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## NOTE

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From:	Presidency
To:	Working Party on General Matters, including Evaluations (GENVAL)
No. prev. doc.:	11112/16
Subject:	Orientation debate on the eight round of mutual evaluations - Further discussion on possible topics

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## I. Introduction

In line with Article 2 of Joint Action 97/827/JHA<sup>1</sup>, at the last GENVAL meeting on 20 July 2016, the Presidency launched an orientation debate with a view to choosing the topic for the eighth round of mutual evaluations.

At the above meeting, a preliminary discussion took place on the basis of doc. 11112/16, which, under point II, describes in details each of the four possible topics that were proposed by the Presidency, namely: A) Environmental crime; B) Information exchange and information

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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).

management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases; C) The practical application of EU legal instruments on procedural rights for suspects and accused persons in criminal proceedings; D) The practical application of EU legal instruments on victims' rights.

At the same meeting, delegations were invited to send to the Presidency and to the General Secretariat of the Council written comments on the possible topic for the 8th evaluation round by 12 September 2016. This deadline was subsequently extended to 20 September 2016. The 15 written comments received are set out in the Annex to this document.

## **II. Preliminary analysis of Member States' comments**

A preliminary analysis of the views expressed by delegations orally at the GENVAL meeting on 20 July 2016 and in their written comments can be described as follows:

**Topic A):** Support was expressed for "Environmental crime". Some delegations, however, expressed concerns on this topic in view of the broad scope and complexity of this type of crime, which falls within the competence of a great number of national authorities and is not a specific priority of the EU Policy cycle for organised and serious international crime.

Taking into account these concerns, and recalling that environmental crime is considered in the 2013 EU Serious and Organized Crime Threat Assessment (SOCTA) and in the EU interim SOCTA 2015 among the specific emerging threats, the Presidency proposes to limit the scope of a possible evaluation round on environmental crime to certain specific aspects of this crime.

In particular, the mutual evaluation could focus on: illegal trafficking in waste, that the above 2013 SOCTA considers as one of the most widely spread unlawful activities in the field of environmental crime, and has important cross-border implications. Strict rules that regulate handling with waste have the potential to generate huge illegal profits taking into account the cross-border dimension of organized criminal groups' illegal activities. This demands a coordinated response across the Union.

The mutual evaluation could also cover the illegal production or handling with CBRN (chemical, biological radioactive and nuclear) materials that, in addition to causing pollution of the environment and significant threats to human health, may have links with other criminal activities, including terrorism.

**Topic B):** Support was also expressed for the "Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases".

Several delegations drew the attention on the other on-going initiatives in this area, namely the implementation of the Roadmap set out in doc. 9368/1/16 REV 1 + COR 1 and the work carried out by the High Level Expert Group on Information Systems and Interoperability set up by the Commission, as well as the Schengen evaluation mechanism. In this respect, some delegations underlined that an evaluation round could have an added value in terms of complementing and following up on these initiatives.

**Topic C):** Very little support was expressed for "The practical application of EU legal instruments on procedural rights for suspects and accused persons in criminal proceedings". The majority of delegations stressed that an evaluation on this topic would be premature at this stage, since the transposition of some of the relevant legal instruments is still pending. In the light of these considerations, the Presidency suggests not discussing this topic any further.

**Topic D):** Limited support was expressed for "The practical application of EU legal instruments on victims' rights". Some delegations observed that the activities of the recently established European Network for Victims' Rights (ENVR), and the on-going implementation of relevant legal instruments, would make it premature at this stage to have an evaluation round on this topic.

### III. Alternative topics proposed by Member States

Some delegations proposed alternative topics for the 8th evaluation round, and in particular:

**Topic E)** DE proposed the topic "Detention conditions in the EU Member States". DE underlined that this topic would be particularly relevant in relation to transfers (surrenders) based on the European Arrest Warrant. However, as also pointed out by one delegation, in the absence of a specific Union legal instrument on detention conditions, a mutual evaluation limited to this issue might fall outside the scope of Joint Action 97/827/JHA.

