



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 26 September 2013**

**13651/13**

**GENVAL 56**

**NOTE**

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from:	Presidency
to:	Working Party on General Matters including Evaluations (GENVAL)
No. prev. doc.:	11147/13 GENVAL 36
Subject:	Orientation debate on the seventh round of Mutual Evaluations - possible topics

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**Introduction**

1. In line with the Joint Action 97/827/JHA<sup>1</sup>, adopted by the Council on 5 December 1997, at the last GENVAL meeting of 10 July 2013, the Presidency proposed two possible topics for the seventh evaluation round, both of which were already discussed when deciding on a topic for the current sixth evaluation round, namely cybercrime and special investigative techniques.

2. Most Member States stressed during this initial orientation debate that they supported continuing the mutual evaluation rounds and conducting a seventh round. However, they would need more time to think before taking any decision on a topic. Some indicated their provisional preference, with a slight predominance for cybercrime, provided that the mandate for an evaluation be sufficiently focused.

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<sup>1</sup> Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime (OJ L 344, 15.12.1997, p. 7).

A deadline for comments was set at 13 September. Eight delegations sent in written comments and / or proposals: AT, CZ, DE, DK, EE, FR, HU, IT; a small compendium containing these written contributions is attached to this note.

3. In addition to the two topics proposed, one delegation - Germany, supported by other delegations - suggested "Mutual evaluation of the legal and practical implementation of Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties"<sup>1 2</sup>.

Another delegation (Denmark) suggests evaluating Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union<sup>3 4</sup>.

A third delegation (Austria) proposes to evaluate "an appropriate law enforcement issue".

4. During the debate in GENVAL, 22 delegations took the floor. As indicated, "cybercrime" seemed to gather the most supporters: BE, CZ, HU, ES, FR, IT, PT, SE with BG, CY, DE, DK, EE, EL, FI, IE, LU, NL, PL, SI, UK able to support. One delegation, AT stated, that they found that an evaluation of cybercrime would be premature.

A number of delegations declared that they could support also the second topic proposed - special investigative techniques. FI and SK declared a preference for this topic; AT, BG, CZ, EE, FR, HU, IE and SI would be able to support it as well, while seven Member States, BE, DE, DK, FR, NL, PL and UK were against it.

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<sup>1</sup> OJ L 76, 22.3.2005, p. 16

<sup>2</sup> DS 1674/13.

<sup>3</sup> OJ L 327, 5.12.2008, p. 27.

<sup>4</sup> DS 1781/13.

5. Judging from this initial debate and the written comments received, "cybercrime" should be the topic for the next evaluation round - focusing on the mandate, avoiding duplication and taking into account among other things the Council of Europe acquis. This is the reason for devoting the rest of this document to this topic, while stressing that discussions are still open.

6. An overview of existing legislative and non-legislative documents and activity/initiatives was given in the previous document<sup>1</sup>. To briefly update it, it should be mentioned that the Directive of the European Parliament and of the Council on Attacks against Information Systems was adopted in July this year and published in August<sup>2</sup>. Apart from an approximation of the criminal law of Member States by establishing minimum rules concerning the definition of criminal offences and the sanctions in the area of attacks against information systems, the objective of this Directive is to improve cooperation between competent authorities, including the police and other specialised law enforcement services of the Member States, as well as the competent specialised Union agencies and bodies, such as Eurojust, Europol and its recently established European Cyber Crime Centre (EC3), and the European Network and Information Security Agency (ENISA).

Following the setting by the JHA Council on 6-7 June 2013, within the framework of the Policy Cycle, of cybercrime as one of the nine EU priority for the fight against serious and organised crime between 2014 and 2017, a Multi-Annual Strategic Plan (MASP) was developed for each priority in order to achieve a multidisciplinary, integrated and integral Strategic Goals (the MAPS related to cybercrime is set out in doc. 12759/3/13 REV 3). The future steps encompass drafting of the annual Operational Action Plans (OAPs) that need to be aligned to the strategic goals which have been determined in the MASP. The cybercrime OAP workshop to draw up this draft will take place on 1 and 2 October 2013.

