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CATS 100

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 23 and 24 September 2015
To: CATS
Subject: Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in doc. CM 3722/2/15 REV 2.

2. Transposition of former third pillar instruments after 1 December 2014: state of play and next steps

Delegations were invited to complete their transposition notifications on the MNE database of the Commission by 9 October 2015, following which the Commission is planning the launching of the "EU pilot on non-communication", meaning a dialogue with the Member States which are lacking notifications about the listed instruments. The Presidency clarified that in order to facilitate the notification process to the Commission, doc. 11902/15 can be used as an indication about the state of play of existing notifications, supplemented by information about notifications which Member States made to the General Secretariat of the Council (GSC) that are missing in the MNE database.

A number of delegations referred to the need to establish certain priorities for the notifications related to the different instruments, as well as to take into consideration the fact that some will be repealed further to the adoption of the Refit Regulation and therefore notifications will become obsolete. Some delegations reported certain technical problems they have experienced when notifying transposition measures on the MNE database.

It was also stressed that further to the transposition notifications, the Commission should concentrate on facilitating the sharing of practical information, such as national competent authorities or declarations made by the MSs, which is essential for the effective implementation of those instruments. Until now the available information in this respect was easily accessible to practitioners on the European Judicial Network site which is due to be migrated to the e-justice Portal during the first semester of 2016.

Delegations underlined that the Commission should also address the issue of enhancing the practical use of judicial and police cooperation instruments, by means of experts meetings, handbooks, practical tools for implementation, etc.

The Commission confirmed that all these aspects are indeed considered in its internal discussions. It is also envisaged including the national implementing measures of former third pillar instruments in the EUR-Lex. The GSC informed about the ongoing e-law pilot project in this respect. Several Member States already participate in the project. Delegations were invited to consider joining the pilot as well as adding in the project an instrument on judicial cooperation in criminal matters.

The Commission would inform delegations about the contacts details that could be used by delegations to address their queries relating to technical problems or concerning clarifications about the substantive aspects of the transposition of the 3rd pillar instruments.

3. International agreements that concern EU competences in the area of criminal law

It was understood that each individual agreement touching upon EU competences in the area of criminal law had to be analysed separately and different conclusions could be reached in different cases, depending on the extent and nature of EU competences, as well as the practical arrangements concerning the negotiating, signing and conclusion on behalf of the EU of such agreements. At the same time delegations pointed out that a more consistent approach is needed in the way to assess the different cases, as well as more awareness about the various legal aspects that need to be assessed.

In this respect, it was suggested that for each international agreement an analysis should be made as to whether the agreement concerns an EU competence as conferred by the Treaties and if so, what the nature is of this competence and whether or not existing EU acquis is affected. The interplay with Protocol 21 to the Treaties should be also considered. Depending on the outcome of the analysis, and whether the analysis is shared by all stakeholders, there would be different legal implications for the possibilities of the EU institutions and the Member States to act in the fields concerned by the respective agreement. Some delegations underlined there would also be implications for the relations with the European Parliament and the National Parliaments.

Delegations made a plea for a more coordinated approach at different levels: by the Commission when preparing proposals concerning international agreements, which should be accompanied by the above-mentioned legal analysis; at the national level especially when different ministries are involved and at Council when different preparatory bodies are concerned. This should result in a more timely and more coherent handling of the files.

It was concluded that CATS would be well placed to ensure a better coordination of the discussions related to international agreements concerning EU competences in criminal matters and should therefore regularly review these files. This would be in addition to the existing practice of inviting JHA counsellors to relevant meetings of other working groups where the respective files are treated.

4. **Migration crisis: aspects of judicial cooperation and fight against xenophobia**

- Preparation of the Council meeting (Justice Ministers)

La crise migratoire sans précédent que connaît l'Union européenne est un double défi humain et politique. La Présidence a indiqué son objectif de soumettre aux ministres de la Justice lors du Conseil du 9 octobre les pistes exposées dans le document 11898/15 afin que des priorités soient définies en matière de renforcement de la coopération judiciaire pour lutter principalement contre les filières d'immigration et la xénophobie.

Eurojust a établi un bilan des actions en cours, tant au plan opérationnel que stratégique: un renforcement des équipes d'enquêtes, la multiplication des réunions de coordination et la mise en place de centres opérationnels, sa participation aux "hotspots" afin d'identifier les dossiers judiciaires significatifs, le support à l'EUNAVFOR MED pour les opérations navales en qualité de conseil juridique, une coopération renforcée avec Europol, la mise en place d'un groupe thématique mobilisant les compétences ainsi que des réunions tactiques dédiées avec des procureurs spécialisés dans la lutte contre les réseaux criminels. Enfin sur le plan externe, Eurojust entend développer et renforcer la coopération avec les pays tiers concernés dans le cadre strict de son mandat et d'accords dûment établis, notamment quant aux transferts de données permettant la diffusion d'actes judiciaires.

