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EJN 49
EUROJUST 116
FREMP 84

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Outcome of proceedings COPEN meeting 21 June 2016

1. Adoption of the agenda

The agenda was adopted as set out in doc. CM 3096/1/17 REV 1.

2. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

COM and DE presented the work on the revised draft forms and agreement, as carried out by a group of experts together with the Commission (doc. 9610/17). Following an exchange of views, the Presidency concluded that while there was no support for the agreement as set out in Annex 6, a large majority of delegations could support the forms as set out in Annexes 1-5 of doc. 9610/17. On the suggestion by the Presidency, it was agreed to invite practitioners to start using these forms, and see in the course of such use whether any modifications should be made. COM pledged to provide translations of the texts.

Further to a comment by the Council Legal Service, the Commission agreed to slightly revise the memorandum (see doc. 11032/17). EJN indicated that it would publish the forms on its website.

3. **Enhancing the use of SIS in the area of judicial cooperation**

Following introductions by COM and by the Presidency, the Working Party held an exchange of views on the use of SIS for the application of instruments of mutual recognition other than the FD EAW (see doc. 9595/17, point 6.3). While some Member States found this idea interesting, most Member States were reluctant to broadening the use of SIS. It was stated, *inter alia*, that such use might affect the principle of direct contacts between judicial authorities, which is a crucial element of EU instruments of mutual recognition. It was also observed that such broader use might harm the effective operation of SIS, since many more alerts would be placed in the system. The Presidency invited the incoming Estonian Presidency to reflect further on this issue.

4. **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States**

A: Follow-up of the Aranyosi judgment

AT presented its paper (doc. 9927/17) in which it proposed to establish focal points in the Member States that can provide general information and recent reports on the situation in their detention facilities or answer questions with respect to a specific prison. AT suggested that the structure of Eurojust could be used, if Member States appoint their National Member as a focal point.

COM supported the AT suggestion to establish focal points. COM further indicated that the revised EAW handbook, containing some explanations regarding the Aranyosi judgment, would be published around mid July 2017. COM referred to the roundtable which was organised on 20 October 2016 and to other meetings where the Aranyosi judgment had been discussed. In view of the information thus gathered, COM submitted two suggestions, consisting of establishing a common questionnaire under Article 15(2) FD EAW, and a common database with information on detention conditions (see doc. 10429/17, point A). COM also indicated that there was a need to establish common indicators, and observed that the FRA was currently working on a project to look into this possibility.

Many Member States expressed misgivings about the idea of establishing a common data base, since it would raise several questions, such as to what information should be inserted and on the criteria to be used, about who would feed and update the data base, etc.

As regards the common questionnaire and the focal points, the reactions were mixed: some Member States felt that these were ideas worth to be explored, while others expressed a more reluctant approach.

Various Member States suggested involving Europris in this matter. COM confirmed that it was in contact with Europris and said that a meeting was planned for October.

The Presidency concluded that it would be advisable to reflect further on this issue, and stated that it would probably be appropriate to await also the upcoming case-law on this issue, as this may further explain the Aranyosi judgment.

B: Follow-up of the case-law on competent authorities

In the light of the judgments of the CJEU on the notion of "judicial authorities", COM requested the Member States concerned to notify to the MNE database all changes of the competent judicial authorities (see doc. 10429/17, point B).

SE indicated that it had already made such notification in December.

C: Follow-up of the Petruhhin judgment

PRES thanked COM and the RO delegation for their interesting papers (see respectively doc. 10429/17, point C, and W. doc. 6894/17). COM referred to the note by Eurojust, which was distributed in the meeting, containing information on several practical aspects of the application of the Petruhhin judgment. COM observed that in practice, it was difficult for the requested person to achieve that he be surrendered to another Member State instead of being extradited to a third State. COM suggested establishing focal points in each Member State who could help in applying the "system" set up under the Petruhhin judgment.

Several Member States told about their experiences with the application of the Petruhhin judgement. It was observed that this case-law is quite new, and that it is not sure if the case-law will be maintained; at least, it is likely that the CJEU will provide further explanations in the future. It was therefore suggested to adopt a cautious approach. Doubts were also expressed towards the idea of establishing new focal points in the Member States.

It was noted that this issue would also be dealt with at the EJM Plenary meeting, which would be held in Valletta on 28-30 June 2017.

PRES concluded that it would be advisable to await the upcoming case-law in this matter and the outcome of the EJM meeting. PRES concluded that there was no support, at this moment, for establishing new focal points; if necessary, existing structures could best be used. Finally, PRES suggested that the incoming Presidency could have a look at this issue in the near future.

5. Report on Eurojust's Casework in the field of the EAW (2014-2016)

Eurojust presented the report set out in doc. [9198/17](#).

6. Outcome Report of the Thematic Discussion by the College of Eurojust on the EAW and Prison Conditions

Eurojust presented the outcome report as set out in doc. [9197/17](#).

7. Directive [2014/41/EU](#) of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

COM noted that the transposition deadline of the EIO Directive had expired on 22 May 2017. While only four Member States had notified measures in the MNE system, another five had indicated that they had transposed the Directive. COM urged all Member States which had not yet done so to notify their transposition measures as soon as possible in the MNE system.

EJM explained where on the EJM website the national transposition measures for the Directive were set out. EJM also briefly explained the information that was set out in doc. [9936/17](#), which was drafted partly together with Eurojust. Several delegations complemented EJM and Eurojust with this very informative note.

8. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

COM observed that 11 Member States had not yet notified COM of the authorities that are competent to act under the EPO Directive. COM urged those Member States to notify this information as soon as possible in the MNE system. COM would then provide this information to EJN, so as to allow it to upload this information on its website. COM also urged the Member States to notify it of statistical information under Art. 22 of the Directive.

COM stated that in relation to Directive 2012/29/EU on victims rights (OJ L 315, 14.11.2012, p. 57), six Member States still had not notified COM of their transposition measures. COM urged those Member States to notify this information as soon as possible. COM also drew the attention of Member States to the obligation to provide statistical data under Art. 28 of the Victims Directive.

9. Report on child friendly justice

The Fundamental Rights Agency presented its report on child friendly justice, as set out in <http://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>

10. Review of the Agreement of 25 June 2003 on mutual legal assistance between the EU and the USA

In the light of the recommendations that were agreed at the EU-US Ministerial meeting on 1-2 June 2016 in Amsterdam, COM informed delegations that the discussions with the US on judicial cooperation were focussing on the issue of e-evidence; the fact that the main service providers are located in the US was an important element in this regard. COM observed that at the June 2017 (JHA) Council, it had presented a non-paper containing practical measures, some of which address the US. COM also reminded that 1 million euros had been made available for training under the 2016 Annual Action Programme for the Partnership Instrument to finance in 2017 targeted action to improve EU-US cooperation on cross-border access to electronic evidence. These funds could notably be used for enhancing knowledge on the probable cause test.

11. Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

DE informed the Working Party that it had sent a letter to the Council Secretariat submitting its notifications and declarations in respect of the Agreement.

IE explained that it was still in the process of establishing the right legal basis in internal law to submit the notifications and declarations.

IT was not present at the meeting and therefore did not present any observations.

The Presidency encouraged IE and IT to continue the work on the submission of the notifications and declarations.

Reference is made to doc. 10968/17, which sets out the current state of play regarding the notifications and declarations to be presented under the EU-IS-NO agreement.

12. AOB

No subjects were dealt with under this point.
