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NOTE

From: Presidency
To: Working Party on General Matters, including Evaluations (GENVAL)
Subject: Orientation debate on the eight round of mutual evaluations
- Possible topics

I) Introduction

The seventh round of mutual evaluations, dedicated to the practical implementation and operation of European policies on the prevention and combating cybercrime, is well underway. Since it started in October 2014, 25 Member States have been evaluated, and so far 10 reports have been adopted. The last evaluation visit is foreseen to take place in autumn 2016, which means that the final report could be adopted in the first semester of 2017. Based on the above timeline, the first evaluation visits of the eighth round of mutual evaluations could take place in mid-2017.

According to Article 2 of Joint Action 97/827/JHA¹, adopted by the Council on 5 December 1997, the Presidency shall propose to GENVAL delegations for approval a "*specific subject of the evaluation as well as the order in which Member States are to be evaluated*".

Taking into account the preparatory work to be carried out as regards the choice of a topic, the elaboration and adoption of the questionnaire and the definition of the order of the visits to the Member States, the Presidency believes it is time to start an orientation debate on the topic of the eighth round of mutual evaluations, with a view to taking a decision in this respect by the end of the current semester.

II) Proposals of topics for the eighth mutual evaluation round

In order to start the discussions on the topic of the eighth mutual evaluation round at next Genval meeting on 20 July 2016, the Presidency proposes the following topics:

- A) Environmental crime
- B) Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases
- C) Practical application of EU legal instruments on procedural rights for suspects and accused persons in criminal proceedings
- D) Practical application of EU legal instruments on victims' rights

¹ 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).

Relevant instruments, documents and ideas for what could be looked at during the evaluations are indicated below for each of them. The mandate and the detailed content of the evaluations will of course have to be clearly defined at a later stage following further discussions, the choice of the topic and the adoption of the questionnaire.

Topic A) Environmental crime

Environmental crime encompasses a wide range of offences, which wilfully or purposefully damage the environment with a serious and multi-faced impact on our societies, and is acquiring both a growing importance in the European Union and an increasing cross-border dimension, thus requiring an adequate response at national, EU and international level.

Due to the close links of environmental crime with other forms of crime, in particular different fraud offences, detected crimes are often reported without due regard to their environmental component, and relatively low rates of detection and conviction, as well as a generally low level of penalties, are registered for this crime.

Along with these factors, the possibility to diversify illegal infiltration in a wide range of areas, the huge amount of money derived from environmental crime used for further laundering and other illicit activities, and the potential high profits, make environmental crime an attractive opportunity to an increasing range of perpetrators, most importantly to organized criminal groups and networks.

Directive 2008/99/EC on the protection of the environment through criminal law² has approximated elements of substantive criminal law at EU level, by setting minimum standards of environmental protection and requiring Member States to provide for adequate and dissuasive criminal sanctions for the most serious environmental offences. However, differences exist in the practical implementation of measures to tackle environmental crime, as well as in the legal definitions at national level, and perpetrators are using the freedom of movement across the EU to increase the scope of their activities.

Environmental crime has been addressed by the dedicated 2013 Threat assessment by Europol³ and is mentioned in the 2013 SOCTA⁴ among the specific emerging threats requiring intensified monitoring; the Interim SOCTA 2015⁵ identifies illicit trafficking of endangered species, along with illicit waste trafficking, among the main criminal threats the EU is facing, underlining that intelligence gaps remain as regards the scope of activity and the modus operandi used by organized criminal groups and other criminal actors involved in environmental crime.

In the framework of the EU Policy Cycle⁶, the Council noted that all actors involved in the fight against serious and organised crime must retain a margin of flexibility to address unexpected or emerging threats to EU internal security, in particular regarding environmental crime and energy fraud.

