



**Brussels, 9 February 2017
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6159/17

**GENVAL 11
COPEN 38
CYBER 18**

OUTCOME OF PROCEEDINGS

From: Working Party on General Matters, including Evaluations (GENVAL)
On: 3 February 2017
To: Delegations

Subject: Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in doc. **CM 1186/17**.

2. Presentation of the Presidency's programme

The Presidency introduced its work programme in the area of Justice and Home Affairs and the planned activities as regards the GENVAL Working Party. The aims of the Presidency are to discuss and adopt the remaining reports of the 7th evaluation round, and to adopt the questionnaire on environmental crime for the 8th evaluation round. The Presidency intends also to address the issue of data retention and to provide feedback to the Commission on the post-2016 THB strategy.

The provisional dates for the GENVAL meetings during the current semester are: 3 February, 7 April and 15 June 2017, with the possibility of an extra meeting if necessary. GENVAL could possibly hold special meetings on the upcoming legislative proposal on non-cash means of payment, if the Commission would present it during the current semester.

3. Seventh round of mutual evaluations

– Adoption of the report on Poland

The draft report on Poland, as set out in doc. 14585/1/16 REV 1 GENVAL 120 CYBER 133 RESTREINT UE, was adopted by the Working Party following the discussion held at last GENVAL meeting on 14 December 2016.

4. Seventh round of mutual evaluations

– Adoption of the report on Slovenia

The draft report on Slovenia, as set out in doc. 14586/1/16 REV 1 GENVAL 121 CYBER 134 RESTREINT UE, was adopted by the Working Party following the discussion held at last GENVAL meeting on 14 December 2016.

5. Seventh round of mutual evaluations

– Adoption of the report on Hungary

The draft report on Hungary, as set out in doc. 14583/1/16 REV 1 GENVAL 118 CYBER 131 RESTREINT UE, was adopted by the Working Party following the discussion held at last GENVAL meeting on 14 December 2016.

6. Seventh round of mutual evaluations

– Adoption of the report on Czech Republic

The draft report on the Czech Republic, as set out in doc. 13203/1/16 REV 1 GENVAL 103 CYBER 112 RESTREINT UE, was adopted by the Working Party following the discussion held at last GENVAL meeting on 14 December 2016.

7. Seventh round of mutual evaluations

– Adoption of the report on Greece

The draft report on Greece, as set out in doc. 14584/1/16 REV 1 GENVAL 119 CYBER 132 RESTREINT UE, was adopted by the Working Party following the discussion held at last GENVAL meeting on 14 December 2016.

8. Seventh round of mutual evaluations

– Discussion of the report on Croatia

The expert team responsible for the evaluation presented the content of the draft report on Croatia and the ensuing conclusions and recommendations, as set out in doc. 5250/17 GENVAL 3 CYBER 9 RESTREINT UE.

BG and NL asked some questions addressed to Croatia which were responded by the Croatian national authorities.

DE referred to its comments regarding the lack of legal basis for the collection of statistics on cybercrime made at previous meetings, underlining that these considerations should apply for all mutual evaluation reports. DE, however, pointed out that statistics should be of high quality and consequently be improved.

The draft report on Croatia will be presented at next GENVAL meeting for adoption.

9. Seventh round of mutual evaluations

– Discussion of the report on Latvia

The expert team responsible for the evaluation presented the content of the draft report on Latvia and the ensuing conclusions and recommendations, as set out in doc. 5387/17 GENVAL 4 CYBER 11 RESTREINT UE.

AT and SK asked some questions addressed to Latvia which were responded by the Latvian national authorities.

The draft report on Latvia will be presented at next GENVAL meeting for adoption.

10. Eighth round of mutual evaluations

– Presentation by the Commission

The Commission gave a presentation on relevant EU legislation and case law in the area of environmental crime, referring in particular to Directive 2008/99/EC on the protection of environment through criminal law, to Directive 2009/123/EC on ship-source pollution, to Regulation 2008/98/EC on waste and to Regulation (EC) 1013/2006 on shipments of waste (as amended by Regulation 660/2014).

The Commission underlined that environmental crime offences are increasing significantly and have strong links with organised crime, and expressed the view that the scope of the questionnaire for the 8th evaluation round should be extended to cover wildlife trafficking.

