



Brussels, 13 November 2015
(OR. en)

14662/15

CATS 125

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	10 and 11 November 2015
To:	CATS
Subject:	Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in doc. CM 4404/1/15 REV 1.

2. Draft Council conclusions on the criminal justice response to radicalisation leading to terrorism and violent extremism doc. 13582/15

Delegations expressed general support for the Presidency's draft Council conclusions on the criminal justice response to radicalisation, as a follow-up to the High level Conference on this topic of 19 October 2015.

The UK asked for some substantial revisions to the text of the draft Council conclusions, and other delegations questioned in Section 2 the "alternative measures to detention", asking to reword them as "supplementary measures", and/or underlined the need to ensure appropriate differentiation as regards their possible use by national judicial authorities, taking into account the diversity of national criminal law systems. Several delegations made other minor drafting suggestions.

The representative of the Commission underlined the need to properly reflect the on-going work and relevant priorities in this area, stressing that the Commission will report to the Council on the implementation activities on the European Agenda on Security in 2016.

The Presidency requested delegations to send their comments in writing by Friday 13 November 2015, with a view to the submission of a revised version of the draft Council conclusions to the Council for adoption.

3. Collecting E-evidence in the digital age - the way forward

- Preparation of the Council meeting (Justice Ministers)
doc. 13689/15

With a view to preparing the debate of the Ministers of Justice at the Council in December, CATS discussed some possible strands of work, as presented in doc.13689/15 that could be examined in order to address the challenges related to collection and use of e-evidence in criminal proceedings. Delegations suggested that the debate of Ministers be focused on a selected number of topics. The Presidency clarified that it envisages a more focused debate at the Council regarding the current state of affairs and next steps following the invalidation of the Directive 2006/24 EC (Data Retention Directive) by the Court of Justice of the European Union on 8 April 2014 (the Data Retention Judgement). The objective as regards the broader subject of e-evidence is to promote a debate which would also allow the incoming Presidencies to ensure an appropriate follow up.

The EU Counter Terrorism Coordinator, Mr. Gilles de Kerchove, made an intervention at the outset of the discussion underlining the relevance of the subject also for scaling an effective response to terrorism. He deemed it essential to enhance the cooperation framework with the US authorities and US Internet Service Providers (ISPs) that would ensure effective and timely securing and transmission of e-evidence through streamlined MLA arrangements or enhanced dialogue with the ISPs, where appropriate. Specific measures in short and long term could be envisaged, including bringing the issue already at the Internet forum that will be launched by the Commission in early December.

Commission and delegations agreed that the topic is of high relevance in the new realities posed by rapid technological developments. Considering the fact that major digital infrastructure is US owned, stepping up cooperation with the US including in light of the review of the EU-US MLA agreement was highlighted as an issue of priority.

In this respect, some speakers referred to the need to ensure a certain balance between the possibilities of US and foreign authorities to receive access to "local" US data on the one hand and any other type of data on the other.

A number of delegations called for an optimal use of the existing EU acquis for judicial cooperation in criminal matters before considering any other legislative measures, where the future use of the European Investigation Order could be an indispensable tool. On the other hand it was confirmed that the existing MLA rules might need to be reviewed to ensure more flexibility and speeding up of the process, including through practical arrangements. In this respect the role of the networks of competent authorities was underlined. It was pointed out that effective cooperation with foreign ISPs is essential, but that it should in any event take place within an established legal framework that is compliant with fundamental rights and freedoms.

A number of delegations underlined the importance of discussing the current state of affairs relating to data retention, including bringing the issue for a discussion to Ministers. It was emphasised that there are still preliminary rulings pending before the CJEU, in particular the *Tele2 Sverige AB v. Post-och telestyrelsen* case (C-203/15 of 4 May 2015) that might add to the assessment of the feasibility of the available policy options in the future. The Presidency confirmed that the main objective of the discussion at the Council would be to facilitate at this stage the common understanding about the effects of the Data Retention Judgement. This would be an important point of departure to discuss the possible next steps, including in light of possible further developments of the CJEU case law.

In general, delegations agreed that the "e-evidence" subject needs to be treated simultaneously from a home affairs and judicial perspective and that in this sense CATS is well placed to ensure the participation of both domains in the discussions, as well as any follow up measures in the future.

In light of the comments made by delegations, the Presidency will prepare a revised version of the document to be submitted to the Justice Ministers as a basis for discussion at the Council in December.

4. EU-US Mutual Legal Assistance Agreement Review 2015

- Follow-up of the Eurojust seminar on 8-9 October 2015
- Preparation of the EU-US ministerial meeting on 13 November 2015

The Committee discussed the issue of the review of the 2010 EU-US Agreement on Mutual Legal Assistance on the basis of doc. WK 127/2015. The Commission indicated that it had taken into account the written comments that Member States had provided on the Commission's proposal for points to be raised with the US during the Ministerial meeting on 13 November 2015. The Member States insisted to convey to the US that practical difficulties, and in particular the long time needed by the US authorities to process MLA requests, are causing problems for investigations in the EU. The Presidency concluded that this point may be need to be taken up during a future meeting of the Committee in order to allow the Member States to follow the review process.

5. Migration crisis: judicial cooperation aspects and fight against xenophobia

- Follow-up of actions agreed by Council

The Presidency, after having recalled the global approach on the justice response to the migration crisis and given information on the measures agreed by the Justice Ministers, explained that the objective was to present a progress report to the Ministers during next JHA Council on 3 December. Eurojust and EJTN will be invited to report to Council but no discussion is expected from Ministers.

In this framework Eurojust provided an update of its work to CATS regarding some topics in this area.

