



**Brussels, 26 November 2018  
(OR. en)**

**14654/18**

**CATS 88**

## **OUTCOME OF PROCEEDINGS**

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From: General Secretariat of the Council  
On: 21 November 2018  
To: Delegations

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Subject: Summary of discussions

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1. **Adoption of the agenda**  
**CM 5255/2/18**

The agenda was adopted.

2. **Mutual recognition in criminal matters - enhancing mutual trust**  
= **Draft Council conclusions**  
**14194/18**

Delegations broadly welcomed the draft conclusions on mutual recognition as submitted by the Presidency (14194/18). In the light of comments presented by several Member States and the Commission, the Presidency will redraft the conclusions, and submit them to Coreper on 28 November and the Council on 7 December for adoption.

3. **Data retention**  
= **preparation of the Council debate**  
**13826/18**

Delegations that intervened expressed general support for the Presidency document on the state of play on retention of electronic data for the purpose of fighting crime (13826/18). Consequently, CATS endorsed submitting the state of play to Coreper and Council. Several delegations regretted the lack of clear way forward. In this context, the incoming RO Presidency assured that work will continue and the issue will be referred to the JHA Council of June 2019. Finally, the Council Legal Service, the Commission, FR and BE encouraged Member States to intervene early December before the European Court of Justice on preliminary ruling interpretation questions referred to by French and Belgian Courts.

4. **The role of encryption in criminal investigations**  
**14190/18**

Delegations largely supported the approach as outlined in doc. 14190/18 regarding the development of capabilities within Europol to counter the challenges posed to criminal investigation by the use of end-to-end encryption. They exchanged views on the possible steps forward and pointed out some concrete elements to be looked up further with respect to the solution that would be put in place. CATS will be informed as appropriate on the state-of-play of this matter.

5. **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**  
**12116/2/18 REV 2**

CATS discussed the revised version of the draft declaration on antisemitism. Due to several substantial comments from various delegations, the Presidency decided to continue at the expert level (JHA Counsellors) and submit the draft to Coreper on 5 December 2018.

6. **Preparation for the setting up the EPPO**

= **State of play**

The Presidency referred to the EPPO Conference held in Vienna on 8-9 November 2018. The Commission provided a comprehensive state-of-play, with special focus on the latest developments: appointment of the ad-interim Administrative Director Olivier Salles; start of the work of the selection panel for the Chief Prosecutor, which is expected to meet at least once still this year, with the aim of completing the process, with the appointment of the person selected by the Council and the EP, before the end of the term of the Parliament; letter sent to Member States inviting them to select candidates for the post of European Prosecutors. Reference was also made to the work currently developed by the EPPO Expert Working Group: conditions of employment of the European Prosecutors; internal rules of procedure where a draft is expected to be presented early 2019. The Commission also announced that it is preparing a proposal for a Council Implementing Decision on the transitional arrangements to be adopted until the establishment of the EPPO college (expected to be submitted by the end of the year). It finally informed of the following: contacts are quite advanced with the Luxemburg authorities for the seat, the EPPO staff is expected to start working in its premises end 2019; the 2019 budget, not yet finalised, takes into account the joining of MT and NL. The Presidency invited the Commission to present the state-of-play at the December Council.

7. **E-evidence**

a) **Proposal for a Regulation on European production and preservation orders e-evidence**

b) **Proposal for a Directive on legal representatives for gathering evidence**

= **selected issues**

**14191/18**

Delegations discussed the definition of service providers on the basis of the Presidency compromise text set out in doc.14191/18. Several Member States made drafting suggestions while others requested clarifications on the proposed text. The Presidency took note of the comments and informed delegations that it would consider them in the compromised text on the draft Regulation it would submitted to COREPER on 28 November 2018.

- c) **Follow-up of international developments: Second additional Protocol to the Budapest Convention and US CLOUD Act**
- d) **Negotiating mandates for the Second additional Protocol to the Budapest Convention and the US CLOUD Act**

The presidency noted that the two negotiating mandates which the Commission has been asked to submit by the October Council were still not submitted.

8. **Next round of the Mutual Evaluations foreseen by Joint Action 97/827/JHA 13716/18**

No extensive discussion occurred during the CATS meeting with regard to the choice of the topic of the 9th round of mutual evaluations. Half of delegations intervened and showed rather flexibility about how the topic should be precisely defined. The vast majority stressed the importance of dedicating the next round of mutual evaluations to the mutual recognition principle and mutual trust.

