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CATS 114

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 13 November 2017
To: CATS
Subject: Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in doc. CM 4789/17, with the addition of a point on a possible EU intervention in the Microsoft case and an update by NL concerning the initiative for a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes.

2. ECRIS - Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 = preparation of Council debate

On the basis of doc. 13976/17, CATS discussed two issues. It was agreed that persons with multiple EU nationalities but without the nationality of a third country would be left out of the scope of the Regulation at this stage and to include a review clause in that respect in the text. There was also an intensive discussion on the criteria to be used for the inclusion of fingerprints in ECRIS-TCN. No firm conclusion was reached, and the issue was referred back to the Working Party. Delegations confirmed their clear will to reach a general approach on both the Regulation and the Directive at the December Council.

3. Data retention **= preparation of Council debate**

Delegations supported the Presidency approach in framing the Council debate on the state of play and next steps on data retention, as set out in doc. 14068/17. There is a broad agreement that work should continue at expert level in the 3 main areas identified by the Presidency ensuring coherence with the draft ePrivacy Regulation, restricting the scope of data retention regime in light of ECJ case-law and setting up a strong safeguard framework for access to data retained. In particular, delegations expressed interest in developing a matrix with "retainable categories of data" in light of the ECJ case-law.

To that end, Europol is encouraged to facilitate preparatory works at technical level with a view to further examination by DAPIX - FoP. Some delegations underlined that an EU instrument on data retention would ensure a common reference framework across the EU. However, at this stage the majority supported continuing the collective examination of the specific elements that would facilitate reflections at national level and ensure as a minimum the possibility for Member States to adopt national measures on data retention for the purpose of prevention and prosecution of crime. The Commission highlighted that work on the guidance on the way forward on data retention is proceeding, as referred to in the 2018 COM Work Programme, but considering the complexity of the issue it could only be presented once there is more clarity about the possible options. In conclusion, the Presidency asked that delegations closely coordinate with the experts negotiating the draft ePrivacy Regulation.

4. International agreements that concern EU competences in the area of criminal law **Update and exchange of views**

CATS took note of the updated inventory of international agreements, set out in doc. 6892/1/17 REV 1. Presidency informed that work was progressing on the two draft Council decisions on the conclusion on behalf of the Union of the CoE Convention on the Prevention of Terrorism and its Additional Protocol, with a view to requesting by the end of the year the consent of the EP.

5. Accession of the EU to the Council of Europe Group of States against Corruption (GRECO)

= **General exchange of views**
doc. 13755/17

Delegations confirmed their interest to examine the modalities for a full accession of the Union to GRECO, as concluded by COREPER in March 2013. CLS highlighted that EU mutual evaluations could also be considered, both in the context of the existing mechanism, pursuing Joint Action 97/827/JHA or a new one based on Article 70 TFEU. Presidency will consult with COM, CLS and incoming BG Presidency about the next steps.

6. Presidency's proposals regarding a new approach to the Mutual Evaluations foreseen by Joint Action 97/827/JHA

= **Information from the Presidency**

The Presidency gave a state of play of the file and explained how the work could be organised in 2018, managing the mutual evaluation in an appropriate working party associating both COPEN and Law enforcement Working Party. The other topics of the GENVAL group would be distributed between relevant working parties.

The incoming Bulgarian Presidency which will have to deal with this question supported this pragmatic approach. A proposal for the abolishment of the GENVAL would be submitted to the COREPER in December.

7. Proposal from the ES delegation for a European Charter on rights of victims of terrorism

= **exchange of views**

ES delegation presented their proposal set out in doc. WK 10065/2017, underlining that the Charter of Rights is intended as a tool of mostly political value to highlight the importance of an efficient framework for the protection and assistance of victims of terrorism, thus complementing the existing acquis in this area. To that end, the ES delegations suggested the adoption of Council conclusions on the proposed Charter of rights.

Delegations confirmed the importance of the issue and called for an assessment of the most suitable approaches in this context, closely associating the Commission. Several underlined the need to take into account the existing EU acquis in this area and in particular the new Directive on countering terrorism when assessing the added value of this new proposal. The incoming BG Presidency, the Commission and the ES delegation would consult on the next steps.