² OJ L 328 of 6.12.2008, p. 28

³ doc. 15915/13

⁴ <https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>

⁵ 7271/15

⁶ EU's priorities for the fight against serious and organised crime 2014-2017 (12095/13)

However, as pointed out in the Eurojust report on a "Strategic Project on environmental crime"⁷, despite its potentially grave consequences, the seriousness of environmental crime is often underestimated. Furthermore, as highlighted by the EnviCrimeNet report (IPEC) presented to COSI in 2014⁸, this form of crime suffers also from a lack of awareness by the general public and by the law enforcement authorities, as well as from insufficient coordination, cooperation and synergies between the competent national authorities.

As highlighted in the European Agenda on Security⁹ adopted by the Commission in 2015, environmental crimes can cause significant damage to the environment and to human health, reduce government revenues and impose clean-up costs on taxpayers, and therefore require appropriate monitoring and enforcing.

In the light of the above, with a view to strengthening the action against environmental crime at EU and national level, a mutual evaluation round, based on the peer review approach, could provide an added value by offering the opportunity, with the on-spot visits, to consider, in addition to the legal issues, relevant practical and operational aspects.

With a view to identifying shortcomings and areas for improvement, as well as best practices to be shared among Member States, an evaluation could in particular look at the following issues: the practical implementation in the Member States of EU legislation regarding environmental crime and linked criminal activities; difficulties encountered in investigating and prosecuting this crime; practical aspects of interagency cooperation and exchange of information among the competent national authorities; cooperation between Member States in cross border environmental cases; availability of statistical data as regards the various forms of environmental crime.

⁷ http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Strategic%20project%20on%20environmental%20crime%20%28October%202014%29/environmental-crime-report_2014-11-21-EN.pdf

⁸ doc.16438/14

⁹ doc. 8293/15

Topic B) Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases

The exchange of (law enforcement) information is one of the Union's efforts enabling to step up the fight against cross-border crime, in particular in the fight against terrorism and against the smuggling of migrants. The insufficient feeding, consultation and interoperability of databases like the SIS, the VIS, Eurodac, ECRIS, as well as Europol and Eurojust information systems (but also non-EU databases like Interpol's SLTD), have been a longstanding point of attention in the JHA area.

The importance of swift, effective and quality information exchange and accompanying follow-up of information to tackle migratory, terrorist and other crime-related challenges was emphasised at the highest political level on various occasions: the Council on 20 November 2015, by the European Council on 17 and 18 December 2015, by the Justice and Home Affairs Ministers and representatives of EU Institutions in their statement on 24 March 2016, as well as by the Council on 21 April 2016.

Various initiatives have already been taken to address some of the gaps. At its meeting on 10 June 2016, the Council endorsed a Roadmap¹⁰ with actions to improve information management and the cross-border exchange of information, including interoperability of systems. On 6 April 2016, the Commission issued a Communication "Stronger and Smarter Information Systems for Borders and Security"¹¹. Further to this Communication, the Commission has set up a High Level Expert Group on Information Systems and Interoperability, which will look both at ways of improving current IT systems and their implementation and at the possible development of new systems, as well as at the interoperability of systems.

¹⁰ doc. 9368/1/16

¹¹ doc. 7644/16

These initiatives are mainly focused on measures to be taken at EU level. This does not detract from the need to investigate how EU databases are fed and consulted at national level. Public security and law enforcement in general are and remain primarily the responsibility of Member States. Any effort to improve information sharing between Member States can only be successful if the information management works properly at national level.

This poses demands in terms of quality and quantity of information (the right information is fed into the right databases), as well as in terms of timeliness of information exchange. As (law enforcement) information is primarily collected by national law enforcement authorities and stored in national databases, a proper understanding of these national IT systems is an absolute prerequisite.

One of the main purposes of an evaluation round on this topic would be to gain a proper understanding for each Member State of how the information flow works at national level, including when and how information is stored in national IT systems, how that information is fed into and checked against EU (or other international) databases. Questions of access to databases, retention of data and purpose limitation will obviously also be of central importance to this exercise.

The scope of the mutual evaluation would therefore go well beyond checking whether Member States have fully implemented EU rules regarding existing IT systems, and the on-spot visits would allow to cover also the practical implementation and management of (law enforcement) information at national level across the board.

