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NOTE

From:	Presidency
To:	CATS
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Subject:	Implementation and application of instruments in the field of European Criminal Law

Introduction

In September 2015, CATS discussed the issue of the implementation and application of former third pillar instruments, notably Framework Decisions and Decisions.¹

It emerged during the meeting of CATS that the implementation and application of such instruments in the Member States could be further improved. It seems appropriate to pay equal attention to the implementation and application of European criminal law instruments that are adopted under the Lisbon Treaty, such as Directives².

¹ See doc. 11902/15 + COR 1.

² For example Directive 2014/41/EU on the European Investigation Order and the Procedural Rights Directives (2010/64/EU, 2012/13/EU, 2013/48/EU, (EU) 2016/343, (EU) 2016/800).

While the Commission is responsible to oversee the application of measures adopted by the institutions pursuant to the Treaties³, the Presidency considers it appropriate to examine whether any other action should be taken to complement the Commission's work and facilitate the (correct) implementation and application of instruments of European criminal law.

Two aspects

In this context, the Presidency suggests to have a look at two aspects:

1) Discussions among Member States

When legislation is adopted at EU level and needs to be implemented and applied at national level, questions may arise which could usefully be addressed in discussions among the Member States to allow, *inter alia*:

- to explain and examine problems that are encountered when implementing and applying instruments of European criminal law;
- to share any solutions for the problems raised;
- to clarify practical issues; and
- to exchange best practices.

2) Promote the awareness and knowledge of European criminal law among practitioners

Practitioners play an important role in the (correct) implementation and application of European criminal law. It is therefore of utmost importance that practitioners - such as judges, prosecutors, police and other law enforcement authorities - are aware and have knowledge of European criminal law instruments. This can *inter alia* be achieved through training, awareness raising and information sharing.

³ Art. 17(1) TEU.

Action already undertaken

The Presidency is aware that action regarding points 1 and 2 above is already taken in various fora, including the following:

- *as regards point 1, discussions among Member States:*

- The Commission regularly organises meetings with experts of the Member States to discuss the implementation of European criminal law instruments;
- Each Presidency of the Council dedicates one meeting of the COPEN Working Party to general matters, at which problems regarding the implementation and application of European criminal law instruments are discussed;
- The European Judicial Network (EJN) frequently dedicates part of its plenary meetings to discuss problems encountered when applying European criminal law instruments;
- Universities and other education bodies, such as the *Europäische Rechts Akademie* (ERA - Trier) occasionally organise meetings at which the subject matter is the implementation and/or application of European criminal law instruments.

- *as regards point 2, promoting awareness among practitioners:*

The Member States play a crucial role in this respect, but also other actors are involved, including:

- The European Judicial Training Network (EJTN): in the field of European law, it develops training standards and curricula, coordinates judicial training exchanges and programmes, disseminates training expertise and promotes cooperation between EU judicial training institutions.
- The Commission supports i.a. various (training) activities under its Justice Programme, it manages the e-justice portal⁴ containing a lot of information on European (criminal) law, and it develops and distributes handbooks on some instruments of European criminal law.

⁴ <https://e-justice.europa.eu>.

- EJN has a very useful website⁵ with a lot of information on instruments of European criminal law; it holds twice per year a plenary meeting with contact points, thus favouring the awareness and knowledge of instruments of European criminal law.
- Universities and education bodies, such as ERA, organise seminars that promote the awareness and knowledge of instruments of European criminal law.

Question for CATS

Apart from and in complement to the above actions, would it be useful that CATS, with its wider view over the Area of Freedom, Security and Justice, regularly monitors whether the above-mentioned discussions and actions are sufficient and effective to ensure the (correct) implementation and application of instruments of European criminal law, and coordinates where appropriate ?

CATS could discuss once or twice per year (horizontal) questions concerning the implementation and practical application of European criminal law instruments. This can be done on the basis of a report or a particular issue or other considerations, as submitted by the Member States, the Commission or other bodies, such as the EJN.⁶

⁵ <https://www.ejn-crimjust.europa.eu>

⁶ See in this regard Article 5 of Decision 2008/976/JHA on the European Judicial Network (O.J. L 348, 24.11.2008):

"1. The purposes of the plenary meetings of the European Judicial Network, to which at least three contact points per Member State shall be invited, shall be as follows:

(a) ...

(b) to provide a forum for discussion of practical and legal problems encountered by the Member States in the context of judicial cooperation, in particular with regard to the implementation of measures adopted by the European Union.

2. The relevant experience acquired within the European Judicial Network shall be passed on to the Council and the Commission to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation."

If it is decided that CATS could play such a coordinating role, it could be tested in the context of a pilot-project, for example relating to the implementation of Directive 2014/41/EU on the European Investigation Order. On the basis of a summary overview of on-going discussions and activities, CATS could discuss whether and which additional efforts are required and where these could be deployed. The aim would be to offer a platform where synergies between national, regional and EU actions could be identified and multiplied, without prejudice to existing competences and mandates.