The issue of cooperation concerning the transfer of prisoners, including in the context of the European Arrest Warrant, is however dealt with by Union instruments. On this basis, alternative proposals were made by other delegations, as set out under topics F and G below.

**Topic F):** DK proposed that the topic of next evaluation round could be "The transfer of prisoners", focusing in particular on the implementation and practical application of Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union <sup>2</sup>.

According to DK, a mutual evaluation on this topic might contribute to improve cooperation between all Member States regarding the transfer of prisoners, which ensures that nationals of the Member States can be returned home to serve their sentences, with a view to facilitating their social rehabilitation.

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<sup>2</sup> OJ L 327 of 5.12.2008, p. 27

**Topic G):** BE proposed as topic "The execution of final convictions within the European Union". In this context, the evaluation could focus on the following instruments of mutual recognition: Council Framework Decision 2008/909/JHA, already proposed by DK, and Council Framework decision 2008/947/JHA on the application of mutual recognition to judgements and probation decisions with a view to supervision of probation measures and alternative sanctions<sup>3</sup>. In addition to these legal instruments, which complement each other and have operational links to the European Arrest Warrant, BE proposes that the evaluation could also cover Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties<sup>4</sup>.

All these three legal instruments address the execution of a judicial decision issued by one Member State in another Member State, based on the principle of mutual recognition. BE underlined that these instruments have been applicable since a sufficient period of time, thus offering enough material for a mutual evaluation. This would allow to carry out a global assessment of the issue of cross-border execution of final convictions, and thus identify best practices, as well as practical difficulties and possible areas for improvement of cooperation between Member States in this field.

#### **IV. Concluding remarks**

With a view to allowing the 8th round of mutual evaluations to start in mid-2017, and taking into account the preparatory work to be carried out in the first semester of 2017, including the elaboration and adoption of the questionnaire and the definition of the order of the visits to the Member States, the Presidency aims at concluding the discussion on the choice of topic for this evaluation round by the end of this year.

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<sup>3</sup> OJ L 337 of 16. 12.2008, p. 102

<sup>4</sup> OJ L 76 of 22.3.2005 p. 16

For this purpose, at the meeting of the GENVAL Working Party on 26 October 2016, delegations are invited to continue the discussion on the subject-matter for the 8th round of mutual evaluations, including on the new topics proposed (E, F and G under point III of this document), and clearly express their preference for one single topic, in order to facilitate preparing the final decision before the end of the year.

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**COMPILATION OF MEMBER STATES' WRITTEN COMMENTS**  
**ON THE CHOICE OF THE TOPIC FOR THE**  
**EIGHTH ROUND OF MUTUAL EVALUATIONS**

## AUSTRIA

According to the statement of the Austrian delegation raised during the last GENVAL working group we are in favor of **topic B** (“Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases”).



## BULGARIA

Bulgaria believes that the mutual evaluation mechanism has proved its effectiveness and added value over the years in the exchange of best practices and experience between the Member States in the co-operation on combating organized crime and on criminal justice issues.

Up to this moment the choice of topic for the mutual evaluations was based on the principle of balance between the areas of the fight against organized crime and the criminal justice, as well as taking into account the necessity to choose an issue which is topical and important.

Comments on the proposed topics:

### **A) Environmental crime**

The topic is important and current but at the same time very complex and comprehensive due to the participation of different state authorities and agencies responsible for the protection of the environment. Environmental crimes are linked to organized crime, but the successful conducting of the evaluation round requires active participation of other authorities beyond the law enforcement. Further to that, environmental crimes are closely monitored by Europol but are still not part of the EU policy cycle for fighting serious and organized crime and there might not be enough practical experience which could be evaluated. Such an evaluation could be carried out at a later stage. By choosing this topic we could distance from the main purpose of the mutual evaluations, namely - improving the cooperation in the fight against the typical organized crime.