A mutual evaluation round on this topic, based on the peer approach model, would enable an in-depth examination by law enforcement experts from other Member States of the specific challenges and difficulties faced by the Member States in the management of information flows. Apart from identifying possible gaps and deficiencies, a mutual evaluation would also allow Member States to share good practices in this area.

Topic C) Practical application of EU legal instruments on procedural rights for suspects and accused persons in criminal proceedings

In November 2009, the Justice and Home Affairs Council adopted the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings.¹² The Roadmap provides a step-by-step approach – one measure at a time – towards establishing a full EU catalogue of procedural rights for suspects and accused persons in criminal proceedings.

The aim of the Roadmap is to foster the application of the principle of mutual recognition of judicial decisions, for example in the context of the Framework Decision on the European Arrest Warrant¹³. The Roadmap also seeks to improve the balance between the measures aimed at facilitating prosecution, on the one hand, and the protection of procedural rights of the individual, on the other hand. In December 2009, the European Council welcomed the adoption of the Roadmap and made it part of the Stockholm programme.¹⁴

The Roadmap called on the Commission to submit proposals for legislative measures on five rights,¹⁵ which the Council pledged to deal with as matters of priority. In the last years, the Roadmap has been gradually rolled-out. The following measures have now been adopted:

- a) Directive 2010/64/EU on the right to interpretation and translation¹⁶ lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of the European Arrest Warrant (transposition deadline: 27.10.2013).

¹² OJ C 295, 4.12.2009, p. 1.

¹³ OJ L 190, 18.7.2002, p. 1.

¹⁴ OJ C 115, 4.5.2010, p. 1; point 2.4.

¹⁵ Measure A: Translation and interpretation; Measure B: Information on rights and information about the charges; Measure C: Legal advice and legal aid; Measure D: Communication with relatives, employers and consular authorities; Measure E: Special safeguards for suspected or accused persons who are vulnerable.

¹⁶ OJ L 280, 26.10.2010, p. 1.

b) Directive 2012/13/EU on the right to information¹⁷ lays down rules concerning the right to information of suspects and accused persons, relating to their rights in criminal proceedings and rules on the right to information of persons subject to a European Arrest Warrant (transposition deadline: 2.06.2014).

c) Directive 2013/48/EU on the right of access to a lawyer¹⁸ lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to a European Arrest warrant to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (transposition deadline: 27.11.2016).

d) Directive (EU) 2016/343 on the presumption of innocence¹⁹ lays down common minimum rules on certain aspects of the presumption of innocence in criminal proceedings and on the right to be present at the trial in criminal proceedings (transposition deadline: 1.04.2018).

e) Directive (EU) 2016/800 on procedural safeguards for children²⁰ lays down common minimum rules concerning certain rights of children who are suspects or accused persons in criminal proceedings or subject to a European Arrest Warrant (transposition deadline: 11.06.2019).

f) Directive (EU) 2013/.... on legal aid²¹ will lay down minimum rules concerning the right to legal aid for suspects and accused persons in criminal proceedings and persons who are subject to a European Arrest warrant (agreed but not yet formally adopted).

¹⁷ OJ L 142, 1.6.2012, p. 1.

¹⁸ OJ L 294, 6.11.2013, p. 1.

¹⁹ OJ L 65, 11.3.2016, p. 1.

²⁰ OJ L 132, 21.5.2016, p. 1.

²¹ doc. 10665/16

A mutual evaluation round – which, given the transposition deadlines, might preferably concentrate on the first three Directives – would provide added value by allowing to assess, on the basis of the on-spot visits, relevant practical aspects regarding the application of the Directives in the national legal orders.

The evaluation could look inter alia at the following issues: national practices and procedures that aim at ensuring that suspects and accused persons, as well as requested persons, can exercise their rights under the Directives; possible obstacles encountered by the Member States in the application of the Directives and at the fulfilment in practice of the Directives' objectives; possible action needed to further improve the application of the Directives; possible lacunae in the Directives that may need to be filled.