– **Presentation by Envicrimenet**

The Chair of Envicrimenet gave a presentation on environmental crime, underlining i.a. its links with organised crime, due to the high profits it ensues. He also pointed out that environmental crime is usually linked with other forms of crime such as corruption, counterfeiting, cybercrime, drug trafficking, illegal migration and terrorism. He also stressed that there is a need to tackle this form of crime based on an intelligence-led approach, including by improving the sharing of information and intelligence, and highlighted the lack of adequate statistics and of cooperation at national and international level, as well as the need to further develop the training activities in this area of crime.

– **Discussion on the draft questionnaire**

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The Working Party had an initial discussion on the draft questionnaire prepared by the Presidency for the purpose of the 8th round of mutual evaluations, which will focus on environmental crime. Some delegations made comments aimed at adding and/or modifying some questions in the draft questionnaire.

With a view to submitting a revised version of the questionnaire at the next GENVAL meeting, the Presidency invited delegations to send written comments on the draft questionnaire to the Presidency (genval.mhas@gov.mt) and to the General Secretariat of the Council (secretariat.mutual-evaluation@consilium.europa.eu and giovanna.giglio@consilium.europa.eu) **by 17 February 2017.**

11. Retention of electronic communication data

The Presidency briefly informed the delegations about the outcome of the informal ministerial discussion held in Valletta on 26-27 January 2017 on "Tele 2 and Watson" joint cases, outlining that the Ministers expressed support for a coordinated approach at EU level and for discussions to continue at the technical level.

The Council Legal Service (CLS) presented its preliminary analysis of the judgment as set out in its note to COREPER (doc. 5884/17). The CLS outlined i.a. that the CJEU reaffirmed and reinforced its previous case-law, by referring to the principles already expressed in the 2014 "Digital Rights Ireland" judgment. However, the Court introduces a new element, namely the freedom of expression, with regard to the incompatibility of a general data retention with the Charter of fundamental rights (Article 11 of the Charter). The CLS further clarified on the possibility and the conditions for a preventive and targeted data retention.

The Commission indicated that it is currently assessing the impact of the judgment and that further reflection is needed on its legislative and operational implications. The Commission intends to elaborate guidance as to how national data retention laws can be constructed in conformity with the judgement, and will cooperate with Eurojust and Europol in particular as regards the cross-border implications and the impact on law enforcement and judicial cooperation.

Eurojust is currently analysing the implications of the judgement and its potential impact on international judicial cooperation in criminal matters, in particular on the admissibility of evidence within the context of cross-border investigations and prosecutions. The College has approved an extensive research and work programme, to include consultation by way of a uniform questionnaire with appropriate contact points, the conclusions of which will be available to share with delegations. Eurojust will ensure synergies with the work being carried out by the Commission.

The Working Party had a debate, which outlined that the majority of delegations are in the process of analysing the impact of the judgment on their national legislation. Many delegations expressed their concerns on the implications of this judgment, which might hinder the effectiveness of the investigations and prosecutions of crimes.

Some of the delegations stressed the complications that would arise if Member States would go in different directions. In view of this, most of delegations are in favour of a coordinated approach at EU level. Some delegations underlined the urgency to start working on possible solutions, whereas others prefer not to rush into immediate action, believing that further reflection is needed. Some delegations expressed an interest in exploring the possibility of addressing the issue in the context of the on-going discussions on the draft e-privacy Regulation. The possibility of establishing an informal network of national experts was mentioned by some delegations.

The Presidency, underlining that the debate has provided some useful "food for thought" on the issue of data retention, invited delegations to send written contributions to the Presidency (genval.mhas@gov.mt) and to the General Secretariat of the Council (secretariat.criminal-law@consilium.europa.eu, giovanna.giglio@consilium.europa.eu and milena.petkova@consilium.europa.eu) **by 17 February 2017**, with a view to continuing the discussions at CATS in March 2017.

12. Preventing human trafficking and sham marriages: A multidisciplinary solution (HESTIA)

– Presentation by Latvia

LV presented the outcome of the HESTIA programme, the main objective of which was to look into the links between human trafficking and sham marriages, with a view to identifying the action to undertake for preventing and fighting against this phenomenon, and outlined some recommendations for this purpose.

13. AOB

The Presidency informed the Working Party about the latest developments of the teamwork project on THB and labour exploitation, which include a Handbook and a dedicated website.