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CATS 152

NOTE

From: Presidency
To: Coordinating Committee in the area of police and judicial cooperation in criminal matters (ex-"Article 36 Committee" or "CATS")
Subject: The future of CATS - Contribution to the evaluation by COREPER

CATS has been established by the Permanent Representatives Committee (Coreper) as part of a working structure entrusted with preparing the discussions in Coreper concerning police and judicial cooperation in criminal matters following the entry into force of the Treaty of Amsterdam (doc. 6166/2/99). Its role was confirmed by Coreper when it reviewed the working structures in the JHA area in advance of the entry into force of the Lisbon Treaty (doc. 16070/09).

The role and working methods of CATS and its predecessor, the Article 36 Committee, have been reviewed several times (with the Haga Slott process and the Val Duchesse process inter alia). The objective was to improve its functioning and streamline its work in order to respond to the needs emerging from new challenges and from the changing architecture of the European Union, and to ensure constant and adequate assistance to Coreper on legal issues and horizontal and strategic topics in the fields of police and judicial cooperation in criminal matters.

In principle, the role of CATS is now mostly confined to strategic discussions and preparation of the work of Coreper and the Council. Furthermore, it may be noted that, in a number of fields, COSI now deals with issues that were previously dealt with by CATS (Interior) but, under article 4 of the Council Decision establishing COSI, the latter is precluded from “preparing legislative acts”.

Following discussions in CATS on the basis of document 13206/11, Coreper decided in November 2011, in accordance with Article 19(3) of the Council's Rules of Procedure, to prolong CATS' mandate, and endorsed the guidelines on improving its working methods set out in document 17187/11. The prolongation of the mandate provided for a further evaluation to be carried out by Coreper towards the end of the Stockholm programme and before the adoption of the next multiannual programme.

During the Italian Presidency, the role of CATS has been enhanced and more meetings were scheduled, with four full meeting days for the Justice issues in addition to one informal meeting in the margins of a Conference, and three half-days and one informal CATS-COSI meeting for the Home Affairs aspects. Moreover, sessions involving both Justice and Interior delegates were held on two occasions.

During these meetings, discussions have focused in particular on thematic and strategic questions related to sensitive dossiers, such as EPPO, with the presentation of new files before the formal negotiations at the level of the working parties and the presentation of the state of play regarding trilogues with the European Parliament.

Presidency began preparing the evaluation to be undertaken by Coreper at the informal meeting of CATS (Justice) in Syracuse on 21 September. It considers that the starting point should be the guidelines on CATS' role and working methods endorsed by Coreper as an annex to document 17187/11 of 18 November 2011.

At this informal meeting of CATS (Justice), delegations were invited to present their comments on this way to proceed and on how the guidelines should be revised. Some delegations have also sent their written contributions to the General Secretariat.

Delegations were unanimous in considering that CATS should continue to play a role in the JHA area with a view to providing added value in a cost-efficient manner. Discussions in CATS should be focused on strategic issues, ensuring follow-up to the policy orientations adopted by the European Council and contributing to the preparation by Coreper of Council meetings (JHA) on matters related to police and criminal law cooperation.

Delegations also pointed out that CATS could play a role in preparing trilogues on selected topics and give orientations on new files before the working parties began the technical examination of the proposals. CATS should also examine from a strategic perspective the outcome of mutual evaluations and discuss issues of a horizontal character.

It was underlined that CATS could also meet in informal formations without necessarily benefitting from a full language regime. Contributions from representatives of JHA agencies, in a structured manner, could also be of interest.

In summary, without the CATS, the outcome of the proceedings of the individual and technical Council parties would be transmitted to Coreper without the added value which the CATS has represented until now in terms of coordination and quality of the preparation.

The present paper is intended to serve as a basis for a discussion among CATS members, with a view to adapting thereafter, if need be, the existing guidelines that define the role and the working methods of CATS.

Delegations are invited to present their comments on this contribution and on the draft revised guidelines attached during the next CATS meeting on 22 and 23 October 2014.

Questions for discussion:

- (1) Do you agree that CATS continues to have an important role to play by contributing, through strategic and technical guidance, to the further development of the policies of the European Union in the fields of police and judicial cooperation in criminal matters, and that its mandate, adapted as necessary, should be confirmed by Coreper?
- (2) Do you agree on the overarching objective of redefining the role of CATS in light of the changing context and as the Strategic Guidelines defined by the European Council in June 2014 are being implemented?
- (3) If this is the case, do you agree with the orientations contained in this document?

ROLE AND FUNCTION OF CATS

DRAFT CONTRIBUTION TO THE EVALUATION BY COREPER

The changes in the legal and operational framework of the EU in the field of police and judicial cooperation in criminal matters brought about by the Lisbon Treaty will come to maturity in the coming months as the strategic guidelines for legislative and operational planning within the area of freedom, security and justice, as defined by the European Council in June 2014, are being implemented.

