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CATS 74

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 26 and 27 September 2016
To: CATS
Subject: Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in doc. CM 3813/1/16 REV 1.

2. Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law

- preparation of the Council meeting
doc.12345/16

Many of the numerous delegations taking the floor repeated their opposition in principle to the inclusion of VAT fraud in the scope of the Directive, but at the same time noted that they are prepared to discuss a compromise with the European Parliament on this issue. Other delegations reiterated their support for such inclusion. Different possibilities regarding the content of such a compromise were discussed, including in particular the possibility to cover only cases of VAT fraud above a certain threshold or of a particularly serious nature. The Chair concluded that the file would be submitted to Council on 11 October (ECOFIN) and 14 October (JHA) 2016. Details in the text should thereafter be finalised by experts before trilogues with Parliament could restart.

3. **Proposal for a Regulation on the establishment of the European Public Prosecutor's Office**

- preparation of the Council meeting
WK 520/16

Extensive discussions, involving practically all delegations, were held on four Presidency documents which covered different issues, with a view to preparing the Council (JHA) in October as well as further work.

Regarding relations of EPPO with third countries and international organisations (doc. 12340/16), a majority of delegations highlighted the necessity of efficiency to solve notably the problems of extradition. The Presidency would redraft the corresponding Article in close consultation with the Council Legal Service, to be submitted to Ministers.

On the issue of the cooperation between EPPO and EUROJUST (doc. 12342/16), a clear majority of delegations favoured a flexible model, notably cancelling the list of services and allowing the two agencies to arrange the cooperation. Nonetheless, there were still some reservations on this issue.

As regards the cooperation with non-participating Member States (doc. 12341/16), the delegations were invited to reflect on the legal basis for a such cooperation and concluded on the pertinence of Articles 82 (1) (a) and 86 TFEU, accepting article 59a as proposed by the Presidency document. The Presidency will present a text of the corresponding Article to ministers.

A number of "other issues" (doc. 12344/16) were also discussed, on which progress was made towards a later compromise, even if no final solutions were found at the meeting. First of all, eight delegations upheld their reservation on the organisation and functions of the Permanent Chambers, with others indicating their strong wish to maintain the current text. Discussions would continue in a bilateral way. Secondly, the competence of EPPO as regards VAT fraud showed the divergence already apparent in the discussion of the previous agenda point. This would be further discussed by Ministers in connection also with the negotiations on the PIF Directive. Thirdly, most delegations urged not to re-open the question of investigations (Article 26), where some reservations are outstanding and concerns of efficiency were raised, because the balance found in this text was so delicate. Finally, some comments were made on the question of operational costs, which would be considered in the further discussions.

4. Fight against terrorism

- Radicalisation leading to terrorism and violent extremism

The Presidency reminded delegations of the Council conclusions of November 2015 on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism and the need to ensure their implementation. The Commission briefly presented its Communication of 21 June 2016 on this subject, highlighting that a holistic approach with a large strategic framework was chosen at EU level for a better and comprehensive work aiming to identify the priorities (such as hate speech, on-line radicalisation...) with a view to sharing best practices and practical instruments and financing the relevant projects.

The Chair asked delegations to coordinate with their relevant colleagues on the Council conclusions that are being drafted in response to the Commission's communication (doc. 12032/16 and DS 1452/16).

5. Transposition and implementation of former third pillar instruments after 1 December 2014 as well as other instruments of judicial cooperation

- state of play
- next steps

The Presidency presented its suggestions to involve CATS in the implementation and application of instruments of European criminal law (doc. 12014/16) and explained that the aim was to enhance coordination regarding existing action (creating synergies) and to stimulate new action where appropriate. Delegations generally welcomed the Presidency suggestions but insisted to avoid any red-tape and increased burdens for their administrations. The Belgian delegation noted the Council conclusions of 2010 on this question (doc. 13403/1/10 REV 1).

There was general agreement to start with a pilot project, although some delegations observed that the Directive on the European Investigation Order might not be the most suitable one and suggested that the procedural rights Directives could be a better alternative. The Presidency concluded that it would examine how to take this matter forward, taking into account the comments made and in close cooperation with the incoming MT Presidency.

6. International agreements that concern EU competences in the area of criminal law / EU external competence in the area of criminal law

- guidance document
doc. 12275/16

Delegations welcomed the guidance document of the Presidency, which they felt was very useful. Several delegations indicated however that they needed more time to examine the document. The Presidency asked delegations to continue their examination and send any comments to the General Secretariat.

7. AOB

- **Conference on the European Day of Remembrance for Victims of Totalitarian Regimes (Bratislava, 22-23 August 2016): information from the Presidency**

The Presidency informed delegations on the joint statement issued by this Conference (doc. 12354/16), where the issue of radicalisation was also addressed.

- **EU-US Senior Officials meeting: information from the Presidency**
doc.12385/16

The Presidency informed delegations of the outcome of the above-mentioned meeting (doc. 12385/16) and highlighted that notably joint investigation teams, data protection and the revision mechanism of the UN Convention on Transnational Organised Crime were discussed.

- **Consultative Forum of Prosecutors General and Directors of Public Prosecutors (The Hague, 11 June 2016): information on the conclusions**

Eurojust gave a short presentation of the outcome and conclusions of the Consultative Forum (doc. 12393/16), which focused on cybercrime, terrorism, illegal immigrant smuggling, the cooperation with third States and the implementation of the Directive on the European Investigation Order in criminal law (EIO.)

- **Choice of topic for the 8th round of mutual evaluations: information from the Presidency**

The Presidency asked delegations to take an interest in and consult nationally on the choice of the topic for the 8th round of evaluation currently discussed in GENVAL meetings (doc. 11112/16).

- **EU-Iceland-Norway surrender agreement: Information on upcoming consent by Iceland and on notifications/declarations**

Delegations took note of the recent progress on this Agreement and were invited to review their notifications with a view to their publication (doc. 12143/16).

- **Proposal for a Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws: Implications on criminal law**

The AT delegation explained its viewpoints on the implications of the above-mentioned proposal as regards criminal law and invited delegations to ensure the necessary national coordination (doc. WK 517/2016).

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

The Council Legal Service provided information on the decision of the Court in the file C 182/15 on the application of extradition rules as well as on the Opinion of Advocate General in the file C 203/15 regarding the data retention and in the file C 656/16 on the agreement with the Canada on PNR.

- **Extradition to Ukraine: information of the EE delegation**

The EE delegation informed the meeting of the extradition of an EE citizen suspected of fighting in the ranks of separatists in Ukraine.
