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Subject:	EU (CATS) - Council of Europe meeting, Strasbourg, 30 November 2018

On 30 November 2018, the Austrian Chairmen of CATS together with representatives of the incoming Romanian Presidency and Commission met with representatives of the Council of Europe (CoE) in Strasbourg. A list of the meeting's participants 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.

Criminal justice in cyberspace - recent developments

The CoE gave an update on recent developments regarding the CoE Budapest Convention on Cybercrime (new accessions and countries preparing for accession), the EU-funded Global Action on Cybercrime and activities in the Eastern Partnership. The T-CY plenary meeting recently agreed to start working on the development of a Guidance note on election interference, which will show how the Convention applies to this important issue.

On negotiations of the Second Additional Protocol, the CoE stressed the need to ensure consistency, continue discussions on emergency legal assistance and reflect on how to allow for direct cooperation between public and private actors. It was noted that the Second Additional Protocol is not limited to judicial cooperation, but also includes police cooperation and can handle issues related to ICANN and WHOIS. The need for the Commission to provide negotiating mandates for an EU-US agreement and for negotiations regarding the Second Additional Protocol was underlined.

The Presidency stated that the examination of the proposed regulation establishing a European Production and a European Preservation Order had been completed at technical level and that the adoption of a general approach was expected at the December JHA Council. Policy discussions in CATS had been held on two occasions. The first had been held on 18 May in preparation of the policy debate in the JHA Council on 4 June regarding a possible extension of the scope of the proposed regulation with real-time interception and direct access. The second had been held on 21 November on the definition of service providers with a view to finalising the negotiation.

With regard to data retention, the Working Party examined both the concepts of restricted data retention covering issues such as limiting data categories, limiting data retention periods, storage in the territory of the Union or in an encrypted fashion and the concept of targeted access to retained data relating to various substantive and procedural legal requirements. On the basis of the discussions, the Presidency drafted a report summarising the outcome of this process and outlining the main findings. This was already examined at the latest CATS on 21 November and would be presented to the December JHA Council. The Commission explained that its April 2018 proposals on e-evidence were a good basis for a coordinated and coherent approach at international level. There is a commitment on present mandates for international negotiations on e-evidence in the near future.

Data protection - recent developments

The CoE announced that there are now 53 signed-up members of the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (Convention 108). An amending protocol was opened for signature in October 2018. The minimum number for entry into force is 38 (so far 20 CoE Member States have signed). Recent work focused on Artificial Intelligence, Health Data and a monitoring mechanism for the convention. In addition, the CoE is working on a guide on 'Police and data protection", and on 'Data protection principles in ICANN'.

The Presidency noted that the Council adopted the Decision authorising the EU MS to sign the amending protocol in the interest of the EU in June 2018. 17 EU MS signed the protocol in Strasbourg on 10 October. Before the EU MS can ratify the amending protocol, the consent of the European Parliament is required. This request was sent to the Parliament on 17 October. It is expected that the EP will respond in the beginning of the next year.

The European External Action Service (EEAS) has prepared a draft proposal for a Council Decision covering missions that implement the common security and defence policy. Discussions between the EEAS and the Commission on this proposal are still ongoing.

The Commission reported on GDPR implementation, shared details of ongoing work on international data flows and adequacy finding and reconfirmed support for Convention 108.

CoE conventions - recent developments

The CoE briefly gave an update on the latest developments as regards countries acceding to the Conventions: since the last EU-CoE CATS meeting (14 June), 27 countries have signed and ratified CoE Conventions.

The Presidency explained briefly that work was ongoing on the EU accession to the ECHR and Istanbul Convention. As regards the ECHR, all aspects indicated in Opinion 2/13 of the CJEU have been addressed at expert and Council level. The Commission is expected to deliver a paper summarising discussions on all the legal issues addressed between 2014 and 2018 and formulating the 'negotiation package'. The Commission would inform the JHA Council on 7 December on the state of play and the next steps. In addition, the Commission and the Presidency are currently working bilaterally to proceed with the EU accession to the Istanbul Convention. On 19 September 2018, the FREMP working party reached a technical agreement on the Code of Conduct and the Council decisions on the conclusion of the Convention in the Council. However, at this stage there is no political endorsement of the texts. Work is also ongoing on the implementation of the Convention by the EU institutions, bodies and agencies which must comply with the obligations internally (as employer) and to analyse the existing EU acquis in view of the Convention to ensure compliance.

Relationship of the EU with the Council of Europe Group of States against Corruption (GRECO)

The Presidency underlined the importance that the EU attaches to GRECO and its activities in the area of the fight against corruption. The issue of the accession of the EU to GRECO has been addressed in the past and there was an exchange of views on this subject at the CATS November meeting. Discussions on this subject are expected to continue at EU level. This subject will continue to be discussed during the incoming Romanian Presidency.

CoE confirmed that it was important to find a suitable legal framework for cooperation between EU and GRECO. The ongoing informal cooperation with the Commission is very good. The Romanian Presidency was encouraged to continue efforts to make progress in formalising EU participation in GRECO.

The Commission reiterated its commitment to continue cooperation with GRECO. However, EU participation in GRECO was subject to discussion, including discussion on the legal basis where there is still a divergence between the Commission and the Council.

