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12707/18

CATS 70

## OUTCOME OF PROCEEDINGS

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From:	General Secretariat of the Council
On:	19 September 2018
To:	CATS
Subject:	Summary of discussions

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### 1. Adoption of the agenda

The agenda as set out in document CM 4174/18 was adopted with the deletion of the last point on information about the case law of the Court of Justice.

### 2. E-evidence

#### a) **Proposal for a Regulation on European production and preservation orders for electronic evidence in criminal matters selected issues**

Delegations discussed the possible way forward regarding the review procedure stipulated in Articles 15 and 16 of the draft e-evidence Regulation on the basis of options outlined by the Presidency in doc. 11954/18. Member States underlined the importance of having a clear, simple, practical and efficient procedure for dealing with cases of conflicting obligations for service providers. A majority of Member States expressed a preference for describing the procedure into a single article allowing the competent court to consider factors stemming from third country law that prohibit the disclosure of data when deciding to uphold or lift that production order.

They also welcomed the explicit possibility for the competent court to contact the third country authority in case further information on the applicable national law or its interpretation is needed. Based on the comments provided, the Presidency would reflect on how to revise the text of the draft regulation.

**b) Follow-up of international developments: Second additional Protocol to the Budapest Convention and US CLOUD Act**

On the external relations side, several delegations and the Presidency repeated the unanimous request of Ministers at the June Council to the Commission to present negotiating mandates on the second additional protocol to the Budapest Convention and the EU-US agreement regarding the US CLOUD Act given the EU exclusive competence on the matter and to avoid the possibility of affecting the community acquis. The Presidency reiterated the need for legal clarity in both cases.

**3. Responsibility of online platforms**  
**12129/18 + ADD1 + ADD2 + ADD3**

The Commission presented its new proposal for a Regulation on the removal of on-line terrorist content, which will be examined by the Terrorism Working Party as from 25 September. The Commission underlined that the proposal should be seen as complementary to the current voluntary approach. FR, DE and UK welcomed the proposal and urged for quick examination and adoption. In line with the Commission, the CTC stressed that the importance of continuing the work in the Internet Forum, among other things because referral would remain complementary to removal of content and the issue of the search engines and algorithms should still be addressed in the Forum.

**4. Fight against antisemitism**  
**Draft Council Declaration on the fight against antisemitism and the development of a common security approach to better protect Jewish communities and institutions in Europe**  
**12116/18**

The Presidency presented a draft Declaration on the fight against antisemitism and explained the main objectives pursued. The Fundamental Rights Agency informed about the second survey on discrimination and hate crime against Jews and its work with national authorities to identify gaps in the recording systems of incidents against Jews. The Commission's antisemitism coordinator warned that Europe is experiencing a worrying emigration by Jews and encouraged Member States to better recognise anti-Semitism incidents and improve the data collection on those incidents.

Several delegations asked that the declaration should be set in the broader context of fighting against racism, xenophobia and antisemitism and would provide comments in writing.

The Counter Terrorism Coordinator gave some background on the rationale for this declaration and stressed that there was a specific issue with antisemitism that required specific attention and measures.

The Presidency invited delegations to send their written comments by 30 September. The Presidency intends to submit a revised version at the next CATS meeting in November with a view to its adoption by Council in December.

## **5. Preparation for setting up the EPPO**

### **12171/18**

The Commission provided a comprehensive presentation of the state-of-play of the implementation of the EPPO Regulation and of next steps. Reference was made in particular to the work done in the framework of the EPPO Expert Group, which allowed to launch the procedure for the selection and recruitment of the Chief Prosecutor, with the adoption of two Council Decisions<sup>1</sup>.

While welcoming the work done and its plans for next steps, delegations invited the Commission to pursue and speed up the preparatory activities, in order to ensure that the EPPO will be fully set and operational by end 2020. They emphasised the importance of ensuring that the budget allows EPPO to be appropriately staffed to perform its duties, as well as to offer working conditions which could attract the best candidates, in particular for the top management jobs (in this context, the question of the recruitment of the Chief Prosecutor at the grade AD 15 was evoked).

The Presidency restated its intention to continue to closely follow the implementation of the EPPO, which will also be addressed by Ministers at the October Council. It invited delegations to raise the budget issue with the financial administrations of their Member States. The Presidency finally announced the organisation of a Conference on EPPO in Vienna on 8-9 November 2018.

## **6. Mutual recognition in criminal matters - enhancing mutual trust**

### **= Implementation and application of EU criminal law instruments - overview**

The meeting took note of the overview set out in document WK 1374/18.

### **= Follow-up to the ministerial discussion of 13 July 2018 in Innsbruck**

The meeting discussed the Presidency paper set out in doc. 11956/18, containing an overview of current challenges in the field of mutual recognition and mutual trust, and setting out possible ways to address these challenges. Delegations appreciated the fact that this topic is being discussed, and showed general support for most of the ideas submitted by the Presidency to improve mutual trust,

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<sup>1</sup> In July, the Council Implementing Decision on the operating rules of the selection panel (10413/18) and in September 2018, Council Decision appointing the members of the selection panel (11513). With respect to the issue of the age of the Chief Prosecutor, a draft Joint Declaration of the European Parliament and of the Council is currently being considered by the Council and is expected to be finally adopted, at Council level, by end September.

especially through enhanced knowledge, understanding and training. Some delegations stressed the usefulness of organising bilateral contacts between practitioners, and the Commission and several delegations acknowledged the homework that has to be carried out by Member States and their authorities in this field. Some delegations explicitly opposed the idea of having EU rules on detention conditions, while others thought that the current case law could at least be drawn together in a practical format for practitioners. The Presidency announced that it would work further on this issue, e.g. by discussing it at the October JHA Council, with a view to adopting Council conclusions at the December Council.

## **7. Next round of the Mutual Evaluations foreseen by Joint Action 97/827/JHA**

The Presidency informed that, in the context of the preparatory activities for the 9th mutual evaluation round, it intends to prepare a document proposing to focus the above evaluation round on mutual recognition, with a view to a discussion at next CATS on 21 November 2018. No objections were raised by Member States' delegations in this respect. The Commission, underlining the need for further reflection and for considering possible alternative topics, also recalled its role as regards infringements. The Presidency invited delegations to provide possible written comments.

## **8. AOB**

- **EU-WB Senior Officials meeting (Brussels, 25 June 2018): information from the Presidency**  
**10501/18**

The Presidency briefed delegations on the outcome of abovementioned meeting.

- **EU-US Senior Officials meeting (Vienna, 25-26 September 2018): information from the Presidency**  
**11859/1/18**

The Presidency briefed delegations about the agenda for the abovementioned meeting.

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