The evaluation, based on the peer review approach, would allow Member States to learn from each other and to share best practices, as well as to identify shortcomings and areas for improvement.

Topic D) Practical application of EU legal instruments on victims' rights

Freedom of movement across the Union has increased the number of people who become victims of criminal offences abroad and who become involved in criminal proceedings with a cross-border dimension, thus requiring appropriate action both at national and at EU level, with a view to enhancing victims' assistance and protection.

Against this background, as the role of victims in the criminal justice systems and the modalities of their participation in criminal proceedings vary in the Members States, it is important to ensure that any victim can rely on the same basic level of rights across the EU.

For this purpose, the Council in the Roadmap adopted by its resolution of 10 June 2011²² called for the establishment of a common minimum standard for the protection of victims of crime and their rights in criminal proceedings throughout the Union, by the adoption of legislative and other measures, based on the principle of mutual recognition.

A package of measures, adopted in the last few years, includes three Directives, two of which - under a) and c) - follow up the call of the Council in the above Roadmap:

- a) Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims' rights²³ and applies as a horizontal legal instrument to all victims of crime with the aim of ensuring that they receive appropriate information, support and protection and that they are able to participate in criminal proceedings (transposition deadline: 16.11.2015).
- b) Directive 2011/99/EU on the European Protection Order²⁴ establishes a mechanism for the mutual recognition of protection measures in criminal matters between the Member States, by allowing that the protection guaranteed to victims by the judicial authorities in one Member State is extended in another Member State (transposition deadline: 11.1.2015).
- c) Directive 2004/80/EC relating to compensation to crime victims²⁵ establishes a cooperation mechanism with a view to facilitating access to compensation to victims of violent intentional crimes in cross-border situations (transposition deadline: 1.1.2006). According to the above Roadmap, this Directive should be reviewed in order to assess whether existing procedures for the victim to request compensation should be revised and simplified.

²² OJ C 187 of 28.6.2011, p. 1

²³ OJ L 315 of 14.11.2012, p. 57

²⁴ OJ L 338 of 21.12.2011 , p. 2

²⁵ OJ L 261 of 6.8.2004, p. 15

More recently, the Council adopted Conclusions establishing an Informal European network on victims' rights²⁶, with a view to stimulating and aiding the implementation of the above EU legislation, suggesting areas for improvement of the EU acquis in this field, and facilitating cooperation between the competent authorities in the Member States in order to enhance access of victims to their rights.

The implementation of the above Directives in the Member States requires a coherent legal framework, a comprehensive national policy and a horizontal and coordinated approach encompassing a wide range of measures at various levels and involving relevant aspects of interagency cooperation among different Member States' authorities and other actors, including from civil society.

A mutual evaluation round on this topic, based on the peer approach model, by analysing concrete challenges and difficulties in the implementation of the above legal instruments, would allow Member States to learn from each other and to share good practices in the field of assistance and protection for victims of crime, as well as to identify shortcomings and areas for improvement.

In this perspective, the added value of an evaluation round on this topic would not only be to consider the legislative and administrative measures, but also, using the opportunity of the on-spot visits, to look at relevant practical and operational aspects, among which: national practices and procedures with a view to assessing if victims fully enjoy their rights and if services they are entitled to are actually available to them; practical aspects of cooperation between police and judicial authorities, relevant administrative bodies and victims' support organizations; standards of protection in cross-border cases; cooperation with other Member States; the quality and level of training for all practitioners involved in victims' assistance and protection.

²⁶ doc. 9997/16

III) Concluding remarks

The GENVAL Working Party is invited to:

- agree on conducting an eighth round of Mutual Evaluations;
- have an initial discussion on the topics for this evaluation round.

At the above meeting, the Presidency intends also to invite delegations to send written comments on the abovementioned topics to the Presidency and to the General Secretariat of the Council by 12 September 2016.
