



Council of the
European Union

Brussels, 14 November 2016
(OR. en)

14078/16

JAI 907
CATS 83
COPEN 323
DROIPEN 177
EJN 65
EUROJUST 137
EJUSTICE 179

NOTE

From:	Presidency
To:	CATS
No. prev. doc.:	12014/16
Subject:	Implementation and application of EU criminal law instruments - Action to be taken and issues for CATS

INTRODUCTION

In September 2016, CATS discussed the issue of the implementation and application of EU criminal law instruments, notably Framework Decisions and Directives, on the basis of doc. 12014/16.

As a follow-up to this discussion, the Commission has drawn up two documents in order to reflect the state of play regarding the implementation of EU criminal law instruments, set out in Annex I and Annex II to this document.

Further to a request of the Presidency, the European Judicial Network (EJN) has drawn up a document in order to show the action that has been taken by EJN to disseminate information regarding the implementation and application of EU criminal law documents (doc. 14140/16).

STATE OF PLAY OF IMPLEMENTATION

Pre-Lisbon instruments, in particular Framework Decisions (Annex I)

Member States which have not yet implemented one or more Framework Decisions or Decisions are invited to do so as quickly as possible.

Member States are reminded that they must inform the Commission of the implementation of Framework Decisions through the MNE system (*Mesures nationales d'exécution*). In fact, the Commission is competent, since 1 December 2014, to ensure the correct application of all "ex-third pillar *acquis*", including EU criminal law instruments such as Framework Decisions that have been adopted prior to the entry into force of the Lisbon Treaty.

However, when, according to a Framework Decision or Decision, Member States must (or can) make specific notifications or declarations¹ to the Council General Secretariat, the Member States should continue doing so, even after the expiry of the transitional period of the Lisbon Treaty on 1 December 2014, until that act is "lisbonised".² However, Member States are kindly invited to insert the notifications and declarations in the MNE database as well, so as to allow the Commission to have a complete picture of the status of implementation (only Member States can feed the MNE database).

As usual, the General Secretariat distributes the notifications and declarations to the other Member States and sends them to the EJV, which stores them on its website. The General Secretariat makes tables, which set out the notifications and declarations that each Member State has made.³ Since these tables indicate the moment of entry into force of the implementing legislation, Member States are kindly invited to continue providing that information to the General Secretariat as well.

¹ Member States are urged to make at least all the notifications and declarations that are obligatory (indicated by "shall").

² I.e. repealed, annulled or amended in implementation of the Treaties, see Article 9 of Protocol N° 36 to the Lisbon Treaty.

³ See, for instance, the table set out in doc. 13955/16 in relation to Framework Decision 2008/947/JHA on "probation", and the table set out in doc. 13515/16 in relation to Framework Decision 2009/829/JHA on "supervision". All tables can be found on the website of the EJV, www.ejn-crimjust.europa.eu.

Post-Lisbon instruments (Directives) (Annex II)

Member States which have not yet implemented one or more Directives, of which the deadline for transposition has expired, are invited to do so as quickly as possible and to notify the Commission hereof.

In respect of Directives and other instruments adopted after the entry into force of the Lisbon Treaty, all communication of implementing legislation and any notifications and declarations should be made to the Commission. The Council General Secretariat has no role to play as regard such instruments.

ACTION TAKEN BY THE EUROPEAN JUDICIAL NETWORK

Member States are invited to take due note of document 14140/16, which provides a useful insight in all the information that is available on the website of the EJM. This information is easily accessible, practical and very useful for practitioners in the field of European criminal law. Member States are encouraged to further foster the knowledge about the existence of this website among the practitioners in their Member States, such as by widely distributing the note of the EJM.

From the document of the EJM it appears that there exist only 4 handbooks on EU criminal law instruments (on the FD's on the EAW and on Freezing, on JIT's, and on exchange of information).

Member States are invited to consider whether it would be useful to have more handbooks available, and if so, to which instrument should priority be given.

Implementation of pre-Lisbon EU criminal law instruments - state of play

All Member States which are not mentioned in the below table have notified the Commission of the implementation of the relevant Framework Decisions and Decisions in their legal order.

Framework Decision	MS missing in MNE database (as per 04/11//2016)	MS which made notifications to the GSC or to the COM and which are nevertheless invited to upload them in the MNE database	MS which did not notify at all (neither in MNE, nor directly to GSC or COM)
Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams	DK	DK	-
Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States	DK	DK - notification letter of 12/10/2012	-
Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence	DK, EL, CY, LU <i>[Does not apply to UK]</i>	DK - notification letter of 13/01/2005 CY - notification letter of 22/07/2010 LU	EL
Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties	DK, IE (partial), EL	DK - doc. 10909/07	EL, IE (partial)

