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NOTE

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

I - Introduction

In line with Article 2 of Joint Action 97/827/JHA¹, 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 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.

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).

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 document 13404/16, that also contains in point II a preliminary analysis of the views expressed by the Member States.

Point III of the same document illustrates the alternative proposals made by some delegations, and in particular topic E) "Detention conditions in the EU Member States", proposed by DE, topic F, "The transfer of prisoners", proposed by DK, and topic G) the "The execution of final convictions within the European Union", proposed by BE.

II - State of play

The orientation debate continued at the GENVAL meeting on 26 October 2016 on the basis of document 13404/16. The outcome of the discussion, which is illustrated in details in point 4 of doc. 14196/16, can be summarized as follows:

- Larger support was expressed in favour of topic A), "Environmental crime".
- Significant support was also expressed both for topic F), concerning "The transfer of prisoners", proposed by DK, and for topic G) concerning "The execution of final convictions within the EU ", proposed by BE, whereas a very limited support was expressed for topic E) on "Detention conditions in the Member States", proposed by DE.
- More limited support was expressed for topic B) "Information exchange and information management in the Justice and Home Affairs area, and in particular the feeding and consultation of EU databases".
- Little support was expressed for topic D), "The practical application of EU legal instruments on victims' rights".

III - Choice of the topic

The Presidency aims at concluding the discussion on the topic for the eighth round of mutual evaluations by the end of the current semester. For this purpose, taking into account the number of the proposed topics which were already discussed and the preferences already expressed by delegations, it proposes to limit further discussions to only two topics, from which it could be more simple to choose one till the end of this semester.

According to the opinions already expressed by delegations, the most preferred topics, on which delegations are invited to express their preference at the last Genval meeting during the Slovak Presidency on 14 December 2016, are the following:

Topic A): Environmental crime, which 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. Environmental crime suffers from a lack of harmonized approach and of sufficient awareness at EU level and there is consequently a need to fight against this crime more efficiently.

The mutual evaluation could focus on the following specific aspects of environmental crime:

- 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 illegal production or handling with dangerous materials, including 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.

A mutual evaluation on environmental crime could examine the legislation, the penalty systems and the administrative measures in order to tackle the various types of infringements linked to this crime in the Member States, as well as relevant aspects of international cooperation. Furthermore, the on-spot visits will offer the opportunity to look closely at the practical aspects and relevant cooperation between law enforcement authorities in this area in the evaluated Member States, to identify best practices and shortcomings, thus contributing to the added value of the evaluation.

Topic G) : "The execution of final convictions within the European Union", which also covers topic F) in point III of doc. 13404/16, considering the support expressed for both topics and their complementarity.

In this context, the evaluation could focus at the same time on the following instruments of mutual recognition: 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 Union², as proposed by DK, as well as 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 sanctions³ and Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties⁴, as proposed by BE.

All these three legal instruments, which address the execution of a judicial decision issued by one Member State in another Member State, based on the principle of mutual recognition, complement each other and have operational links to the European Arrest Warrant.

A mutual evaluation on all these instruments, which have been applicable since a sufficient period of time, would offer the added value of allowing a global assessment of the issue of cross-border execution of final convictions, and thus identifying best practices, as well as practical difficulties and possible areas for improvement of cooperation between Member States in this field.

² OJ L 327 of 5.12.2008, p. 27

³ OJ L 337 of 16. 12.2008, p. 102

⁴ OJ L 76 of 22.3.2005 p. 16

IV - Concluding remarks

With a view to taking the final decision on the topic for the eighth round of mutual evaluations at next Genval meeting on 14 December 2016, the Presidency invites delegations at that meeting to clearly express their preference for one of the two topics under point III.

Following the decision on the topic, further proceedings during the next semester will involve defining in details the content of the mutual evaluation in the context of the discussions on the draft questionnaire.
