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## NOTE

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On 14 June 2018, the Bulgarian Chair of CATS together with representatives of the incoming Austrian Presidency, Commission and the EEAS met with representatives of the Council of Europe (CoE) in Brussels. A list of participants to the meeting is set out in the Annex to this note. Issues of common interest were discussed and information was exchanged about the most recent developments in the areas concerned.

### Counter-terrorism - recent developments

The parties exchanged views on the most recent developments on countering terrorism. The Presidency referred to the recent adoption of the Council conclusions on victims of terrorism and the Council decisions on the conclusion of the Council of Europe Convention on the prevention of Terrorism and its Additional Protocol.

The representative of the Council Counter Terrorism Coordinator highlighted some of the ongoing actions, in particular regarding the collection of battlefield information and child returnees. He also highlighted the further development of the JHA Agencies, the work on data retention and the prevention and rehabilitation in prisons.

The Commission informed that a dedicated Task Force on radicalisation would be set up within the Commission, and provided details on the funding available for projects on de-radicalisation under the Justice programme. Reference was also made to on-going work regarding tackling illegal content online, the interoperability of information systems, measures to restrict explosives precursors and firearms, the enhancement of the security of ID cards, the substantial increase in anti-terrorism activities of Eurojust, the discussions on the draft Regulation on mutual recognition of freezing and confiscation orders as well as the adoption of the Directive strengthening EU rules to prevent money laundering and terrorist financing. The Commission explained that it is currently working towards an EU methodology to identify high risk third countries presenting strategic deficiencies in tackling money laundering and financing of terrorism, to replace the current practice of copying the FATF lists.

The EEAS representative referred to the ongoing work to implement the Conclusions on EU external action on counter-terrorism of June 2017 which set out some geographical priorities in counter terrorism. The EEAS expressed interest in the CoE work on radicalisation in prisons in the Western Balkans. Underlining the nexus between internal and external security of the Union, the EEAS representative also mentioned the pilot project on the creation of a crime information cell within EUNAVFOR MED Operation Sophia.

The CoE explained it considers radicalisation as a generational challenge and highlighted the work done on radicalisation in prisons. The CoE is working on guidelines for the training of prison staff and a CoE Conference of Directors of Prison and Probation Services would be held on 19-20 June 2018. A ministerial conference on prison over-crowding would be organised in 2019. The CoE underlined that, since the last meeting, a lot of attention was also given to families of FTF. A new CoE Recommendation on terrorists acting alone was adopted on 4 April 2018 (Recommendation CM/Rec(2018)6). In this regard, a set of risk indicators for terrorists acting alone is being elaborated. A final report was issued on the 2015-2017 Action Plan on the fight against violent extremism and radicalisation leading to terrorism and work is ongoing to develop the Council of Europe Counter-Terrorism Strategy 2018-2022. Special attention is given to the links between terrorism and organised crime as well as the abuse of the internet by terrorists. Furthermore the CoE informed that economic corruption, money laundering and the financing of NGOs is also being discussed. It further recalled the importance of the CoE Convention on the Trafficking of Cultural goods which could be of use for combating financing of terrorism which was acknowledged by the CTC representative.

## **Criminal justice in cyberspace: data retention and e-evidence**

The Presidency informed about the ongoing examination of the legislative proposals on e-evidence presented by the Commission on 17 April 2018. It specified that as a result of the policy debate held by the (JHA) Council, the Commission was requested to study further the issues of direct access and real-time interception of data at expert level with a view to possible expansion of the scope of the proposed regulation. Furthermore, the Council confirmed the common EU approach towards the US with regard to the CLOUD Act and the CoE Second Additional Protocol to the Budapest Convention and asked the Commission to urgently provide recommendations for negotiation mandates. On data retention the Presidency explained that the reflection process for an EU approach compatible with the ECJ judgement criteria continues while monitoring at the same time the relevant national developments.

The CoE underlined the link between the EU proposals, the US CLOUD Act and the Second Additional Protocol to the Budapest Convention. With regard to the latter, it underlined that so far work was focused on improving MLA and stressed the need for consistency between the different legal texts that are being developed, starting with the definitions of the different types of data. With regard to data retention, the CoE emphasised that companies have been pleading for coherent and harmonised legal frameworks.