8. Responsibility of online platforms

= exchange of views regarding the draft Council of Europe Recommendation and elements of the Commissions Communication

The Presidency introduced the item recalling the recent Commission Communication on that matter (doc. 12879/17) and explained that the main objective of the current debate was to ensure appropriate coordination of Member States in view of the upcoming discussion of the Council of Europe draft recommendation. The Commission highlighted the elements of the draft recommendation that require attention due to their potential unfavourable impact on the development of some of the current EU policies and urged delegations' input in preparation of the Strasbourg meeting.

A number of delegations explicitly expressed preference of the EU approach over the one taken by the Council of Europe. They shared some positive developments and experiences based on the current EU policies, notably the Code of Conduct and others set out in the recent Commission's Communication. They also raised different points of concern of the draft recommendation (e.g. lack of clarity on the scope, penalties). The importance of continuing the progress made so far in working with the online platforms on combatting illegal content on Internet as well as of the need of effective engaging with 3rd countries, in particular US, was also stressed.

The Presidency asked Member States to ensure national coordination and invited the Commission to take delegations' comments into account while formulating its position on the draft recommendation.

9. 2018-2021 EU Policy cycle for organised and serious international crime

= Information and exchange of views on the priority "criminal finances, money laundering and asset recovery"

doc. 9450/17

doc. 12811/17

A representative of the French Customs, which is the driver for the priority "criminal finances, money laundering and asset recovery" in the framework of the new 2018-2021 EU policy cycle, briefly explained the strategic objectives for this priority as well as the participants and some details regarding the upcoming work. He highlighted the cross-cutting nature of this priority across the policy cycle and explained how this would be implemented in practice. He further explained the planning work currently on-going, which would result in the submission of the Operational Action Plan for 2018 to COSI in the following weeks. This would be the basis for the actions in the next year.

10. Presentation of the priorities of the incoming Bulgarian Presidency

The Bulgarian Presidency informed CATS about its programme

11. AOB

– Ex-post evaluation of EU legislation

The Presidency informed delegations about the discussion held so far regarding the EP work on ex-post evaluation of EU legislation, referring also to the website of EP that sets out the published and upcoming studies. The question would continue to be dealt with by General Affairs Council (preparatory bodies).

– EU-US Ministerial meeting (16 & 17/11/2017): information from the Presidency

The Presidency informed delegations about the upcoming EU-US ministerial meeting, providing briefly details on the main items covered in the agenda.

– EU (CATS) - Council of Europe meeting (23/10/2017): information from the Presidency

The Presidency informed delegations about the recent meeting with the Council of Europe, the report of which is set out in doc. 14131/17.

– Information on the course of action for the new e-Justice Strategy and Action Plan 2019-2023

The Presidency explained the work on-going regarding the new e-Justice Strategy and Action Plan, as set out in doc. WK 11074/2017 and invited delegations to coordinate at national level to ensure that different parts of judicial cooperation would benefit from this work. It was stressed that this would be a very collaborative process and the Commission highlighted the fact that a thorough evaluation would be carried out, that the participation of Member States would be one of the most important aspects of the next strategy and finally that there is a need to focus work on the results which serve the largest community.

– Information on the draft Council conclusions on cybersecurity

The Presidency informed delegations about the draft Council conclusions on Building strong cybersecurity for the EU, prepared within the Horizontal Working Party on Cyber Issues (doc. 13943/17), which would be adopted on 20 November by GAC. Their implementation would be followed up through an action plan that was currently being drafted. The Presidency stressed the need for delegations to follow this work to ensure that justice matters be properly reflected.

– **Microsoft case**

The Presidency briefly recalled the Microsoft case, explaining the relevance of its outcome for cross-border access to e-evidence and the possibility to submit an amicus curiae brief. The Commission explained that no final decision has been taken on that possibility and in case such was decided to be made, it would be an intervention in support of neither party explaining some data protection rules. It was stressed that if the Commission would submit a brief, it would duly consult the Council in due time. Given the short deadline for submission of the amicus curiae, 13 December 2017, deadlines would be extremely tight.

– **Initiative for a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes**

NL updated CATS about the progress on the above-mentioned initiative, following the preparatory conference held in October with the presence of 41 of the 57 supporting States as well as civil society representatives. NL encouraged Member States who had not yet officially supported the initiative to do so.