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

The information exchange at EU level is of key importance for enhancing the fight against cross border crime, terrorism and illegal migration. The good level of co-ordination between the competent authorities of the Member States on one hand and between the Member States and EU Agencies on the other is a precondition for successful fight against crime. Other significant issues are the effective feeding of data bases and the necessity to ensure high level of interoperability between the national and EU data bases. Unification of practices and procedures on using and feeding EU and other data bases (SIS, VIS, EURODAC, ECRIS, the information systems of Europol, Interpol and Eurojust), is also needed. Ensuring access of all Member States to all existing EU data bases is also a key issue allowing all Member States to effectively contribute to the security of the EU.

The Roadmap on enhancing the information exchange and information management including interoperability solutions, adopted by the JHA Council on 9 June 2016 envisages measures in short- and long term aimed at identifying legal and technical solutions for improving the functioning and interoperability of EU data bases. Some steps have already been taken in this direction. A High level expert group on the information systems has been set up along with its subgroups, which have already carried out their first meetings and planned their activities. The High level expert group should complete its activities in mid- 2017. Therefore, by choosing this topic, we will provide the opportunity for a follow up of the measures undertaken by the Member States implementing the Road Map and Bulgaria supports this topic.

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

Bulgaria is currently transposing Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, as well as Directive 2013/48/EU on the right of access to a lawyer. The transposition period for both instruments has not yet expired (28 November 2019 and 27 November 2016). A possible evaluation should be carried out after the completion of the transposition process and obtaining enough information on their practical implementation.

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

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime was recently transposed into the Bulgarian legislation and there is still not enough practice on its implementation. We consider the topic as important, but a possible evaluation should be carried out after obtaining enough information on its practical implementation.

### **E) Conditions for detention (additional topic proposed by Germany)**

Bulgaria is conducting internal consultations on the topic proposed by Germany. We consider that it covers a wide scope of issues and would upgrade the results from the evaluation on the practical implementation of the EAW. It could also contribute to eliminating the gaps in the Member States detention systems and practices. The topic of detention is very up-to-date also in regard with the necessity to improve and strengthen the measures in the fight against terrorism and radicalization.

In order to shape its final position though, Bulgaria will need some further clarifications on the proposal, incl. on its exact scope and whether it covers only the arrests in the criminal proceedings (the so called preliminary detention) or also includes imprisonment.

## BELGIUM

Topics A) and C) seem to us not appropriate: environmental crime because it is not part of EU policy cycle (not a priority) and procedural rights because it is premature as the implementation of the roadmap, as the national implementation of the most important instrument (access to a lawyer), are still on going.

We can show some interest towards topics B) and D). However topic B) should be more targeted and should not duplicate other initiatives (i. e. the future roadmap, the work of the ad hoc working party on interoperability, Schengen evaluation mechanism). The same could be said as regards topic D) taking into account the new network (ENVR) that has been settled and the number of information already available on this issue.

Belgium would find interesting to choose another topic: the execution of convictions within the EU. We already had a specific round of mutual evaluation on the application of the European Arrest Warrant and the execution of confiscation orders was also tackled within the 5<sup>th</sup> round. It could be interesting to conduct now an evaluation on the application of other mutual recognition instruments which concern the execution of final convictions, as the one on the transfer of sentenced persons, on probation measures and/or on the execution of financial penalties. These instruments are applicable since a certain period of time which would allow to give enough material for such an evaluation.

## CROATIA

Following the discussions in GENVAL of 20 July 2016, the Republic of Croatia submits its comments regarding the Presidency proposals of topics for the eighth mutual evaluation round, as follows:

The objective of the Council Joint Action 97/827/JHA, of 5 December 1997, was to establish a mechanism for peer evaluation of the application and implementation at national level of the Union and other international acts and instruments as well as best practices and international cooperation actions, in **the fight against organised crime**. The focus of the mutual evaluations should be in-depth examination of the specific challenges and difficulties faced by the Member States in the area of the fight against serious organised crime, being one of the major challenges jeopardising the creation of an area of freedom, security and justice.

We found that neither of the topics for the eighth mutual evaluation round, proposed by the Presidency under A) crimes against the environment and B) information exchange and management of information in the area of Justice and Home Affairs, in particular with regard to the data entry into the EU databases and their consultation, fall within the scope of work and the mandate of this Working Party. Both topics are the subject of interest of other working groups. This WP should deal with issues and topics related to OC.

