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NOTE

From: General Secretariat of the Council
To: CATS

Subject: Information on implementation of mutual recognition instruments
- Note by the Austrian Delegation

Delegations will find attached a note by the Austrian delegation concerning information on implementation of mutual recognition instruments.

Note by the Austrian Delegation**A. Third pillar instruments**

In the instruments on mutual recognition adopted under the third pillar (Framework Decisions), the following system has been established as regards information to be provided concerning the implementation of these instruments:

- Member States transmit to the General Secretariat of the Council (GSC) and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under the Framework Decision;
- Where Framework Decisions provide the obligation for Member States to communicate certain specific information (e.g. concerning the designation of competent authorities or accepted languages), or provide for the possibility to make declarations, the Framework Decisions determine that this information and these declarations should be sent to the GSC, and that the GSC shall notify the Member States and the Commission of such information and declarations.

The GSC has, for many years, produced and kept up to date, for each of the Framework Decisions, a table containing, for each Member State, the specific information provided, the date of entry into force of the implementing legislation, and any declarations.

Since the adoption of the Council Conclusions in October 2010,¹ which entrusts the EJM Secretariat with the task to include in its website information on the state of play of EU instruments for judicial cooperation in criminal matters applying the principle of mutual recognition, the GCS has sent to the EJM Secretariat all relevant information, including the official notifications provided by the Member States.

The GCS has even made tables showing the implementation of Framework Decisions by Member States where no specific information or declarations should or could be provided by Member States; the tables in such a case simply inform about the transposition of Framework Decisions by Member States. An example is FD 2009/299/JHA (in absentia).

However, after 1 December 2014, the GCS will not anymore make tables in such cases, given that as from that date the Commission has full competence for monitoring the implementation of Framework Decisions, and it seems preferable to avoid double work (which could also lead to confusion). The GCS has communicated this line of action to the Commission, who agreed with it.

This implies, by the way, that as regards such Framework Decisions, where no specific information or declarations should or could be provided by Member States to the GCS, the latter will not anymore send information to the EJM Secretariat.

According to Article 9 of Protocol 36 to the Lisbon Treaty, the legal effects of acts, notably Framework Decisions, adopted prior to the entry into force of the Lisbon Treaty, shall be preserved until those acts are repealed, annulled or amended. Therefore, the obligation for Member States to transmit to the General Secretariat of the Council the text of provisions transposing Framework Decisions into national law continues to exist until such repeal, annulment or relevant amendment.

¹ Justice and Home Affairs Council meeting in Luxembourg, 7–8 October 2010. See doc. 13405/1/10 REV 1, point 3 a).

B. Directives

The provisions in the two Directives adopted in the last years (Directive 2014/41/EU on the European Investigation Order and Directive 2011/99/EU on the European protection order) are different: Member States are obliged to inform only the Commission about the relevant implementing legislation. They have to transmit to the Commission the texts of national law and, where relevant, notify it of any specific information. ²

As regards **Directive 2011/99/EU** (European protection order), the time to implement Directive 2011/99/EU ended on 11 January 2015.

On 16 January 2015, information was informally circulated through EJN contact points that eight Member States had implemented the Directive in time.

However, no official information on the implementation of Directive 2011/99/EU has been circulated up to now; therefore, the EJN homepage does not yet contain any information on this Directive. This means, for example, that although in Austria the relevant legislation has entered into force on 1 January, it is not possible to properly apply the Directive (even not in relation to the seven other Member States which are said to have already implemented the Directive).

² Article 33 of Directive 2014/41/EU (Investigation Order) contains a specific provision on notifications, listing all the notifications provided for in the whole text to be done by Member States. Paragraph 4 foresees:

„4. The Commission shall make the information received under this Article available to all the Member States and to the EJN. The EJN shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA.“

Directive 2011/99/EU (European protection order) does not contain a similar provision.

C. Conclusions

It goes without saying that proper application of any instrument providing for co-operation between national authorities of Member States (including mutual recognition and execution) presupposes up-to-date information of the authorities about

- Which Member States have implemented and thus apply the relevant instrument; and
- All specific information provided by Member States, like on competent authorities and accepted languages, and any declarations by Member States.

This information shall be made available by the EJM on its website. While there might still be room for improvement in how this information is structured on the EJM website, the core issue is that the EJM is dependent on receiving the relevant information from the GSC or the Commission.

The aim should be that information is available at least in the same transparent and comprehensive manner as is the case, since many years, with the Council of Europe Conventions on the Council of Europe homepage.

At the moment, certain aspects seem unclear:

1. Who gathers and disseminates information on the implementation of Framework Decisions where there is neither an obligation to send specific information to the GSC, nor a possibility to make declarations?
2. Who gathers and disseminates information on the implementation of Directives concerning cooperation in criminal matters, such as Directive 2011/99/EU (European protection order)?

It is suggested that the Commission should carry out both tasks, since the Commission receives the information concerned from the Member States and since the Commission is competent for monitoring Directives and Framework Decisions.

In fact, under Article 17 of the Treaty on European Union, the Commission shall oversee the application of Union law under the control of the Court. Moreover, since 1 December 2014, the power of the Commission under Article 258 of the Treaty on the Functioning of the European Union also fully applies to Framework Decisions, as a result of which it would also be logical that the Commission solely carries out the accompanying monitoring function.

It is also suggested that the Commission, in collaboration with the EJM Secretariat, establish the proper communication channels in order to allow the EJM to feed its website with information on Directives and Framework Decisions and to maintain all information on the EJM website up to date.

The GSC has indicated that it will continue disseminating information and making tables when Framework Decisions provide that specific information or declarations should or could be sent to the GSC and the GSC is entrusted with the task of notifying the Member States and the Commission of such information and declarations. The GSC will also continue sending such information and declarations to the EJM, so as to allow it to maintain its website up-to-date.

In the long term, it does not seem ideal to have such a shared responsibility on the provision of information concerning the implementation of EU measures. However, transferring all responsibility to the Commission, which seems the most logical thing to do, would require amending the Framework Decisions (in particular where it now provided that specific information or declarations should or could be sent to the GSC, and where the GSC is entrusted with the task of notifying the Member States and the Commission of such information and declarations).