### **Data Protection**

On Convention 108, the Presidency confirmed the Council's intention to adopt the Decision on the signing of the Protocol amending the Convention in the following days, so to allow the EU to sign the amending Protocol on the day of the opening for signature of the said Protocol.

In this respect, the CoE confirmed that it will be focusing on the Convention's implementation and capacity building in this field. The CoE offered to provide assistance to Member States and to inform DAPIX about this work strand and the external dimension.

Furthermore, the Presidency gave an update on the results of the negotiations on the draft Regulation on data protection by the EU institutions and bodies, and stated that the Council now awaited a draft proposal for a Council Decision covering the processing of operational data by CSDP missions (excluded from the scope of the Regulation) from the EEAS.

## **European Public Prosecutor's Office – information**

The Commission gave a state of play on the setting up of the EPPO, in particular on the procedure for the appointment of the EPPO's interim Administrative Director; the different preparatory steps for the selection of the European Chief Prosecutor (operating rules for the selection panel and names of the selection panel, vacancy notice); the proposed budget for next year and the study to identify the requirements for the case management system. The Commission further informed on the ongoing work with Luxembourg authorities regarding the premises for the seat of EPPO, and the work of the EPPO Expert Group which held its first meetings on 14 and 29 May 2018. Later on, work would start on the cooperation of the EPPO with third countries, which would involve discussions with the CoE but the preparation of the EPPO's cooperation with non-participating Member States was currently prioritised. The EPPO should be in place in the first half of 2019.

The Presidency debriefed about a conference held in March 2018 in Sofia, on issues related to the establishment of the Office and preparation of the Member States that participate in this enhanced cooperation.

## **CoE Conventions**

The CoE updated on the state of play of different Conventions, focusing in particular on the Second additional Protocol to the European Convention on mutual assistance in criminal matters (recently ratified by Austria, Hungary and Spain), and the additional Protocol to the Convention on the prevention of terrorism (recently signed by Croatia and Hungary, and ratified by Portugal). On the EU accession to the ECHR, the CoE informed about recent contacts between its Secretary-General and Commission President Juncker with the former asking about progress on the EU accession. The Presidency confirmed the EU commitment to take work forward on the EU accession to the ECHR, once the Commission has presented its analysis on the remaining questions raised by the Court of Justice (namely on the CFSP).

On the EU accession to the Istanbul Convention, the Presidency informed the CoE that discussions are currently on-going at technical level on a code of conduct (an interinstitutional agreement with the Commission on the division of tasks with Member States once the EU becomes a party to the Convention), and explained the further steps (EP consent and adoption of Council decision to conclude the Convention).

## **Migration - recent developments**

The Presidency highlighted that migration and fighting against migrant smuggling continues to dominate the agenda of the JHA Council as well as the agenda of the European Council.

The Commission gave a state of play of the Agenda on migration (in particular, the work on the external dimension, voluntary returns, tackling human trafficking, detention and reception conditions, family reunification and missing children, and on the Common European Asylum package currently negotiated in the Council).

The CoE updated on the current work of its special representative Boček, in particular the reports he releases about country visits he has recently made (Bulgaria, Hungary, Serbia, Spain; Portugal in September) and the activities of his office in Skopje and Turkey. In terms of migrant smuggling, the CoE has created two working groups, one on the prevention of migrant smuggling and one on the international cooperation regarding migrant smuggling, aiming to provide practical guidance and exchange of good practices. The CoE underlined its willingness to deepen and increase cooperation with the EU.

## **Rule of Law – information**

The Commission updated the meeting on the ongoing procedure based on Article 7 TEU, triggered against Poland, and the upcoming discussion in the General Affairs Council on 26 June 2018. It also informed that it referred Hungary to the EU Court of Justice in relation to three different cases, namely the Higher Education Law, the law on foreign-funded NGOs, and (together with Czech Republic and Poland) for the non-compliance with legal obligations on the relocation scheme.

The incoming Austrian Presidency informed on the annual Rule of Law dialogue in the Council in October that this year would focus on "Trust in Public Institutions and the Rule of Law". An expert seminar would be held on 11 July to prepare the ministerial debate.