We agree with the opinion pointed out by the CZ, that the A) topic should be narrowed down, because it is too broadly defined.

We also agree with the view of DE that this topic has already been the subject in other areas of the political cycle. Dealing with the A) and B) topics within the scope **of the work and mandate of this Working group** would double the already undertaken efforts.

For these reasons, we consider that dealing with the A) and B) topics in the sense of sharing best practices and identifying shortcomings, would not be an added value in the context of the Genval WG.

The Working Party on General Matters including Evaluations coordinates measures to prevent and counter organised crime and evaluates Member States' practices and compliance with the international obligations in the area of law enforcement and fight against organised crime. Having this in mind, the Republic of Croatia agrees particularly with Romania, France and Slovakia that:

- the topics proposed by the Presidency under C) Practical application of the EU legal instruments on procedural rights for suspects and accused persons in criminal proceedings and D) Practical application of the EU legal instruments on victims' rights **do not fall within the scope of the work and mandate of this Working group;**
- as France has already pointed out, there is **no added value** in sharing best practices and identifying shortcomings and areas for improvement in the field of the procedural rights for suspects and accused persons, as well as in the field of assistance and protection for victims of crime, in order to fulfill the main objective of the *Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime* – which is to improve the common capability of the Union and the Member States for the purpose of combating cross-border organised crime, with a more effective and combined approach. In that sense, we do not believe that the proposed topics are areas that will enable and ensure more strengthened and stated fight against organised crime.
- Same arguments apply to the alternative topics proposed by the German and Belgian delegations – Conditions in investigative prisons and overall conditions regarding the execution of the European arrest warrant and Cross-border enforcement of court judgments.

## CZECH REPUBLIC

*The Czech Republic, as already stated at the last meeting of GENVAL, supports the topic of practical application of EU legal instruments on victims' rights (D).* Out of all the proposed topics this seems the most relevant for the purpose of mutual evaluations. It also represents a serious and important issue and the Czech Republic believes that it should be given attention as much as possible.

*The topic of environmental crime (A) seems too broad according to the information provided in the discussion paper.*

We believe that the environmental crime is closely associated with other types of criminal activity and unless it is specified further it will not cover all key aspects as regards an evaluation of this kind. The Czech Republic, however, could support this topic as an alternative in the case that the evaluation is focused on an illegal trade with endangered species (regulated on the international level by the CITES Convention) – traditionally, this seems to be one of the most neglected areas as regards types of environmental criminal activities not only in the Czech Republic<sup>5</sup> but also worldwide. Other types of environmental crime such as poaching or criminal acts leading to environmental pollution do not represent as great an issue in the EU, and there is also a higher detection rate.

*The Czech Republic does not support the topic of information exchange and information management in the Justice and Home Affairs area (B).*

This issue is dealt with in the comprehensive document of the Council of the EU 9368/1/16 REV 1, which includes a number of specific measures, the timeframe for their implementation and the designated competent authorities and EU platforms, which are responsible for the implementation.

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<sup>5</sup> Relevant provisions in the Criminal Code of the Czech Republic No. 40/2009 Coll.: Section 299 Unauthorized Handling of Protected Wild Animals and Plants; Section 300 Unauthorized Handling of protected Wild Animals and Plants out of Negligence.

At this point, the European Commission, the Council and EU agencies acknowledged the need to perform a range of changes in the information handling and interdependence of individual systems based on a self-assessment and indications from Member States. The Standing Committee on Operational Cooperation on Internal Security (COSI) was entrusted with the overall monitoring of the implementation. We believe that any evaluation of this kind which is not explicitly provided for in the previously mentioned document will not be effective.

As regards the Justice area, this topic will overlap with the evaluation, which took place during the 6th round of mutual evaluations when Eurojust was also evaluated in terms of the functioning of its information system and the provision of information by national authorities.