This opens a new phase in the efforts of the EU to develop an area of freedom, security and justice. This renewed strategic vision comes at a time when the evolution of crisis scenarios, the reinforced threat from terrorists and their impact on our societies call for broader and more coordinated EU action, based on the principles of responsibility and solidarity.

Over the years, CATS has proved to be an invaluable network for senior officials acting in this politically sensitive and fast-developing EU policy field, committed to finding solutions to interrelated problems covered by several working parties, thus allowing Coreper and Council to focus on the most contentious political issues.

During the last years, CATS has provided a significant contribution to EU achievements in the field of police and justice cooperation. This is true in particular for developments concerning Europol, where CATS has been instrumental in identifying solutions to several difficult issues – for example when preparing the draft Council Decision amending the list of third States and organisations with which Europol shall conclude agreements; or, in relation to the draft Europol Regulation, when rejecting the Commission's proposal to merge Europol and CEPOL or when discussing the new regime applicable to Europol's external relations and the data protection supervisory body for Europol under the new legal basis.

CATS has also provided strategic guidance to working parties on issues such as the European protection order, the European investigation order, trafficking in human beings, sexual exploitation of children and the setting up of a European public prosecutor's office.

The challenges brought about by terrorism and organised crime need to be met with reinforced coordination at EU level, both between national administrations and between various relevant EU working parties, agencies and bodies so that external and internal priorities of the European Union remain altogether consistent.

National administrations responsible for matters related to police and judicial cooperation in criminal matters strongly believe that CATS continues to have an important role to play in this regard by contributing, in terms of technical and strategic assistance, to the future development of the policies of the European Union in these fields. They also stress the importance of enhancing coordination and coherence between different Council Committees and working parties, by improving cooperation and working methods and by providing them where appropriate with strategic guidance and support from CATS. In particular, given the increasing relevance of the coordination between strategic and operational work, the relationship between CATS and COSI is considered crucial.

On that basis, it is therefore recommended that CATS continues its work beyond 2014, assisting Coreper in relation to legal, horizontal and strategic matters in the field of police and judicial cooperation in criminal matters. Further evaluations of CATS' work could be subsequently undertaken and endorsed by Coreper, as appropriate, and may be in particular relevant in conjunction with the next definition by the European Council of the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

It is also recommended that the working methods of CATS be adapted to this increasingly demanding environment. To this end, with due regard for the original purpose of CATS as a forum for open and strategic discussions between delegations in police and judicial cooperation in criminal matters and also to the need to respond with increased flexibility to new challenges, CATS has prepared revised guidelines for the continuation of its work, presented in the Annex attached to this document.

Coreper is invited to take these considerations into account when pronouncing itself on the future of CATS and, should the prolongation of CATS' mandate be decided, to endorse the attached guidelines on CATS role and working methods, in accordance with Article 19(3) of the Council's Rules of Procedure.

CATS**GUIDELINES ON ITS ROLE AND WORKING METHODS^(*)**

CATS shall assist Coreper in relation to legal, horizontal and strategic matters in the field of police and judicial cooperation in criminal matters, working in collaboration with other relevant Council Committees, in particular COSI and SCIFA, and working parties and providing them where appropriate with strategic guidance and support. CATS shall also follow the implementation of the renewed Internal Security Strategy and provide strategic input to the Commission on topics falling within its remit.

CATS shall continue its work beyond 2014 subject to further evaluations to be carried out by Coreper, as appropriate. These evaluations may be in particular relevant in conjunction with the next definition by the European Council of the strategic guidelines for legislative and operational planning within the area of freedom, security and justice, as provided for by the Treaty on the Functioning of the European Union (Art. 68).

CATS shall pursue its strategic function in the field of police and judicial cooperation in criminal matters, focusing on horizontal and/or cross cutting issues and on politically important legislative proposals and non-legislative initiatives as well as by fostering operational cooperation and strategic thinking on EU challenges. However, Coreper remains solely responsible for preparing legislative acts and preparing the Council (Justice and Home Affairs).

CATS shall in particular:

- facilitate work in the field of police and judicial cooperation in criminal matters by clearing outstanding questions and thus narrowing down the number of issues to be examined by Coreper and Council;
- foster shared analysis of relevant developments at EU level and support operational cooperation at EU level on issues related to police and judicial cooperation in criminal matters;

^(*) These guidelines complete and replace those endorsed by Coreper on 23 November 2011 (annex to document 17182/11).

