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NOTE

From:	Presidency
To:	Delegations
Subject:	Discussion on the possibility, advisability and necessity of collecting statistics concerning instruments of mutual recognition other than the FD EAW
	- Paper by the Presidency

Delegations will find attached a paper with questions by the Presidency on the issue of cooperation by the Union in criminal matters and statistics.

The Presidency intends discussing this paper at the meeting of the Friends of the Presidency that is foreseen to take place on 21 May 2019.

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Paper by the Presidency

EU cooperation in criminal matters and statistics

Discussion on the possibility, advisability and necessity of collecting statistics concerning instruments of mutual recognition other than the FD EAW

Preliminary considerations

At the COPEN (mutual recognition) meeting held in December 2018 under the Austrian Presidency, one of the subjects which was touched upon was the matter of statistics in the context of the European Arrest Warrant.

On that occasion, the Commission underlined the necessity of reliable statistical data. It was then concluded that the matter of statistics could be further explored by the incoming Presidency.

The Presidency considers that the collection of statistical data is without doubt a very important step in obtaining a clear view of the practical application of all the legal instruments which put into effect the principle of mutual recognition in criminal matters. Such statistics allow relevant conclusions to be drawn, which usually constitute a first step for any assessment in this field.

For the analysis of statistical data to accomplish its purpose, it is first necessary to ensure that the data are accurate. This raises the issue of quantitative analysis and whether the authors of the statistics have access to all the relevant documents and information at the source of the data.

A second condition is that only relevant data should be considered, which raises a qualitative issue, namely the method used by the authors of the statistics to identify the relevant information, according to the aim of the research.

A third issue relates to the processing of data, which must ensure that the result is clear and easy to understand and serves its purpose.

When it comes to statistics in general, for comparable data to be obtained it is very important to have in place similar collection procedures and to take into consideration similar elements when providing the statistical data. This ensures accurate analysis of the correlated items. But for this aim to be achieved, statistical tools are needed. In social sciences such as sociology or psychology such tools are widely available, but in the field of criminal law and criminal justice such means are not as evident and accessible.

For example, it is common knowledge that in the substantial criminal law field various efforts have already been made to apply a certain level of standardisation, for example through the formats used by Eurostat for its crime statistics or, at a global level, the International Classification of Crime for Statistical Purposes (ICCS) created by the UN. However, when it comes to criminal procedural law at EU level and international cooperation in general, the situation is a little different.

Purpose

Most of the legal instruments adopted in the field of mutual recognition establish the Commission's competence to evaluate their application after a certain period of time following the deadline for their transposition. Some of the more recent instruments adopted at EU level in this field or connected fields even make specific reference to the collection of statistical data. For example, Article 11 of *Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union* requires that data be collected on, inter alia, EU cooperation requests on freezing and confiscation, and Article 35 of *Regulation 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders* sets out an obligation for Member States to provide statistical data of a similar nature on an annual basis. Also, Article 19 of the text of the General Approach agreed by the Council on the *draft Regulation of the European Parliament and of the Council on European production and preservation orders for electronic evidence in criminal matters* requires Member States to collect and send to the Commission each year statistical data on the European Production Orders and European Preservation Orders.

In addition, we cannot ignore the fact that the assessments carried out during the rounds of mutual evaluation benefit significantly from Member States' presentation of statistical data. Also, statistical data are always needed for the preparation of various specialised events, such as seminars, conferences, working groups, in order to support, for example, presentations and national positions on matters related to EU-level cooperation in criminal matters.

From the experience gained so far, gathering statistical data is often considered quite burdensome for Member States, especially given that it is generally a task for central authorities, whose direct involvement in judicial cooperation is limited. Also, Member States use different systems to collect and process statistical data. Some use automated tools, while others have only limited access to such tools and rather apply traditional methods of data collection, which are time-consuming and can more easily lead to errors of analysis.

Taking into account the fact that many instruments promote direct contact, as mentioned above, in many cases it is necessary to consult judicial authorities from throughout the country in order to obtain the relevant information, and then put together the data at the level of the central authority. From the Presidency's own experience, it emerged that such endeavours are always quite difficult, since the reporting judicial authorities often provide data that cannot be aggregated, because they take different forms and cannot be compared. If the response to even one specific element is missing or incomplete, it can be impossible to carry out a comprehensive analysis that would pass the tests of statisticians.

Consequently, there is an obvious need to identify best practices for obtaining and processing statistical data, while at the same time defining the challenges that arise in the collection and processing of such data.

Questions

The Presidency invites the delegations to provide answers to the following questions:

1. To what extent are the case management systems in your Member State able to carry out automated analysis of data that allows for disaggregated variables to be provided based on type of cooperation, incoming or outgoing requests, typology of offence, time for solving the requests and grounds of refusal? More specifically, would it be possible based on the automated analysis provided for in the existing case management systems to provide statistics on:

    a) the number of requests for judicial cooperation in criminal matters, including decisions giving effect to the principle of mutual recognition (e.g. EAWs, EIOs, Freezing and Confiscation certificates etc.), hereinafter referred to as requests/orders, issued and received in a certain year in/by your Member State?

    b) the number of requests/orders issued and received in a certain year with respect to specific offences?

    c) the average time needed to respond to such requests/orders? and/or

    d) the numbers of refused requests/orders and the grounds thereof?

2. If not, what alternatives could be used to collect such data?

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