***The topic concerning the practical application of EU rules governing the procedural rights of suspects and accused persons in criminal proceedings (C) appears to be rather immature since the legislation out of the „map of procedural rights“ were adopted only recently. The last one of them had not yet been adopted.***

The deadline for implementation has passed in the case of two them, the third one will pass in November 2016, the presumption of innocence in 2018, procedural rights of children in 2019, directive on legal aid has not yet been adopted. It is, therefore, appropriate to allow the required time interval between the adoption, implementation and evaluation.

***The Czech Republic cannot support the DE proposal - the evaluation of detention conditions.*** The Czech Republic understands that the topic may represent a valuable instrument for the Member States, i.e. for the improvement of existing conditions, as well as for the support of the European Arrest Warrant effective exercise. However, the acceptability of conditions for persons deprived of liberty (both in custody or prison) is dealt with by a range of other instruments (i.e. CTP) and, therefore, the Czech Republic believes that this topic will not have any added value. In addition, mutual evaluations are generally aimed at practical implementation/application of a particular EU legal instrument, however, such a framework is missing in the case of detention conditions.



## DENMARK

### Danish suggestions and comments

Denmark welcomes the proposed topics from the Slovak Presidency of GENVAL for the eighth round of mutual evaluations.

Denmark is of the opinion that it would be desirable if the topics for an eighth round of mutual evaluations includes the 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.

Below, please find the Danish remarks to the four proposed topics that were initially discussed at the GENVAL meeting on 20 July 2016:

#### A) Environmental crime

Organized cross-border environmental crime is considered infrequent in Denmark. Therefore, an evaluation of efforts against environmental crime cannot contribute substantially with regard to combating organized crime within a Danish context.

However, if environmental crime is supported by a vast majority of Member States, Denmark is prepared to accept this topic for the eighth round of mutual evaluations.

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

Denmark can accept “information exchange” being the topic for an eighth round of mutual evaluations if this is supported by a vast majority of Member States. If information exchange is chosen as the topic for the eighth round of mutual evaluations, Denmark is of the opinion that focus should be centered on quality and quantity of input to the databases.

However, the added value should be considered in the context of ongoing evaluations, e.g. the *Schengen evaluation and monitoring mechanism*, and the work being carried out by the High Level Expert Group on Information Systems and Interoperability.

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

Since all directives mentioned under this proposed topic is subject to the Danish opt-out on EU justice and home affairs, Denmark has no further remarks to this being the topic for an eighth round of mutual evaluations.

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

Since two out of three of the mentioned directives under this proposed topic are subject to the Danish opt-out on EU justice and home affairs, Denmark has no further remarks to this being the topic for an eighth round of mutual evaluations.

## ESTONIA

With regard to the proposed topics for the 8th round of mutual evaluation our choice on the basis of doc. 11112/16 would be

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

We see this topic as a key element in combating and preventing all crime areas. There are high expectations in this field at EU level, but we should also pay a high attention to the systems and processes at national level where it all starts from.

## GERMANY

1. Germany would like to thank the Presidency for the paper and the very interesting topics proposed in it. However, we have some doubts as to whether these topics are the best choice for a new evaluation round and would like to propose an alternative for debate:

Comments on the proposed topics:

### - regarding A) Environmental crime

Germany is open for topic A), but points out that the following political initiatives are underway in this area:

- Wildlife Action Plan of the European Commission (EU-COM)

- Policy recommendations by the research project EFFACE, carried out by the EU Commission (<http://efface.eu/> - the primary goal of the recently completed three-year research project was to work up policy recommendations for COM, DG Research & Innovation, with a view toward improving and harmonising the fight against environmental crime)

- Intensification of measures of the Interpol Environmental Crime Programme and the UN (UNEP [http://unep.org/documents/itw/environmental\\_crimes.pdf](http://unep.org/documents/itw/environmental_crimes.pdf) and UNO DC <https://www.unodc.org/unodc/en/frontpage/2016/May/wildlife-crime-assessed-globally-for-the-first-time-in-new-unodc-report.html> ).

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

Carrying out evaluations on the topics of "information exchange/databases," as has been proposed, would not provide any added value at the present time.