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<sup>1</sup> 11147/13 GENVAL 36.

<sup>2</sup> OJ L 218, 14.8.2013, p.8.

In this context, it should be mentioned that the mandate for the Friends of Presidency Group (FoP) on Cyber Issues, established at the end of 2012<sup>1</sup> for initially one year, will most probably be extended for another year. Following the adoption of the Joint Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on "*The Cybersecurity Strategy of the European Union: An open, safe and secure Cyberspace*"<sup>2</sup>, on 7 February 2013 by the Commission and the High Representative of the European Union for foreign affairs and security policy, the FoP undertook the task to draft and negotiate Council Conclusions on that Strategy, which were adopted in June.

These Council Conclusions<sup>3</sup>, containing in its point 30-36 recommendations and invitations to stakeholders in the area of cybercrime, equally stress the importance of coordination and a comprehensive policy framework.

One delegation (Estonia) suggests that an evaluation should deal with cyber crime/criminal matters/ law enforcement cooperation in the fight against child pornography and child sexual abuse online focusing on offences against the confidentiality, integrity and availability of computer data and systems. Solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet. The fight against child pornography and the prevention and combating of sharing of child pornography images, spreading through the use of new technologies and the Internet, could be dealt with as a separate element of such an evaluation, with an emphasis on the practical cooperation (participation in the European Union Strategic Group of the Heads of National High-Tech Crime Units at Europol, the use of joint investigation teams (JITs) and public-private partnerships (as mentioned in the previous document). This sub-topic could form part of the evaluation.

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<sup>1</sup> 15686/12 POLGEN 183 JAI 750 TELECOM 198 PROCIV 170 CSC 72 CIS 6 RELEX 988 JAIEX 91 RECH 398 COMPET 659 IND 181 COTER 107.

<sup>2</sup> 6225/13 POLGEN 17 JAI 87 TELECOM 20 PROCIV 20 CSC 10 CIS 4 RELEX 115 JAIEX 14 RECH 36 COMPET 83 IND 35 COTER 17 ENFOPOL 34 DROIPEN 13 CYBER 1.

<sup>3</sup> 12109/13 POLGEN 138 JAI 612 TELECOM 194 PROCIV 88 CSC 69 CIS 14 RELEX 633 JAIEX 55 RECH 338 COMPET 554 IND 204 COTER 85 ENFOPOL 232 DROIPEN 87 CYBER 15 COPS 276 POLMIL 39 COSI 93 DATAPROTECT 94.

Concerning the Global Alliance against Child Sexual Abuse Online, the joint initiative by the EU and the US launched by the Commission on 5 December 2012, delegations will receive an update at the upcoming GENVAL meeting.

As stated in the previous document, apart from the legal issues, an evaluation should look at best practices on technological investigation techniques in the police, judicial and forensic authorities, among other things looking at statistical data and anti-cyber crime policy, practical forms of cooperation with other Member States, how a cross-border cyber-incident is handled in practice, etc.

### **Concluding remarks**

*At its meeting on 3 October 2013, GENVAL is invited to:*

- *have a continued discussion of the topics for this evaluation round, including the two new topics suggested. If possible, the topic should be decided at the meeting so that the next meeting could be devoted to a closer examination of a draft questionnaire. It should be noted that once the questionnaire has been adopted, the first on-site visit generally takes place 6-8 months thereafter.*

**AUSTRIA**

We would like to recall that the last three rounds where:

4 - arrest warrant (justice)

5 - financial crime & investigations (horizontal)

6 - Eurojust (justice).

This makes it seem appropriate that the 7th round should be dedicated to a (at least largely) law enforcement issue.

Therefore we cannot support proposals that would focus on implementation of FDs under the principle of mutual recognition.

As can be seen from document 11147/13 GENVAL 36, the issue "special investigative measures" is also an issue which is horizontal.

As we have said in the last GENVAL meeting, we find the topic "cyber crime" premature.

Therefore we feel that thought should be given to find an appropriate law enforcement issue; I am sorry that we do not have such a proposal at hand.