Une très large majorité de délégations ont apporté leur soutien à la Présidence quant aux objectifs exposés et aux actions entreprises par Eurojust, principalement dans le cadre du renforcement des mécanismes existants. Le débat a aussi fait ressortir le caractère spécifique des filières d'immigration et de leur organisation, soit entre les mains de groupes criminels mafieux structurés et financés aux fins du trafic d'êtres humains, soit de petits réseaux locaux d'opportunité dans un contexte économique de chômage, soit enfin dans un contexte humanitaire de bénévolat. Chacun de ces cas de figure appelle naturellement à une réponse pénale proportionnée et raisonnée, que ce soit dans la définition des peines ou les modes d'enquêtes, qui a été soulignée par nombre de délégations.

Beaucoup ont également mis en lumière les limites actuelles de l'action d'Eurojust au plan extérieur. Les remarques ont principalement porté sur la nécessité de prudence dans le projet de mise en place de magistrats de liaison d'Eurojust dans les pays tiers qui devra prendre en compte les législations des pays hôtes, notamment dans le domaine de l'échange de données. A ce titre une évaluation apparaît indispensable et devra être présentée.

Quant à la coopération au sein de l'Union, tant les Etats membres qui ont apporté leur soutien de principe à un renfermement des moyens budgétaires d'Eurojust que la Commission qui a indiqué que des solutions réalistes pouvaient être dégagées dans le cadre du budget actuel et pour 2016 ont permis de dessiner des perspectives crédibles dans la lutte contre les réseaux criminels.

La thématique de la lutte contre la xénophobie a également recueilli le soutien des délégations qui ont souligné la nécessité de mener un dialogue avec les opérateurs d'internet pour juguler les appels à la haine raciale, conséquence indirecte du phénomène migratoire. La Présidence a rappelé que le groupe de travail "Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP)" examinera le document concernant les aspects liés aux droits fondamentaux lors de sa réunion du 29 septembre 2015.

La Présidence a conclu en notant le large soutien reçu et invitant les délégations à transmettre leurs commentaires pour le 25 septembre afin de pouvoir finaliser dans les délais le document qui sera soumis au Conseil des Ministres d'octobre qui visera à des conclusions orales pour appuyer les actions proposées et un renforcement du financement nécessaire, notamment pour Eurojust. Enfin, la Présidence a fait état de son souhait de voir figurer au déjeuner le point concernant la lutte contre les discours de haine relayés par les réseaux d'internet.

5. Judgment in case C-105/14 (Taricco and Others)

A great majority of delegations took the floor, whereby many expressed openness to further discuss the consequences of the judgment for the negotiations on PIF Directive, more particularly as regards the exclusion of VAT fraud from the scope of the Directive (Article 2(2) in the General approach of June 2013). Some delegations noted that they would still maintain the said Article 2(2). The Presidency took note of the variation in the positions expressed by delegations and stated that the Council now must advance towards a solution that will make it possible to adopt the Directive. Ministers will be asked to address the issue at the October Council.

6. Proposal for a Regulation on the establishment of the European Public Prosecutor's Office

Almost all delegations intervened to discuss the package compromise on four Articles proposed by the Presidency. The Commission noted that the package seemed to tilt a bit too much towards a national model and was in particular critical about Article 31 (admissibility of evidence). Most delegations expressed support in principle to the Presidency package, although a number of them announced that they would still have new technical drafting suggestions, in particular as regards Articles 25 and 26.

On Article 31, the debate was animated, with some delegations supporting the Commission's view that the provision should be more ambitious and others requesting a stronger link to existing national rules on admissibility of evidence. The Presidency concluded that Articles 25, 26 and 31 in the draft Regulation was a balanced compromise to be considered in one single context. The Articles would need some technical adjustments, which would be discussed at JHA Counsellors level, and that the package would then be presented to ministers at the October Council. The Presidency noted that Articles 24, 28, 28a, 29, 30, 32 and 35 would also be submitted to Ministers with a view to reaching a partial general approach.

7. AOB

a) **Data retention: information from the Presidency**

The Presidency informed delegations about the discussions held so far in the GENVAL group on this file as well as the next steps it plans for bringing this item to the Council in December.

b) **Legislative proposals on new psychoactive substances: information from the Presidency**

The Presidency informed the meeting about the work done on the legislative proposals on new psychoactive substances following the orientation given by Coreper that a solution based on Article 83 TFEU should be examined. Delegations were invited to coordinate at national level with their delegates at the Horizontal Drugs Group, where the proposal is being discussed.

c) **Pending cases and development on the case law of the Court of Justice: information of the Legal Service - Judgment in case C-363/14 (Parliament v. Council)**

The Council Legal Service explained the salient points of the judgment in case C-363/14.