In this regard, there are already two parallel lines of action (1. Roadmap, 2. High Level Expert Group), whose activities and results should be awaited before any evaluations are initiated:

- Roadmap

The reference document of 11112/16 of the GENVAL Working Group accurately states the following:

"Various initiatives have already been taken to address some of the gaps. At its meeting on 10 June 2016, the Council endorsed a Roadmap 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". 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."

In contrast, it is not accurate that "these initiatives are mainly focused on measures to be taken at EU level [and that this] does not detract from the need to investigate how EU databases are fed and consulted at national level." A look at the Roadmap's action list (Doc. 9368/1/16) shows that precisely the issue of data quality made available by the Member States has already been taken into account (e.g., action 2, 6, 7, 9, 13, etc.).

- High Level Expert Group

COM has established a High Level Expert Group on Information Systems and Interoperability (HLEG; COM Decision (2016) 3780). This HLEG is expressly focusing on the aspect of making available high-quality information. The agenda of the first meeting of the "Improving the Existence" sub-working group of 20 July 2016 states the following:

"An information system must be filled with data when available, that is as complete as possible and of the highest possible quality or correctness. Incomplete records lead to problematic situations when consulting them. Existing important data that is however not fed to the system leads to other problematic or dangerous situations. [...] The discussion will focus around these topics to exchange best-practices, problems & opportunities of an organisational, legal or technical nature."

The HLEG and its sub-working groups have only just begun their discussion process. A concluding report is planned for summer 2017.

Therefore, at this time we should refrain from any additional parallel action on this topic by way of an evaluation.

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

It does not seem prudent to evaluate the Directives on the rights of accused persons because only four of the five Directives have even been passed to date. The period for implementation – which to some extent still runs into 2019 – is still underway for three of the Directives, namely DIR 2013/48/EU (access to legal counsel), DIR (EU) 2016/343 (presumption of innocence) and DIR (EU) 2016/800 (children in criminal proceedings). The fifth DIR (legal aid in criminal proceedings) will not be promulgated and enter into force before the fourth quarter of 2016, so that the politically-agreed period of implementation of 30 months will not expire until the second quarter of 2019. Pursuant to Article 25 of DIR 2016/800/EU, the Commission is to forward a report to the European Parliament and the Council by 11 June 2022 "assessing the extent to which the Member States have taken the necessary measures to comply with this Directive." Therefore, Member State resources in a not insignificant scope will already be committed to the compilation of that report.

Also, the notion raised in the document of an evaluation of only the two Directives that have already taken effect and whose period for implementation has already expired (DIR 2010/64/EU - interpretation and translation - and RL 2012/13/EU - right to information -), as well as DIR 2013/48/EU, whose deadline for implementation expires in November 2016, currently does not make sense. It has been recognised that the five Directives which serve to implement the so-called Stockholm Roadmap represent an overall packet which will develop its effect only when all Directives have been implemented. As such, recital 11 of DIR 2012/13/EU has the same language as recital 9 of DIR 2013/48/EU and recital 4 of DIR (EU) 2016/800: "The Roadmap is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full." An evaluation of the "practical implementation" of the Directives which have already taken effect would be contrary to the estimation of the European legislator.

#### **- regarding D) Practical application of EU legal instruments on victims' rights**

An evaluation does not seem to make sense because the ENVR (European Network on Victims' Rights) has already been established; its goal is to exchange best practices and above all to address practical issues in implementing the victim protection Directive (**Directive 2012/29/EU**). In our view, this network is fully adequate in order to cover the issues and goals detailed in the document.

Furthermore, an evaluation would be premature because the implementation measures have not yet been completed in all EU MS, or implementation is currently in progress.

Victim protection is characterised by the interplay of two EU instruments: Directive 2011/99/EU on the European Protection Order, and Regulation (EU) no. 606/2013 on the mutual recognition of protective measures in civil matters. The implementation of those instruments was effected in Germany by way of a civil law. The measures to be taken according to that law are of a civil-law nature – including in those cases where a criminal-law measure was ordered in another country. In contrast, GENVAL deals with criminal law cooperation rather than that in civil law. This would mean that GENVAL would have to address areas for which it is not responsible.

