



**COUNCIL OF
THE EUROPEAN UNION**

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8365/12

COPEN 78

OUTCOME OF PROCEEDINGS

of: Working Party on Cooperation in Criminal Matters
on: 28 March 2012
Subject: Summary of discussions

1. Adoption of the agenda

The agenda as set out in CM 2166/3/12 REV 3 was adopted.

2. Exchange of information extracted from criminal records (ECRIS): Implementation of the Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) and the Council Framework Decision 2009/315/JHA on the exchange of information extracted from criminal records

- **Information on the state of play on the implementation**

- **Discussion paper on the possible further support required by Member States during the implementation and beyond.**

7745/12 COPEN 58 EJUSTICE 22 JURINFO 13

A detailed outcome of proceedings regarding this point is set out in 8327/12 COPEN 76 EJUSTICE 28 JURINFO 15.

3. Study "Making better use of statistical data relating to the European Arrest Warrant" - Final report
DS 1163/12 +ADD 1

The Commission presented the study and the revised draft questionnaire that was being proposed. Several delegations provided comments on the draft questionnaire, highlighting its detailed nature. The Chair invited delegations to provide written comments on the draft questionnaire by 16 May 2012.

4. State of play of the implementation – follow-up of the Mutual recognition instruments:
13405/1/10 REV 1 COPEN 184 EUROJUST 86 EJM 35

- **Framework decision 2003/577/JHA on the execution in the European Union of freezing property or evidence**
16921/1/10 REV 1 COPEN 268 EJM 69 EUROJUST 136
- **Framework decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders**
7348/1/11 REV 1 COPEN 38 EJM 17 EUROJUST 25
- **Framework decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties**
16924/2/10 REV 2 COPEN 269 EJM 70 EUROJUST 137
17998/10 COPEN 295 EJM 81 EUROJUST 153
7941/12 COPEN 62 EJM 17 EUROJUST 22
- **Framework decision 2008/909/JHA 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**
6345/12 COPEN 34 EJM 10 EUROJUST 13
- **Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions**
7334/12 COPEN 48 EJM 14 EUROJUST 19

The Chair recalled the Council conclusions of 8 October 2010 on the follow up to mutual recognition instruments. Delegations were reminded of the current state of play regarding various mutual recognition instruments and invited to send in an update.

- **Information on the European Judicial Network Website - Presentation by EJM**

The EJM Secretariat provided a presentation of its website and the information available on the website.

5. Information on the Probation Framework decision – Presentation by Belgium

The Belgian delegation presented the EU project that the Belgian Ministry of Justice had launched in 2009 on the implementation of the 2008/947/JHA Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgement and probation decisions with a view to the supervision of probation measures and alternative sanctions.

This project was co-financed by the European Commission and realised with the partnership of France, Germany, Hungary, Luxembourg, Slovakia, Spain, United Kingdom and the European Organisation for Probation ('CEP'). It is aimed at facilitating the effective implementation of the Framework Decision by networking legislative experts and practitioners, identifying the main difficulties linked to the implementation of this instrument and disseminating information on national probation systems.

One of the results of this project consists in the setting-up of a website offering an overview of the legal systems with regard to probation measures and alternative sanctions in each Member State and explaining the main steps and objectives underpinning the EU project: www.euprobationproject.eu.

6. Implementation of the EU-JAPAN mutual legal assistance agreement

- Discussion of fact-sheets

13259/11 COPEN 187 EJM 93 EUROJUST 114 COASI 127
14673/11 COPEN 250 EJM 126 EUROJUST 150 COASI 163
14668/1/11 REV 1 COPEN 249 EJM 125 EUROJUST 149 COASI 162
14667/11 COPEN 248 EJM 124 EUROJUST 148 COASI 161
14665/11 COPEN 247 EJM 123 EUROJUST 147 COASI 160
14640/11 COPEN 245 EJM 122 EUROJUST 146 COASI 156
14639/11 COPEN 244 EJM 121 EUROJUST 145 COASI 155
14636/11 COPEN 234 EJM 120 EUROJUST 144 COASI 154
14635/11 COPEN 242 EJM 119 EUROJUST 143 COASI 153
14634/1/11 REV 1 COPEN 241 EJM 118 EUROJUST 142 COASI 152
14231/11 COPEN 219 EJM 109 EUROJUST 131 COASI 141
14230/11 COPEN 218 EJM 108 EUROJUST 130 COASI 140
14108/11 COPEN 214 EJM 106 EUROJUST 128 COASI 137
14106/11 COPEN 213 EJM 105 EUROJUST 127 COASI 136
15895/11 COPEN 285 EJM 139 EUROJUST 165 COASI 187
15896/11 COPEN 286 EJM 140 EUROJUST 166 COASI 188
15897/11 COPEN 287 EJM 141 EUROJUST 167 COASI 189
16326/1/11 REV 1 COPEN 300 EJM 149 EUROJUST 177 COASI 196
16434/1/11 REV 1 COPEN 307 EJM 154 EUROJUST 182 COASI 197
16439/11 COPEN 308 EJM 155 EUROJUST 183 COASI 198
16485/11 COPEN 309 EJM 156 EUROJUST 184 COASI 199
8037/12 COPEN 67 EJM 18 EUROJUST 23 COASI 36

Delegations were reminded of the fact that there were still some Member States that needed to send in their fact-sheets regarding the EU-Japan MLA Agreement.

7. Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway - Notifications and declarations

7454/12 JAI 159 COPEN 51

Delegations were reminded that some Member States still needed to make their notifications - declarations under the 2006 EU-Norway / Iceland agreement on surrender.

8. Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest
- Questions on Article 11 on the right of access to a lawyer in European Arrest Warrant proceedings

7794/12 DROIPEN 30 COPEN 59 CODEC 695
8031/12 DROIPEN 34 COPEN 65 CODEC 769

The Working Party generally agreed with the indications by the Presidency, according to which the procedural rights referred to in Article 11(3) of the draft Directive (cf. 7337/12) should also extend to European arrest warrant proceedings, but pointed out that account should be taken of the specificities of those proceedings. In particular, the rights should not delay the surrender procedure.

Various delegations observed that they do not consider it appropriate to insert in Article 11(2), third indent, the words "during questioning, if any, and" after "participate". The observation was made that in European arrest warrant proceedings any questioning in the executing State, such as by the police, should normally relate only to the identification of the person concerned. In this light, the Presidency suggested to leave the text as it stood.

9. Any other business.

- Relation between Framework Decision 2009/315/JHA from 26 February 2009 on the exchange of information extracted from criminal records (ECRIS) and the European Investigation Order, particularly Article 3.

The German delegation shortly presented its concerns in respect of the relationship between the ECRIS system and the mechanisms of gathering of evidence envisaged by the draft Directive on EIO. In response the chair indicated that, the EIO concerns the gathering of evidence while ECRIS concerns exchange of criminal records. Therefore, the two instruments co-exist. No delegation objected this conclusion.