A thematic group has been created at the end of September for five years which intends to reinforce the capacity of Eurojust as well as of Member States to organise investigations and to use legal instruments, notably through the implementation of a table of offences established in the EU.

A tactical meeting is schedule in February 2016 to exchange relevant information as well as in view to create a specialised network of magistrates dedicated to fight against human trafficking

The increase of Joint Investigation Teams number will answer with efficiency to the increase of number of cases

The president of Eurojust has signed a letter of understanding with EUNAVFOR to support its work.

The cooperation with third countries (notably Tunisia and Saudi Arabia) will be reinforced via the contact points who do a specific work to facilitate investigations and, if some agreements have been established, to exchange data.

The Presidency added that a list of the liaison magistrates of the MS would be provided to the delegations and that a meeting was being planned at the level of the central authorities together with Turkish authorities, as well as training.

Slovenia underlined the fact that the risk of radicalisation in the context of migration crisis would increase and Germany pointed out that the migration liaison officers in post in EU delegations in third countries could be of help to facilitate the investigations.

The Presidency concluded by taking into account these remarks and indicating that the theme of the fight against online hate speech would be on the agenda of the lunch Ministers on December 3.

6. Proposal for a Regulation on the establishment of the European Public Prosecutor's Office
doc. 13589/15

Almost all delegations intervened to discuss the package compromise on five Articles proposed by the Presidency. The Commission proposed a number of changes in Articles 17(1), 17(2), 19 and 20(5). In particular, it made a strong call for a dynamic reference to the PIF-Directive in Article 17. Most delegations that took the floor also focused on the character of the said reference in Article 17, whereby opinions were almost evenly divided between preferences for a static reference and a dynamic reference.

Many delegations expressed support in principle for the current package, but a few delegations noted that they could not agree to it in its current shape. In particular, the inclusion of the preponderance criterion in Article 17 and certain aspects of Articles 19 and 28a(2a-2c) was criticised by some.

The Presidency concluded that it will introduce a number of changes in the document, and discuss these changes with delegations in bilaterals next week. The text will then be presented to COREPER on 26 November and thereafter be taken to Council for agreement on 3 December.

7. Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law

- Follow-up of the ministerial discussion
doc. 13590/15

A great majority of delegations took the floor, whereby most delegations repeated the standpoint already expressed in the DROIPEN working party a week earlier: most of the Member States maintain their opposition in principle to the inclusion of VAT fraud in the scope of the Directive. Following the judgment of the Court in the Taricco they however also expressed a willingness to explore the ground for compromise solutions acceptable to both Council and Parliament. Different possibilities regarding the content of such a compromise were discussed, including in particular the possibility to cover only certain cases of VAT fraud, for example by the introduction of a threshold to determine which fraud cases should be considered serious, or of a cross-border criterion.

The Presidency concluded that the file would be discussed in Council on 3 December 2015. The previous call to Member States to provide comments in writing by the 20 November 2015 was reiterated.

8. Information by the incoming Dutch Presidency on its programme

The Dutch Presidency informed CATS about its programme.

9. AOB

a) **Stakeholder workshop on communicating tolerance against radicalisation - information by the Austrian delegation**

The Austrian delegation informed the meeting about the above-mentioned workshop, which it organises jointly with the Fundamental Rights Agency on 14-15 December 2015, as well as the expected outcomes.

b) **EU external competence in the area of criminal law**

– **Signing on behalf of the EU of the CoE Convention on the Prevention of Terrorism and its Additional Protocol (Riga, 22 October 2015)**

The Presidency informed that the CoE Convention and its Additional Protocol were signed on behalf of the EU at the Opening Ceremony for the Signature of the Additional Protocol held in Riga, Latvia on 22 October 2015. On the same occasion, the Protocol was also signed by 12 Member States (BE, EE, FR, DE, IT, LV, LU, PL, SI, ES, SE, UK). The Commission reiterated its position regarding the nature of the EU competence on the Protocol. It informed that it will soon submit a proposal regarding the conclusion of the Convention and its Additional Protocol.

– **Draft Council Decisions on the signing on behalf on the EU of the CoE Convention on the Manipulation of Sports Competitions**

At the last CATS meeting it was concluded *inter alia* that the state of play of discussions related to international agreements concerning EU competences in criminal matters should be regularly reviewed. In this respect, the Presidency informed delegations that the revised texts of the two draft Council Decisions on the signing on behalf on the EU of the CoE Convention on the Manipulation of Sports Competitions, as resulting from the discussions at the Council Working Party on Sport would be submitted for approval to COREPER on 11 November 2015. In the context of this discussion, UK supported by other delegations raised the need to ensure a systematic approach that would allow achieving a better coordination on relevant files while reaching coherent and consistent decisions promptly. It was suggested that this issue be brought for discussion to COREPER, where possible review of the CATS mandate in this respect could be also considered.

In general it was understood that a case-by-case approach should be applied in each individual agreement, but the need that any related proposal of the Commission be accompanied by a detailed competence assessment was once again reiterated. Building on the conclusion from the last CATS meeting that a consistent method is also needed regarding such an assessment in the Council, it was suggested that some general criteria or guidance could be elaborated in this respect.

It was concluded that, where appropriate, a regular update of the state of play concerning international agreements concerning EU competences in criminal matters could be presented to CATS, possibly including an update of the inventory of recent international agreements presented at the last CATS (doc. 11901/15). More discussion would be needed regarding the involvement of the JHA Counsellors and CATS in future discussions on international agreements concerning criminal law matters, while respecting the distribution of competences assigned to the various preparatory bodies of the Council.