## CZECH REPUBLIC

CZ is relatively flexible regarding the selection of topics for the 7th round of mutual evaluations. Based on the last GENVAL meeting, we have taken into account both the advantages and disadvantages of the proposed topics.

From the perspective of the Police Presidium of the Czech Republic, the topic of cybercrime would be very desirable since it poses an increasingly more important issue. Special investigative techniques are seen as an interesting topic, however, it would have to be narrowed down to specific areas such as information exchange, coordination of cross-border cooperation, etc.

On the other hand, the topic of special investigative techniques is supported by the Ministry of Justice based on the knowledge of great differences within the Member States regarding the conditions for their authorisation, or the fact that they are not considered as evidence and therefore they are not included in the international judicial cooperation in some Member States (e.g. Poland).

Providing that this round would be able to accurately map the conditions for authorization, methods of application, or control of the use of such techniques and the Member States' approaches to their use, and providing the result would be the impetus for establishing at least some common criteria permitting certain procedural actions, then it could represent a significant step forward for the EU. CZ does not propose any other topic for the 7th round of mutual evaluations, and considering the importance of both given topics, CZ is prepared to support either.

## GERMANY

At the meeting of the GENVAL Council Working Group on 10 July 2013, the EU Member States were requested by the Council Presidency to submit proposals, by 13 September 2013, for the topic of GENVAL's upcoming seventh round of mutual evaluations.

The Federal Republic of Germany is pleased to take advantage of this opportunity and would like to propose the following topic for the seventh round of mutual evaluations: “mutual evaluation of the legal and practical implementation of Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.”

Reasons:

The Council of the European Union adopted Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (hereinafter referred to as “Financial Penalties Framework Decision”) on 24 February 2005. The proposal was put forward on the initiative of France, Sweden and the United Kingdom. This created for the Member States of the European Union a uniform procedure for cross-border enforcement of financial penalties within the European Union and set a new European standard.

The deadline for implementing the Financial Penalties Framework Decision expired on 22 March 2007. Therefore the Member States have already been able to gain experience with the application of the legal instrument. This provides a sound basis for an assessment of the legal and practical status of implementation in the individual Member States.

In addition to the European arrest warrant and the Framework Decisions on the freezing of evidence and on the recognition of confiscation orders, the Financial Penalties Framework Decision is the fourth European legal instrument based on the principle of mutual recognition of criminal decisions. The principle of mutual recognition goes back to the special meeting of the European Council in October 1999 in the Finnish city of Tampere and was referred to there as the cornerstone of future judicial cooperation in civil and criminal matters. In the Council's programme of measures to implement the principle of mutual recognition of judicial decisions, priority at that time was given to the adoption of a legal instrument for the application of financial penalties.



Among the instruments of mutual recognition, so far only the implementation of the Framework Decision on the European arrest warrant has been examined. Just like the European arrest warrant, the Financial Penalties Framework Decision also constitutes an important building block in the creation of a European area of freedom, security and justice. Effective cross-border enforcement of financial penalties is an important prerequisite for ensuring that the Member States' legal systems are not only observed by their own citizens but also by all visitors from other EU countries. This guarantees legal equality and certainty for all. However, prior to the entry into force of the Financial Penalties Framework Decision, cross-border enforcement of financial penalties only took place to a limited extent between the Member States of the European Union. The Financial Penalties Framework Decision closed this gap. Application of the Framework Decision is of great practical significance for, inter alia, road traffic matters.

Legal certainty and legal equality within the European Union are fostered significantly by applying the Financial Penalties Framework Decision consistently and as uniformly as possible in all EU Member States. A mutual evaluation by the GENVAL Council Working Group could contribute to this. In the context of an evaluation, the Member States could, in particular, exchange their legal and practical experiences and develop best practices. It might be possible to identify remaining application problems and find a solution to them. In the medium term, this would ensure greater application of the Financial Penalties Framework Decision and achieve a higher case load.

Also, in light of the fact that the principle of mutual recognition will be embodied in other European legal instruments, such as the European Investigation Order, an evaluation of the Financial Penalties Framework Decision would be useful and informative.