With regard to DIR 2004/80/EU on compensation for crime victims, we do see room for improvement in terms of cooperation among MS as well as in particular with regard to the preconditions for, amount and scope of compensation payments. However, we do not consider it appropriate to undertake an evaluation of only this DIR. Rather, we would suggest addressing DIR 2004/80/EU on compensation to victims within the scope of the ENVR and placing it on the agenda within that framework.

2. Germany proposes for debate the following alternative topic for the eighth round:

### **Detention Conditions in EU Member States**

Explanation of the proposed topic:

Transfers based on European Arrest Warrants have taken on major significance in cross-border cooperation. The next GENVAL evaluation can contribute toward further promoting that instrument.

Particularly in the field of organised crime, extradition plays a special role because prison sentences are usually imposed for organised crime. This topic also relates to the 4th round, in which the European Arrest Warrant was evaluated.

The decision of the European Court of Justice in the matters of Aranyosi and Caldaru has shown that detention conditions are attaining special significance within the contexts of transfers based on the European Arrest Warrant.

The most recent case law of the European Court of Human Rights features several cases which criticise the detention conditions of the Member States of the EU and at times have determined systemic defects. These decisions influence the practice of transfer procedures.

The European Court of Justice has called upon the courts of the Member States in transfer procedures to initially review based on generally accessible sources whether there are any reservations against the detention situation in the issuing States. In a second step, it is to be reviewed whether such reservations can be overcome in the specific case.



Such a review first presupposes generally accessible, high-quality and reliable information on detention conditions in each Member State. The report by the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), a significant source, are not always current enough to do justice to the demands of everyday practice. It would therefore make sense to have the EU itself gain an overview of the situation.

Additionally, it would be important to find out what possibilities exist to do justice to special situations, both pursuant to the law of the issuing State and that of the executing State. A collection of best practices could contribute toward continuing to design transfer procedures in a successful manner throughout the EU.

### 3. Critical stock-taking

Before GENVAL dedicates itself to possible topics for an 8th round, it should undertake a **critical stock-taking** on the existing evaluation mechanism. Article 10 of the Joint Action of December 1997 states that an examination of the rules and the scope of the evaluation mechanism should take place at the end of the 1st evaluation round. Although such an examination took place at the end of the 1st round, no further examination has happened with regard to the last three rounds. It should also be emphasised that some articles of the Joint Action have no longer been followed as time goes by. For example, Article 7 of the Joint Action states that a draft report is to be forwarded to the Member State no later than one month following the on-site report. In practice, however, this is not done until three months or even longer after the on-site visit. Therefore, some of the rules upon which GENVAL is based are no longer being applied. In our view, it is high time, after **seven rounds and almost 19 years**, to subject the evaluation mechanism to a critical stock-taking and to ask: What effort and cost do the GENVAL evaluations cause, and how is their added value to be calculated in relation thereto?

The goal of this process of reflection should also be to design the evaluation mechanism in such a way that it results in improvements for the EU and the MS in terms of everyday practice, and at the same time does not bind an unnecessary amount of resources. If we review the past several rounds, potential for improvement should be recognisable.

## HUNGARY

Hungary stands behind the Presidency's efforts to continue the evaluation of Member States' practices in various fields of work.

We felt that all four possible options are intriguing but **option A** (Environmental crime) and **option B** (Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases) stands out even more from the other two, so we could support both equally.

We are also aware of various Member States' proposals to include other topics, we are eager to hear about them and discuss them during the coming months.

## ITALY

In relation to the subject matter specified above, Italy preliminarily intends to emphasise that all the issues identified by the Presidency as a possible topic for the 8<sup>th</sup> Mutual evaluation round are of extraordinary importance.

However, Italy would rather opt for the topic proposed in document 1112/16 of 12<sup>th</sup> July under letter a), related to the “*Enviromental crime*”.