- serve as a forum for a first exchange of views in case of politically important legislative proposals and initiatives and provide guidance, without prejudice to the role of Coreper for work at expert level in the relevant working parties;
- contribute to the overview of the application of the policies on police and judicial cooperation in criminal matters developed at EU level;
- serve as a complementary forum for the purpose of informing and/or consulting Member States by the Commission in relation to important forthcoming initiatives;
- contribute to the preparation of trilogues on selected topics;
- examine from a strategic perspective the outcome of mutual evaluations and discuss issues of a more horizontal nature;
- be a forum for the exchange of information on developments of interest in the areas of its mandate, in particular pending cases and developments in the case law of the Court of Justice / European Court of Human Rights.

Composition and frequency of meetings

The Member States and the Commission are solely competent to designate their representatives in CATS. However, in order for the committee to perform its functions in the most efficient way and in particular to issue clear political orientations, it is recommended that CATS continues to be composed of high-level senior officials responsible for or involved in the policy areas examined by the committee and who are responsible for preparing Ministers, Vice-Presidents and Members of the Commission for the Council meetings.

Participation of the European External Action Service is encouraged and this service shall be invited for all agenda items relevant to its mission.

Relevant agencies (Europol, Eurojust, Frontex, CEPOL...) may, upon invitation, participate in the meetings as required for the discussion of issues which relate to the tasks and competences of the Agency concerned, thus providing, whenever needed, updated analytical and operational reports as well as technical assistance on various initiatives and proposals which have an impact on the performance of their tasks. A similar invitation could also be extended to relevant international organizations.

Invitation to external experts, for instance from relevant international organizations such as the Council of Europe, might be considered in a limited number of cases, whenever such exchanges of views are appropriate to inform CATS' subsequent discussions. Written contributions from external sources might also be considered.

Meetings shall be organized when issues requiring strategic input arise, reflecting current and emerging needs, as a rule three to four times per semester. To increase flexibility, a simplification of the interpretation regime might be considered.

Where needed, informal meetings as well as working lunches and/or dinners may also be organized, and could be restricted to Heads of Delegation only. The possibility of conducting field trips, at the initiative of the Presidency or of any other delegation, should be further explored as a source of direct, operational information on important issues dealt with by CATS.

Agenda

- Annotated agendas should be a regular tool.
- Agendas of meetings should consist of a limited number of topics, with a focus on complex legislative and/or political files and/or certain outstanding issues of strategic nature.
- Thematic/horizontal policy discussions should be regularly organized, for instance, but not only, when assessing the impact of EU action on police and judicial cooperation in criminal matters. More generally, there should be reinforced coordination of policy areas related to terrorism, exchange of information between police and judicial authorities and security issues.

- Agenda points should distinguish between discussion and information points, with the latter kept to a minimum.
- Exchange of information should, as a rule, be done in writing unless agreed or requested otherwise.
- Exchanges of views on politically important proposals and initiatives should be organized on the basis of documents circulated well in advance accompanied by concrete questions proposed by the Presidency.
- The Commission is invited to consider presenting relevant new legislative proposals to CATS whenever appropriate, leading to early exchanges in CATS before the working parties begin the examination of those proposals.
- Discussions on legislative issues should be limited to those that have remained unresolved by relevant Council working parties and which need to be addressed prior to the continuation of work on a given legal text. For those discussions to be as productive as possible, delegations and the Commission are encouraged to ensure coordination between their representatives in CATS and those in the relevant Council working parties.
- Presentations of EU agencies should whenever possible be communicated to delegations prior to the CATS meetings, so that strategic discussions could be held on that basis.
- Delegations and the Commission are encouraged to ensure coordination with their representatives in the management structures of Europol and Eurojust, in order to enhance coherence and follow-up by agencies of decisions and strategic orientations developed by the Council in the areas covered by CATS.

Coordination with other working parties and bodies

Coordination primarily takes place within each Member State. However, there is a need to strengthen the mechanisms that coordinate the activities of different Council working parties and EU bodies, without prejudice to their respective remits.

To reinforce this coordination, the following shall be considered:

- Delegations should ensure appropriate coordination between the activities of CATS and those of other Council Committees and working parties (such as PSC, COSI, JAIEX, etc.). The Presidency should work actively to facilitate this coordination.
- In particular, coordination with the external dimension of JHA should be facilitated by the Presidency, for instance through participation of the Chair of CATS, where appropriate, in the meetings of JAIEX and vice versa, thus supporting CATS in ensuring coordination, and interaction between the internal and external dimensions of issues relating to police and judicial cooperation in criminal matters.

Furthermore, joint meetings as well as back-to-back meetings could be organized as appropriate.

- Among the information points prepared for CATS, the General Secretariat of the Council could refer delegations to the outcome of discussions that take place in other relevant groups and forums and are of direct relevance to items dealt with by CATS.
- The Chair of CATS, through its National Representative, should follow the discussions held in the Management Board of Europol and the College of Eurojust. For issues of particular strategic relevance, the CATS Chair shall bring discussions held and decisions taken to the attention of the Committee.
