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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Outcome of proceedings COPEN meeting 12 December 2018

1. Adoption of the agenda

The agenda was adopted as set out in CM 5506/18.

2. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

The Presidency presented its paper (14741/18). Referring to the judgment of the CJEU of 25 July 2018 in case C-220/18 ('ML'), the Presidency raised in particular the question of which authority could give guarantees that the person concerned would be detained in a certain prison facility.

The Commission then presented its paper (14744/18), containing several questions relating to the judgment of the CJEU of 13 November 2018 in case C-247/17 (Raugevicius).

As regards the questions by the Presidency, the Member States gave differing answers.

Guarantees that a sentence would be served in a certain prison facility, or a certain type of prison facility, could be provided by:

- the prosecution service (DE, EL, SE);
- the courts (SK, SI, SE);
- the prison authorities (CZ, HU, IT);
- the ministry of justice (FR, RO); or
- the central authority (BE).

While the issuing authority normally takes care of transmitting these guarantees to the executing authority, sometimes this task is carried out by the central authority or by the ministry of justice.

However, one Member State said that no guarantees regarding detention in a certain prison facility could be provided (FI).

As regards the questions by the Commission concerning the judgement in the Raugevicius case, most Member States that replied stated either that this judgement had not led to problems in practice so far, or that the questions raised by the Commission were still under consideration.

The Commission invited the Member States to further study this issue and to communicate any replies to the Commission or the General Secretariat.

3. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

DE presented its paper set out in 14745/19. Referring to the judgment of the CJEU of 6 September 2016 in case C-182/15 (Petruhhin), DE wondered whether the Member State of which the citizen in question is a national has to be informed by the competent authority of the requested Member State *even when the person pursued explicitly does not agree to the transmission of such information*.

Various delegations stated that they were still analysing this question.

Of the Member States that replied to the question, most stated that consent was essential: if the person concerned did not consent to the information being transmitted to the Member State of nationality, the information should not be transmitted (CZ, PT, SE).

One Member State, however, stated that the information should be transmitted in all cases, regardless of whether the person had consented or not (RO).

The Presidency concluded that this question should be further examined.

4. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

Eurojust presented its updated summary of case-law of the CJEU relating to Framework Decision 2002/584/JHA on the European arrest warrant (14746/18). The summary is a tool for practitioners to facilitate the search for relevant judgments.

5. Statistics regarding instruments of judicial cooperation, in particular on the FD EAW

The Commission urged those Member States which had not yet provided statistical data on the application of the Framework Decision on the European Arrest Warrant for 2017 to do so as soon as possible. The COM observed that the Member States had agreed to submit such data regularly (11356/13), and underlined the importance of having up-to-date and complete data.

The Commission stated that because of the delay in submission by Member States, the data for 2016 could only be published in 2019; this three-year delay was unacceptable. The Commission urged the Member States concerned to put in place a better system for collection and transmission of data.

As regards the other Framework Decisions, the Commission noted that unfortunately only informal data could be collected (e.g. through Europris), since no legal basis was provided for in the instruments.

6. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

Delegations had an exchange of views on four issues regarding Framework Decision 2008/909/JHA, relating to time limits, continuing enforcement of two or more sentences, translations, and non-recognition based on lack of social rehabilitation (c.f. the Presidency paper in 14758/18).

With regard to the question of reintegration into society, the Commission mentioned the proceedings before the CJEU in case C-495/18. The Commission also pointed out that a handbook on Framework Decision 2008/909/JHA was being prepared, and that it intended to present this handbook in June 2019.

7. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

The Presidency briefly presented its paper set out in 14750/18.

The secretary of the European Judicial Network (EJN) presented the conclusions that were issued by the network on the European Investigation Order (EIO) in 2018 (relating to discussions at the EJN Regular meeting in The Hague in February, the EJN Plenary meeting in Sofia in June and in several Regional EJN meetings during the year - see 14755/18). The conclusions concerned inter alia the scope of the EIO, deadlines and urgent measures, translation, possible alternative measures according to the law of the executing State, and the issue of speciality.

On the question whether the rule of speciality would apply in the context of the EIO, Member States took different positions.

Some Member States (including CZ, DE, UK) considered that the rule of speciality would apply, since it is a principle that commonly applies in matters of mutual legal assistance. Evidence obtained in the context of specific proceedings could only be used in the context of other proceedings if the executing authority consents to such use.

Other Member States (including FR, SE, FI) supported the line set out by the Presidency in its paper, according to which the rule of speciality should not apply within the framework of the EIO unless the executing authority has expressly set conditions regarding the use of the evidence transmitted.

It was suggested that the Commission could organise an expert meeting on this issue, in order to examine the matter further.

