The Commission welcomed the Eurojust Annual Report, highlighting the importance of the contact points in third countries as a light form of cooperation and of the Joint Investigation Teams as a success story.

Delegations welcomed the Eurojust Annual Report and expressed their support to draft Council conclusions. Some delegations presented a few comments and remarks aimed to further improve the text. The Presidency took note of the agreement in principle on the draft Eurojust Council conclusions subject to some drafting amendments, *i.e.* the need to emphasise Eurojust's role to support the Member States and the necessity of implementing in an efficient way the agreements already concluded with third countries.

Delegations were invited to send any other further written comments by 23 May 2016. The draft Council Conclusions would be submitted as an A-point for the approval of the Council.

7. Presentation of the priorities of the incoming Slovak Presidency

The incoming Slovak Presidency informed CATS about its programme, whereby it would ensure continuity on on-going files, and the meetings as provisionally planned (26-27 September 2016 and 21-22 November 2016).

8. AOB

– **Roadmap to enhance information exchange and information management in the Justice and Home Affairs area: information from the Presidency**

The Presidency informed delegations about the development of the above-mentioned Roadmap (doc. 8437/16) which also touches upon aspects of judicial cooperation.

Delegations were invited to consult with their COSI delegates on this matter.

– **Delegates' Portal**

The Secretariat briefly presented the main features of the Delegates' Portal and called upon delegations to make full use of the functionalities of this platform.

– **Pending cases and development on the case law of the Court of Justice:
information of the Legal Service**

The Legal Service informed the meeting about the judgment of the Court in Joined Cases C-404/15 and C-659/15 PPU. development in pending cases in the area of responsibility of CATS.