The issue is not only of great interest and importance, but the choice of this topic would be also useful to obtain a successful exchange of best practices in investigating and prosecuting environmental crimes and, as highlighted in the aforementioned document, to enhance the interagency cooperation and exchange of information among the competent national authorities and the cooperation between Member States in cross-border environmental cases.

## LATVIA

- 1) ***environmental crime*** – LV is not entirely convinced on this topic's suitability for the 8th round of mutual evaluation for the following reasons:
  - environmental crime is not among the serious and organized crime priorities for 2014-2017;
  - according to the Interim EU SOCTA (EU Serious and Organised Crime Threat Assessment) of March 2015, the environmental crime (with an emphasis on illicit waste trafficking) has been placed on a watch list; hence, once again it has been concluded that environmental crime should not (yet) be pronounced as one of the serious and organized crime EU priorities (this recommendation of Europol has been approved by COSI in March 2015);<sup>6</sup>
  - with a view to define serious and organized crime EU priorities for next four years (by *inter alia* evaluating whether environmental crime should be a EU level priority), Europol has already started its work on the new EU SOCTA (to be available on 2017).
  
- 2) ***information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases*** – LV acknowledges the high importance of this topic, however, LV has doubts whether this is the most appropriate timing for such an evaluation to be carried since, at this point, there are a number of fundamental EU-level initiatives in this area implemented in parallel.<sup>7</sup> Furthermore, LV is convinced that information management and flow at *national level* (which, according to doc. 11112/16, could be the main subject-matter) should not be evaluated separately from the on-going processes at the EU level. Hence, LV sees a greater added value of the mutual evaluation in this field after the foreseen EU-level improvements, aimed at better information exchange and management, are put in place.

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<sup>6</sup> It was, for instance, stated that the illicit trafficking of waste in the EU is thought to be carried out by small number of OCGs.

<sup>7</sup> Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (doc. 9368/1/16); work of the Commission's High Level Expert Group on Information Systems and Interoperability.

## POLAND

**Topic: Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases.**

Poland recommends this topic as most beneficial for eight round of mutual evaluations.

Recent terrorist and criminal threats at the EU level requires the most effective exchange of information. To achieve such an integrated approach, evaluation to be conducted in this subject could be a useful tool in order to compare the flow, processing, access, the use of information and data quality in the different Member States.

Selection of this topic for the eight round of Mutual Evaluations to be potentially undertaken in 2017 would be complementary to other initiatives in 2016 and 2017 such as “Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area” and establishment of High Level Group on Information Systems and Interoperability (HLEG).

## PORTUGAL

Portugal favours **Option D - Practical application of EU legal instruments on victims' rights** - as topic for the eighth round of GENVAL Mutual Evaluations, as already stated in the last working party held in Brussels in July 20 2016.

## SLOVENIA

As already mentioned at the last Genval meeting, SI is in favor of:

Topic B) Information exchange.

Topic A) Environmental crime is our second preference.

## SPAIN

Spain, along the lines already expressed in the last GENVAL meeting, insists in our view regarding the possible topic for the eighth round of mutual evaluations.

We would prefer that the 8th round would be focused on option D) Practical application of EU legal instruments on victims' rights for three main reasons:

1. This topic is based on practical application and not on general exchanges which could involve transposition's exercises (for this reason we think option A is too broad, and it could concur with the role of the Commission while controlling transposition and implementation measures -see Article 1.1 of Joint Action 97/827/JHA).
2. This topic is related to Justice matters so it maintains the traditional order of the mutual evaluations, given that the previous one has been specially related to Home Affairs matters (this is the reason why we think option B should be avoided).
3. This topic is related to Directive [2012/29/EU](#) about minimum standards on the rights, support and protection of victims of crime which implementation period is over. It had to be incorporated into national law by 16 November 2015. Exchange of good practices in this field is very important and can be easily evaluated, because they depend on concentrated systems. This is the reason why we think option C is not appropriate: the directives on procedural rights for suspects and accused persons in criminal proceedings are not totally closed (legal aid directive is not yet published), they are too many and implementation and transposition periods are not over. This topic will be best tackled in the future.