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15699/16

CATS 99

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	18 November 2016
To:	CATS
Subject:	Summary of discussions

1. Adoption of the agenda

The agenda, set out in doc. CM 4691/1/16 REV 1, was adopted with the addition of an AOB point from the Austrian delegation on the draft anti-money-laundering Directive.

2. Criminal justice in cyberspace

a) E-evidence

- progress report from the Commission on the work strands identified in the June 2016 Council Conclusions
- debrief on the Cybercrime Convention Committee (T-CY) plenary meeting

The Commission confirmed that a progress report would be presented to the Council in December, as envisaged in the June 2016 conclusions. At the moment work focused on defining practical solutions for improving channels and technical platforms for cooperation, streamlining the dialogue with service providers, including in the context of the Internet forum, as well as identifying strands of work with the US.

The Commission informed that support was noted at the T-CY Committee of the Council of Europe (14-15 November, Strasbourg) for a Guidance Note on Article 18 of the CoE Convention on Cybercrime, as further adjusted at the meeting concerning the notion of "business presence" of the service providers. Parties to the Convention were invited to provide written comments on the draft Guidance Note by 10 December 2016 with a view to adoption or further consultations, if needed. Furthermore, the T-CY Committee agreed in principle to pursue work on an Additional protocol to the Convention and to that end extended the mandate of the Cloud Evidence Group. The first meeting of the Group next year would take place on 30-31 January. The delegations underlined the need to ensure prior coordination of the EU position in this respect. The EU CTC reiterated the importance of setting out long term solutions for efficiently securing and obtaining of electronic evidence. Specific recommendations from a counter-terrorism perspective were presented at the Council on 18 November 2016. It was concluded that CATS should continue to follow the work on the global issue of criminal justice in cyberspace.

b) Encryption

– policy debate

The Presidency briefly presented doc. 13993/16 which outlines the 4-step approach to tackle the issues related to the use of encryption, as fine-tuned at the Horizontal Working Party on Cyber Issues on 28 November 2016. Delegations were positive and broadly supported the steps suggested by the Presidency as a way ahead. They highlighted the need to address both the technical and legal (criminal justice) aspects of the issue and to focus future work on practical solutions that would facilitate law enforcement work without undermining encryption as such and the protection of citizens' privacy. Member States reiterated once again the importance of ensuring an appropriate balance between privacy and security, and envisaged new legislation only as a measure of a last resort. The Commission was pointed out as best placed to organise the reflection process in order to keep the link with the expert process on e-evidence and to avoid any overlaps while the two processes were running separately.

During the discussion some delegations addressed more specifically the role of service providers and suggested to have a closer look at the scope of their responsibility and obligations. Others reminded to keep thinking ahead given the rapid technological developments as well as to ensure close involvement of the relevant EU agencies, such as Europol and Eurojust in this process. The Presidency welcomed the comments made, including the concrete suggestions to improve the drafting and informed delegations that a progress report would be presented to the Council in December

3. **Mutual legal assistance between the EU Member States and Ukraine**

- Policy debate

The Presidency explained the objective to find a common approach through the answers to the questions as set out in doc. 13954/1/16 REV 1. Most delegations agreed on the aim to adopt in principle a joint non-binding approach but opinions diverged on the approach to be chosen. The matter would be further explored by the (incoming) Maltese Presidency.

4. **Joint Investigation Teams**

- Presentation of the new Model Agreement
- Discussion on a draft Resolution

The Head of the JITs Network Secretariat presented the updated version of the model agreement for setting up the JITs, as agreed by the experts at the 12th meeting of the Network. Following a brief exchange of views, the Presidency invited delegations to send possible written comments on the draft resolution set out in the Annex to doc. 14313/16 by 28 November 2016, with a view to its adoption by the Council.

5. **Guiding principles for legislative initiative in the field of substantive criminal law: towards a common inter-institutional document ?**

- Policy debate

The Committee discussed this issue on the basis of doc. 14004/16. While a few Member States expressed themselves in favour of entering into discussions with the European Parliament and the Commission with a view to establishing a common non-binding document, other Member States and the Commission took a reluctant approach, stating that the Council and its preparatory bodies could better devote their time and energy to more pressing issues, or they took a neutral position.

In those circumstances, the Chair noted that there did not appear to be enough willingness in the Council to take the project of establishing a common non-binding document forward. The Chair stated, however, that it would be for the (incoming) Maltese Presidency to analyse the situation and draw any firm conclusions

6. Implementation and application of EU criminal law instruments

The Commission presented the tables set out in the annexes to doc. 14078/16 and the EJM presented its paper set out in doc. 14140/16. The work of the EJM regarding its website was complimented, and so was the work of the Council Secretariat regarding the tables setting out notifications and declarations relating to Framework Decisions. As regards the question whether more handbooks were needed, the Chair observed that EJM would be best placed to give indications in this respect, after having consulted relevant practitioners.

7. Presentation of the priorities of the incoming Maltese Presidency

The Maltese Presidency informed CATS about its programme.

8. AOB

a) Preparation of the Council

- Draft EPPO Regulation: recent developments
- Draft PIF Directive: recent developments

After having pointed out the particular difficulty of negotiating these two files, the Presidency informed the Committee of the roadmap planned up to the Council meeting of December, including the reopening of trilogue with the European Parliament for the PIF Directive.

b) Draft Counter-terrorism Directive: recent developments

The Presidency informed that the co-legislators reached an agreement ad referendum during the seventh trilogue which took place on 17 November 2016.

c) EU (CATS) – Council of Europe meeting (16 November 2016)

The Presidency informed the delegations of the fruitful exchange of views with the Council of Europe regarding the different topics as set out in the agenda of the meeting (doc. 14072/16).

d) Preparation of EU-US Ministerial Meeting

The Presidency presented the main items of the agenda of this meeting planned for 5 December: counter-terrorism, border management and cooperation in the field of criminal law, in particular e-evidence and fight against cybercrime. The Presidency would report on the outcome of that meeting to the Council on 8 December.

e) Preparation of EU-Western Balkans Ministerial Meeting (15-16 December 2016, Brdo)

The Presidency presented the agenda of the meeting, where the Justice session would discuss the fight against corruption, money laundering, terrorism financing and independence of the Judiciary.

f) Cyberissues Conference (14 December 2016, Brussels)

The attention of the delegations was drawn to this conference.

g) JHA - Aspects in the proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directive 2009/101/EC - Working paper by the Austrian Delegation

The Austrian delegation presented the main points of its working paper WK 940/2016 and pointed out particularly the paragraph 3 regarding the limitation of the retention period. The Commission was invited to take this point of view into consideration.