The CoE provided information about the work in the framework of the Venice Commission and the Secretary General's 2018 annual report on human rights. Furthermore, the CoE explained the challenges it is facing internally as an organisation using for the first time ever the procedure for bringing a member to court for failure to execute court decisions and the possible decision to be taken next year to suspend the membership of another member for a continued refusal to pay its financial contribution.

## **Update on recent developments**

The CoE referred to the 128th session of the Ministerial Committee and drew particular attention to the Secretary General's document on “State of democracy, human rights and the rule of law - Role of institutions - Threats to institutions - Report by the Secretary General of the Council of Europe – 2018”, and on the “Summary Report on co-operation between the Council of Europe and the European Union”. The CoE also referred to the Presidency conclusions of its ministerial meeting about the future of the CoE. In that context, the CoE had defined as for future priorities the impact of new technologies, combating modern slavery and torture, the protection of human rights defenders and freedom of religion.

The Presidency informed about the recent finalization of the trilogues on the draft Directive on countering money laundering by criminal law. Information was also provided about the Conference on e-Justice that took place on 14-15 May in Sofia where the Strategy on e-Justice (2019-2023) and its Action Plan were discussed.

## **Priorities of the incoming EU Austrian Presidency and the incoming CoE Committee of Ministers Croatia Chairmanship**

The incoming Austrian Presidency explained that it would, inter alia, focus on the e-evidence package, the implementation of the EPPO, the relationship between the EU and GRECO, ECRIS and the Rule of Law (starting from the standards established by the Venice Commission). It also informed that it will address the issue of mutual trust, including the consequences of recent Court cases in this regard, both at ministerial and at expert level. On the external dimension, the Austrian Presidency intends to focus in particular on the fight against anti-Semitism, the use and exchange of financial information to combat terrorism and online crime as well as the PNR agreement between the EU and Canada.

To conclude, the CoE informed about the priorities of the Croatian Chairmanship of the Committee of Ministers (18 May - 21 November 2018) that include the fight against corruption, protection of national minorities and vulnerable groups, as well as the protection of cultural heritage.

Council of Europe

**Ivan KOEDJIKOV**, Head of Action against Crime Department, Directorate of Information Society and Action against Crime, Directorate General Human Rights and Rule of Law

**Alexander SEGER**, Head of Cybercrime Division, Information Society Department, Directorate of Information Society and Action against Crime, Directorate General Human Rights and Rule of Law

**Peter KIMPIAN**, Programme Advisor, Data Protection Unit

**Lucy ANCELIN**, Secretariat of the Mutual Legal Assistance Unit, Criminal Law Division, Action against Crime Department, Directorate of Information Society and Action against Crime, Directorate General Human Rights and Rule of Law

Mr **Humbert de BIOLLEY**, Deputy Head of the CoE liaison Office to the EU

EU Presidency

**Petar RASHKOV** - Minister Plenipotentiary - Head of Justice Section - Permanent Representation of Bulgaria to the EU

**Florian FLOROV** – Second Secretary – Permanent Representation of Bulgaria to the EU

**Bogdan MLACHKOV** – Attaché - Permanent Representation of Bulgaria to the EU

Future EU AT Presidency

**Wolfgang PEKEL** - the head of CATS

**Teresa STUMMER** - Ministry of Interior

**Judith WIMMER** - JHA Counsellor – Criminal law

**Commission**

**Dick HEIMANS** - Deputy Head of Unit General Criminal Law and Judicial training - DG Justice and Consumers.

**Georgina PLESU** - International Coordination Unit

**Tjabbe BOS** - Cybercrime Unit

**Jeroen BLOMSMA** - Terrorism and Radicalisation Unit

**EEAS**

**Andrej GROSELJ** - International Relations Officer for Migration

**Joanne BELL** - Security Policy – CT Division

**Mr Vassil TOUHTCHIEV** - Multilateral relations Division

**Ms Emese SAVOIA-KELETI** -Data Protection office

**General Secretariat of the Council**

**Nathalie PENSAERT** - Director for Justice, DG Justice and Home Affairs

**Emanuela GULINO** - Policy Officer, DG Justice and Home Affairs

**Herald FREYER** - Counter terrorism Coordinator Office