Framework Decision	MS missing in MNE database (as per 04/11/2016)	MS which made notifications to the GSC or to the COM and which are nevertheless invited to upload them in the MNE database	MS which did not notify at all (neither in MNE, nor directly to GSC or COM)
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognitions to confiscation orders	DK, EL, LU, SI, SK, UK (partial)	DK - doc.15970/09 SI - doc. 5506/14 LU - 13075/06 UK - 6637/15	EL, SK
Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings	CY	CY - notification letter of 8/11/2011	-
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 purposes of their enforcement	BG, DK, IE (partial), CY	DK - doc.6298/12 CY - doc.11298/14	BG, IE (partial)
Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law	EE (partial), FR, IT <i>[Does not apply to UK]</i>	FR - notification letter of 10/08/2011 IT - notification letter of 27/06/2011	EE (partial)

Framework Decision	MS missing in MNE database (as per 04/11/2016)	MS which made notifications to the GSC or to the COM and which are nevertheless invited to upload them in the MNE database	MS which did not notify at all (neither in MNE, nor directly to GSC or COM)
Council 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	DK, IE (partial), CY <i>[Does not apply to UK]</i>	DK - 7601/12 CY - 11315/14	IE (partial)
Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters	DK, DE, EL, ES, IT, LU, FI (partial)	DE, DK, LU	EL, ES, IT, FI (partial)
Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial	BG (partial), DK, EL (partial)	BG, DK	EL (partial)
Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States	DK, IE (partial) RO, UK (partial)		DK, IE (partial), RO, UK (partial)

Framework Decision	MS missing in MNE database (as per 04/11/2016)	MS which made notifications to the GSC or to the COM and which are nevertheless invited to upload them in the MNE database	MS which did not notify at all (neither in MNE, nor directly to GSC or COM)
Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions of supervision measures as an alternative to provisional detention	BE, CY, DK, IE (partial)	DK - doc. 7305/15	BE, BG, CY, IE (partial)
Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal matters	BG, EL, LU <i>[Does not apply to UK]</i>	EL, LU	BG
Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime – as amended by Council Decision 2003/659/JHA of 18 June 2003 amending Council Decision 2002/187/JHA setting up Eurojust; and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime	DK, IE, ES, CY, MT, RO, SI, UK	CY	DK, IE, ES, MT, RO, SI, UK

Framework Decision	MS missing in MNE database (as per 04/11/2016)	MS which made notifications to the GSC or to the COM and which are nevertheless invited to upload them in the MNE database	MS which did not notify at all (neither in MNE, nor directly to GSC or COM)
Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA	DK, IE (partial), EL, ES, IT, MT, RO, UK		DK, IE (partial) EL, ES, IT, MT, RO, UK (there is no obligation to notify transposition foreseen in the Decision)

Implementation of post-Lisbon EU criminal law instruments - state of play

All Member States which are not mentioned in the below table have notified the Commission of the implementation of the relevant Directives in their legal order (save where the deadline for transposition has not yet expired, indicated by N/A). Please note that the table only shows instruments that fall within the remit of DG JUST.

Directive	Deadline for transposition	Observations	MS which did not notify the measures to the MNE database (as per 21/10/2016)
Mutual recognition / cooperation instruments and victims			
Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order	11/01/2015 <i>(Does not apply to DK, IE and UK)</i>		BE

Directive	Deadline for transposition	Observations	MS which did <u>not</u> notify the measures to the MNE database (as per 21/10/2016)
Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime , and replacing Council Framework Decision 2001/220/JHA	16/11/2015 <i>(Does not apply to DK)</i>		BE (partial) BG (partial) IE (partial) EL HR (partial) LT (partial) LU NL (partial) RO (partial) SI (partial) SK (partial)
Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters	22/05/2017 <i>(Does not apply to DK and IE)</i>	The deadline for transposition of this Directive has not yet expired.	N/A
Procedural rights			
Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings	27/10/2013 <i>(Does not apply to DK)</i>		BE (partial) LU (partial)

Directive	Deadline for transposition	Observations	MS which did <u>not</u> notify the measures to the MNE database (as per 21/10/2016)
Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings	02/06/2014 <i>(Does not apply to DK)</i>		LU (partial) RO (partial)
Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty	27/11/2016 <i>(Does not apply to DK, IE and UK)</i>	The deadline for transposition of this Directive has not yet expired. The following MS have already notified their implementing measures: EE, ES, IT, LT, PT, AT (partial)	N/A
Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings	01/04/2018 <i>(Does not apply to DK, IE and UK)</i>	The deadline for transposition of this Directive has not yet expired.	N/A
Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings	11/06/2019 <i>(Does not apply to DK, IE and UK)</i>	The deadline for transposition of this Directive has not yet expired.	N/A

Directive	Deadline for transposition	Observations	MS which did <u>not</u> notify the measures to the MINE database (as per 21/10/2016)
Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings	25/05/2019 <i>(Does not apply to DK, IE and UK)</i>	The deadline for transposition of this Directive has not yet expired.	N/A