The Presidency concluded that the question of speciality is dealt with very differently in the Member States. It should be clear for the issuing judicial authority under which conditions evidence provided in execution of an EIO could be used. The discussions should therefore continue.

8. Presentations by the European Judicial Network

The secretary of the EJM presented the ‘20th Anniversary’ conclusions resulting from the 50th EJM plenary meeting held in Sofia in June 2018 (14753/18). The secretary underlined that the ‘human factor’ is essential in the field of cooperation in criminal matters. He therefore called upon the Member States to ensure that sufficient resources were provided for the functioning of the EJM, including for the secretariat and for the maintenance and further improvement of the EJM website.

The Commission acknowledged the work done by the EJM, which it felt was very useful. It complimented the EJM on its recent contributions to legislative projects, and stated that further contributions of this kind in the future would be welcomed.

FR considered that restrictions to the EJM budget would not be acceptable. It found it hard to understand why ample resources were made available for projects in the area of internal security (Home), but relatively few resources were allocated for projects in the area of judicial cooperation (Justice).

The AT delegation presented the outcome and the conclusions of the 51st EJM plenary meeting in November 2018 in Vienna on the application of mutual recognition instruments (14754/18).

9. Information by the Genocide Network

The Genocide Network Secretariat presented the outcome and results of the 24th meeting of the Network (24-25 May 2018, 10181/18 and 10182/18). The meeting focused on the topic of open source information, and participants included experts from social media companies (Facebook and others). One point touched upon was the problem posed by the deletion of data (content) on social media as a result of automatic algorithms of the service provider; this could jeopardise the possibility of using such data as evidence in (future) criminal proceedings.

The Genocide Network Secretariat also presented the outcome and results of the third EU Day Against Impunity for genocide, crimes against humanity and war crimes, which took place on 23 May 2018 in The Hague. This day was organised as a high-level event to highlight the difficulties in prosecuting core international crimes (10183/18).

The Austrian Presidency presented the outcome and the conclusions of the 25th meeting of the Genocide Network (14758/18). This meeting focused on the issue of secondary trauma as a health risk for prosecutors, investigators, interpreters or other people involved in the prosecution of core international crimes.

The Commission expressed support for the Network. It noted that any future restrictions on the budget of Eurojust in the context of the new Multiannual Financial Framework (MFF) were very likely to result in cuts to the budget of the Genocide Network. The Commission stated that it would try to ensure that sufficient funds were foreseen when discussing the MFF. The Commission asked the Member States to help to defend this position.

10. Presentations by Eurojust

Eurojust presented three documents:

- a) Report on Eurojust's casework in the field of prevention and resolution of conflicts of jurisdiction (6864/18)

This report provides an update of a report issued in 2015 on Eurojust's experience in the field of prevention and resolution of conflicts of jurisdiction. It specifically covers the period from 2009 to 2017. A follow-up is currently being prepared.

- b) Guidelines for deciding 'which jurisdiction should prosecute?' (9628/18)

Eurojust has developed criteria that could be used in practical cases when there is a conflict of jurisdiction. There is no hierarchy of such criteria. The transfer of proceedings remains problematic when a conflict of jurisdiction has been identified.

- c) The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of the Court of Justice of the European Union (9629/18)

The collection of CJEU case-law on *ne bis in idem* cases has been prepared as an additional tool for practitioners. It aims to supplement the CURIA website by providing a thematic overview containing keywords and a chronological list. It also contains pending cases.

11. Debriefing TAIEX session on ‘blood antiquities’

The adviser to the EU Counter-Terrorism Coordinator provided information on the issue of illegal trafficking in cultural goods as a way of financing terrorism. He underlined the importance of the problem: objects stolen in 2003 from a museum in Baghdad have been found worldwide. Cultural goods are mainly traded through the internet/darknet. It is very difficult to prove that an object has been stolen and illegally traded. The financial profit is high, and the risk of being successfully prosecuted is low. According to the adviser, a more efficient legal framework should be created and the art market should face restrictions similar to those applicable to the banking sector.

FR supported these findings and invited the Commission to examine whether legislative action could and should be taken.

12. Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

The Presidency pointed out that the surrender agreement can only enter into force when all Member States as well as Iceland and Norway have deposited their notifications and declarations. IT was the only Member State that had not yet deposited its notifications and declarations, all other Member States, Iceland and Norway having already done so (7779/1/18 REV 1).

IT said that a draft bill relating to the deposit of its notifications and declarations had been passed by the Italian Senate on 5 December 2018 and had now been forwarded to the Chamber of Deputies. IT expressed the hope that it could deposit its notifications and declarations by the end of January 2019.

13. AOB

RO presented the priorities for its Presidency, starting on 1 January 2019.