COM welcomed the PRES proposal and shared the view of the need to focus on the mutual recognition principle and mutual trust. It brought out, however, that the discussion on the independence of the judiciary and detention conditions should be left to the CJUE jurisprudence and thus be excluded from the scope of the evaluation. It showed flexibility whether or not to include EIO but supported BE to factor in ESO (FD 2009/829) and FD on probation (FD 2008/947). Currently COM is scrutinising the way how FD on transfer of prisoners (FD 2008/909) and FD on probation decisions (FD 2008/947) were implemented, which is why the evaluation round should avoid duplications.

PRES concluded that the clear choice of the MS was made to focus on the application of the mutual recognition principle.

The precise scope of the next evaluation round should be defined during the next Presidency.

This, however, should comprise the elaboration of the operability of the EAW, the transfer of prisoners, the probation decision and alternative sanctions, the financial penalties and ESO.

9. **Relationship of the EU to the Council of Europe Group of States against Corruption (GRECO)**  
**14199/18**

The Presidency presented its paper (14199/18), recalling that this issue was last addressed in 2017. At this stage there were only some preliminary reactions from delegations. CLS drew attention to the fact that full membership of the EU in GRECO will involve an external (i.e. non-EU) evaluation by experts from Council of Europe States of all the EU institutions and other bodies and agencies. An alternative could be to make use of Article 70 TFEU (peer review by EU Member States' experts together with the Commission) to evaluate objectively and impartially the proper implementation of the existing EU anti-corruption acquis in the private and public sector. RO indicated that it intends to continue work on the issue of accession of the EU to GRECO and to address it again at a forthcoming CATS meeting.

10. **"Digital Justice" presentation by Eurojust**  
**14345/1/2018 REV 1**

The President of Eurojust presented its paper 'Towards Digital Criminal Justice in the EU' (14345/1/18 REV 1).

CATS expressed support for the initiative of Eurojust to assess what could and should be done in order to achieve a fast, reliable and secure IT infrastructure for transmitting information between prosecutors and Eurojust, and between prosecutors across the Union. It was observed, however, that when making this assessment, existing IT systems should be duly taken into account, as well as the need to achieve interoperability between the systems that are (going to be) used by other agencies and bodies, such as Europol, Frontex and EPPO. Due attention should also be paid to budgetary aspects of the proposed exercise. The paper will be submitted to Coreper on 28 November, and to the Council on 7 December where Eurojust will present the paper under AOB.

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

– **Overview**

8594/2/18 REV 2

CATS took note of the updated overview of the international agreements that concern EU competences in the area of criminal law (doc. 8594/2/18 REV 2).

On the Istanbul Convention, the Commission asked to update the state of play.

– **EU-Iceland-Norway surrender agreement: state of play of deposit of notifications/declarations**

7779/1/18 REV 1

CATS took note of the state of play on the EU-IS-NO surrender agreement (7779/18 REV 1).

Italy informed the Committee that it intends depositing its notifications and declarations relating to the Agreement before the end of this year. As soon as this is done, the agreement shall enter into force in accordance with the relevant provisions.

12. **Presentation of the priorities of the incoming Romanian Presidency**

The incoming Romanian Presidency informed CATS about its programme.

### 13. AOB

– **UK information on the CLOUD Act negotiations with the US**

The UK delegation informed CATS on the CLOUD Act negotiations with the US providing some details on the scope and the modalities.

– **EU-US JHA Ministerial meeting (Washington, 8-9 November 2018): information from the Presidency**  
**12894/18**

The Presidency referred to doc 12894/18 on the outcome of the abovementioned meeting.

– **EU-WB Ministerial meeting (Tirana, 4-5 October 2018): information from the Presidency**  
**12868/18**

The Presidency referred to document 12868/18 on the outcome of the abovementioned meeting.

– **Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the EU (The Hague, 19 October 2018): information from the Presidency**  
**14459/1/18 REV 1**

The Presidency referred to document 14459/1/18 on the outcome of the abovementioned meeting.

– **CATS-Council of Europe meeting (Strasbourg, 30 November 2018): information from the Presidency**  
**14096/18**

The Presidency informed delegations about the agenda for the upcoming meeting between CATS and the Council of Europe (14096/18).

– **Pending cases and development on the case law of the Court of Justice: information of the Legal Service**

The Council Legal Service referred to the recent judgment of the Court given on 13 November 2018 in Case C-247/17 (Raugevicius) about extradition to third States of EU nationals having made use of their free movement right within the EU.