JUSTITSMINISTERIET  
Ministry of Justice

Date: 6 September 2013  
Office: Criminal Enforcement  
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Our ref.: 2013-304-0142  
Doc.: 859721

**Danish suggestions and comments on possible evaluation topics for a seventh round of mutual evaluations in accordance with Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime (97/827/JHA)**

Denmark is of the opinion that the topic for a seventh round of mutual evaluations should be Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (as amended by Council Framework Decision 2009/299/JHA of 26 February 2009).

It is the Danish point of view that the cooperation regarding transfer of prisoners is just as important as the cooperation relating to the Framework Decision on the European Arrest Warrant because it ensures that nationals of our respective countries can be returned home to serve their sentences with a view to facilitating the social rehabilitation of the sentenced person. Therefore, it is of great importance to ensure a smooth and efficient cooperation between all Member States in this area.

Denmark would also be able to support Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties as the topic for a seventh round of mutual evaluations.

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Furthermore, Denmark can also accept “Cybercrime” being the topic for a seventh round of mutual evaluations if this is supported by a vast majority of Member States. However, it is very important that the mandate for an evaluation is sufficiently focused and that the evaluation focuses on criminal matters and not security issues in relation to cybercrime, cf. Article 1(1) of the Joint Action.

On the other hand, Denmark cannot support “special investigative techniques” as the topic of the upcoming seventh round of mutual evaluations. Some of the well-known special investigative techniques mentioned in the 2000 Convention on Mutual Legal Assistance have already been dealt with as a sub-aspect of previous rounds of mutual evaluations. Furthermore, an EU-wide definition of “special investigative techniques” does not seem to exist which could hamper an effective seventh round of mutual evaluations.

## ESTONIA

Estonia is of the opinion that the topic for a seventh round of mutual evaluations should be cybercrime focusing on law enforcement cooperation. We support the Danish view that the evaluation should not focus on security issues in relation to cybercrime. We believe that in addition to the law enforcement cooperation in the fight against child pornography and child sexual abuse online the focus of the evaluation should be on offences against the confidentiality, integrity and availability of computer data and systems.

Our next preference would be special investigative techniques. It would be useful to map the legal and practical obstacles within the field of special investigative techniques, in particular in relation to practical cross-border cooperation and to study how this cross- border co- operation works in practice.

We could also support Council Framework Decision 2008/909/JHA as the topic for a seventh round of mutual evaluations. However, although from the practical aspect the topic would be very interesting and necessary, it has been not fully implemented yet and therefore it could be too early for the evaluation.

We cannot support Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties as the topic for a seventh round of mutual evaluations.

## **FRANCE**

### **FR**

Pour la France, le choix de la cybercriminalité est le thème à retenir pour le 7ème cycle d'évaluations mutuelles.

Toutefois, comme nous l'avions exprimé lors de du groupe GENVAL du 10 juillet 2013 et conformément à la demande de plusieurs autres Etats membres lors de la réunion du 10 juillet dernier, nous sollicitons la Présidence pour qu'elle rappelle qu'il serait intéressant qu'une réflexion soit menée par la Commission européenne sur l'élaboration d'un instrument destiné à harmoniser les définitions et contenus des techniques spéciales d'enquêtes.

### **EN**

For France, the choice of cybercrime is the theme to adopt for the seventh round of mutual evaluations.

However, as we expressed at the GENVAL of 10 July 2013 and in accordance with the request of several other MS at the meeting of July 10, we will appreciate from the Presidency to remind that it would be interesting that a reflexion should be conducted by the European Commission on the development of an instrument to harmonize definitions and contents of special investigation measures.

## **HUNGARY**

On behalf of Hungary I can confirm that our position is the same as it was highlighted during the GENVAL meeting in July. We think that a cybercrime related evaluation that focusing on law enforcement cooperation could be very useful. However we are not against any other suggested topic. We could support the Danish proposal (evaluation of 2008/909/JHA or 2005/214/JHA) as well since we also proposed these during our Presidency.

## **ITALY**

With reference to the subject of the next (seventh) round of mutual evaluation currently under discussion, be informed that Italy agrees on the choice of “cyber-crime” as the theme to be dealt with.

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