European Public Prosecutor's Office - information

The Commission reported on preparatory steps to set up the EPPO, including work relating to recruitment, the appointment of an interim administrative Director and the facilities needed for the future office. The CoE asked how the EPPO would be able to cooperate with third countries.

The Presidency stressed that the EPPO would need to be able to secure cooperation at international level, despite 6 MS not participating. Detailed discussions on solutions would follow.

Mutual recognition in criminal matters - information

The Presidency pointed out that in accordance with Article 82(1) TFEU, judicial cooperation in criminal matters in the European Union is based on the principle of mutual recognition of judgments and judicial decisions. Mutual recognition requires mutual trust, but that trust is not a given: constant efforts should be made to maintain and enhance such trust. In order to promote mutual trust and mutual recognition, the Presidency has drafted conclusions which have been submitted to the justice Ministers (14540/18). It is expected that the Council (Justice and Home Affairs) would adopt these conclusions at their meeting on 6/7 December 2018.

The Commission highlighted EU-CoE cooperation, and pointed to the funding for the creation of a European network of bodies monitoring detention conditions since 2016. It said it supported the High Level Conference on detention conditions and prison overcrowding to be held in Strasbourg on 24 and 25 April 2019.

The CoE mentioned ongoing work to improve knowledge on detention conditions and stressed the need to create synergies among all the actors involved.

Migration - information

The CoE working group on smuggling of migrants held its first meeting in Paris on 21 June. Around 25 countries attended, including Tunisia and Nigeria. Europol also participated. According to the opinion of the CoE Committee on Legal Cooperation, the issue is that the scope of the draft CoE recommendation on the administrative detention of migrant is considered as political and will be discussed at the level of the CoE Committee of Ministers.

The Presidency announced that the December Council should adopt a comprehensive set of measures to strengthen the prevention and fight against migrant smuggling from a law enforcement perspective.

The Commission provided information on the main activities carried out in relation to the prevention and the fight against smuggling of migrants, including the 2015 Action Plan, cooperation with third countries, and the role of Europol and joint investigation teams.

Counter-terrorism - information

The Presidency stated that the main topic is currently the Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online, submitted to the Council and the EP on 12 September 2018. The aim is to have a negotiating mandate in December to ensure that the framework is in place to deal with the issue within the current EU-legislature.

The report of the EP special committee TERR will be voted on in plenary in December. The report will contain recommendations to the EU institutions on how to improve the measures and cooperation on counterterrorism, to more effectively respond to and prevent terrorist threats and protect citizens.

The proposal for a Regulation on explosive precursors of 17 April 2018 amending the current Regulation in force (Regulation 98/2013 on the marketing and use of explosive precursors), is expected to be agreed on at COREPER-level on 12 December, with a view to trilogies starting early next year.

The Commission added information on the adoption of the anti-money laundering directive by criminal law.

The CoE welcomed EU's ratification of the CoE Convention and its Additional Protocol on the prevention of terrorism. The CoE outlined its CT Strategy (3 strands: prevention, protection, prosecution), the implementation of which has started. The CoE is working on sector indicators of risk regarding a possible attack, as well as on the preparation of a possible definition of terrorism.

Rule of Law - information

The Presidency informed the CoE about the two Article 7(1) TEU procedures relating to Poland and Hungary which are discussed within the Council. Since the beginning of the year, the Council has been regularly discussing the Article 7 case against Poland and the impact of reforms there on the independence of the judiciary. The final ruling by the European Court of Justice (on the reform of the Supreme Court) is expected for early next year and could have a decisive impact. In September, the European Parliament triggered the Article 7 procedure against Hungary. The EP raises many different issues, ranging from the rule of law to the non-respect of a large number of fundamental rights. The Council will now start discussing these concerns. However, key issues could be solved through infringement procedures before the Court in Luxembourg.

CoE provided information on upcoming opinions by the Venice Commission and GRECO regarding several EU Member States. Deterioration of the situation as regards respect for the rule of law in several Member States was a new 'trend'. It was hoped that the issues could be resolved in the near future.

The Commission noted that the rule of law and independence of the judiciary were fundamental principles of the Union. COM intends to present in early 2019 an initiative designed to strengthen the Union's rule of law framework of 2014. It stated that it has already presented a proposal in the context of the Multi-Annual Financial Framework aiming to protect the Union's budget in the case of generalised deficiencies regarding the rule of law in the Member States.

Priorities of the incoming EU Romanian Presidency and the CoE Committee of Ministers Finland Chairmanship

The incoming Romanian Presidency briefly set out its priorities (e-evidence, mutual recognition, the next round of mutual evaluations, the European Arrest Warrant, the accession of the EU to GRECO, Criminal justice in cyberspace: 26-27 Feb 2019) and the events planned during the Presidency (e.g. Criminal justice in cyberspace: 26-27 February 2019, the Conference on Penitentiaries and Prevention of Radicalisation in prisons: April 2019, the 2nd plenary of the European Judicial Network: June)

Finnish priorities for the upcoming CoE Finnish Presidency include: strengthening the system for human rights and rule of law, women's rights, radicalisation, youth.

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