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## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
On: 13 May 2019  
To: Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)  
Subject: Summary of discussions

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### 1. Adoption of the agenda

The agenda was adopted as set out in CM 2548/2/19 REV 2.

### 2. Synergies Eurojust/EJN/Genocide network/JITs experts network/EJCN

The Presidency presented the draft conclusions set out in 8620/19. Eurojust and the EJN underlined that the resources of Eurojust, and by extension of the networks, should be sufficient to allow them to carry out their functions properly, including the maintenance of the EJN's website. The Commission expressed support for the financial concerns expressed by Eurojust and the EJN.

The Member States indicated that they could agree with the conclusions as they currently stand. The Presidency noted that there was consensus, and stated that the conclusions would be submitted to Coreper/Council for adoption.

### 3. **Ninth round of mutual evaluations**

The Presidency presented the draft questionnaire (8602/19) and draft order of visits (8601/19) for the 9th round of mutual evaluations.

As regards the draft questionnaire, a few Member States proposed minor amendments. The Presidency explained that insofar as these were of a technical nature and consistent with the scope of the 9th round, they would be accepted.

As regards the order of visits, several Member States complained about their position in the order and/or the fact that there would be little time to prepare for the visit. In the light of this, some Member States suggested that the start of the evaluation round be postponed by one or two months. The Presidency gave assurances that such a postponement would be taken into consideration.

The Presidency concluded that, subject to these modifications, the questionnaire and order of visit were adopted.

### 4. **The way forward in the field of mutual recognition in criminal matters**

The Presidency presented the report set out in 8562/1/19 REV 1, underlining that this was a report by the Presidency. It therefore presented the views of the Presidency, and not necessarily the views of all delegations.

While the Commission expressed support for the report, several delegations made comments, but often with opposing viewpoints.

In these circumstances, the Presidency concluded that the report should stay as it is. The Presidency noted that there was substantial support for the report from Member States, and indicated that it would be submitted to Coreper/Council for a policy debate.

## 5. **The future of EU substantive criminal law**

The Presidency presented the report set out in 8619/19, underlining again that this was a report by the Presidency. The Commission expressed full support for the report.

A few delegations intervened, generally acknowledging the quality of the report. The Presidency concluded by noting that the report was supported by a very large majority of Member States, and indicated that it would now be submitted to Coreper/Council for a policy debate.

## 6. **Providing reasons in case of an alleged failure to comply with Treaty obligations**

The Austrian delegation presented its note (8938/19) regarding the obligation for the Commission to provide reasons in case of an alleged failure to comply with Treaty obligations.

The Commission indicated that a distinction should be drawn between incorrect and incomplete implementation. In case of the latter, the Commission would not have to provide reasons in the relevant opinions submitted to Member States. The representative of the Commission also indicated that she was always available to discuss alleged infringements with the Member States.

Several Member States expressed support for the note by Austria, and thanked the delegation for having tabled the issue. While acknowledging the availability of the Commission, it was observed that in case of an alleged failure to comply with Treaty obligations, the first document drafted by the Commission should be sufficiently clear for the Member States to understand the Commission's concerns. It was observed in this context that EU legislation did not always have to be transposed by a single national law, and that sometimes transposition could be achieved by means other than formal legislation (e.g. administrative notes, 'circulaires', etc.).

The Commission referred to the CJEU case law in this matter, but indicated that it would look into the comments by the Member States and come back to this issue in the near future.

## 7. **EPPO**

The Commission presented the state of play of the implementation of the EPPO Regulation. Further to concerns expressed by some delegations, it was clarified that the discussions at the meeting of the EPPO expert group on 27-28 May 2019 on a first draft of the internal rules of procedure would just be a preliminary exercise, which would not undermine the right of the EPPO College, in accordance with the EPPO Regulation, to define and adopt them. This position was supported by the majority of delegations.

The Commission stressed the importance of quickly appointing the European Chief Prosecutor and insisted on the importance of sticking to the current timetable (the EPPO should be fully operational by December 2020). The Presidency invited the Commission to present the latest developments to the JHA Council in June.

## 8. **Victims-report by special advisor Milquet, 'From compensation to reparation'**

The Commission presented the report by special advisor Milquet (8629/19). While it did not support all the 41 recommendations set out in the report, the Commission stated that it certainly did support several recommendations that were addressed to the Commission, and that it was already trying to implement such recommendations where possible.

The Commission informed the Committee that it planned to consult the Member States in the near future, in order to see which recommendations could be supported and implemented by them.

## 9. **Participation of the Union in the work of GRECO**

Member States restated their support for the Presidency proposal to seek the accession of the EU to GRECO with observer status (8563/19). Several delegations stressed that this should be seen as a first step towards full membership. In this respect, some delegations insisted that careful consideration should be given to the legal and financial implications of full membership.

The Commission took note of the position of the Member States and indicated that it would reflect on the appropriate legal instrument to enable the EU to join GRECO with observer status.

The Presidency concluded that the outcome of the discussions would be communicated to Coreper and Council in order to confirm the approach taken by the Member States and to invite the Commission to present a proposal at the earliest opportunity.

## 10. **International developments in the area of cross-border access to e-evidence:**

- a) **Negotiating directives for an agreement between the European Union and the United States of America on cross-border access to e-evidence for judicial cooperation in criminal matters**
- b) **Negotiating directives for the second additional protocol to the Council of Europe Convention on Cybercrime (CETS No 185)**

The Presidency provided an overview of the work that had taken place at technical level in the COPEN Working Party, which had led to the finalisation of the texts of both recommendations for a Council decision and the negotiating directives annexed to each Council Decision.

The Presidency enumerated the new elements that had either been added to or further elaborated in the texts, such as the reporting mechanisms and the role of the Council in the negotiation process, but also provided some details on the matters that had been subject to detailed discussions and considerations during that technical examination.

The Presidency acknowledged that these texts as amended were largely supported by delegations, with the exception of one issue in each of the two negotiating directives on which divergent views had been expressed by delegations. The Presidency therefore restated its intention to bring these issues for discussion in Coreper.

#### 11. **Draft Council conclusions on retention of data for the purpose of fighting crime**

The Presidency referred to 7833/3/19 REV 3 as the final result of the discussions that had taken place at technical level in the meetings of the Friends of the Presidency DAPIX (Data Retention) on the text of the Council conclusions, and presented the timeline for their adoption. The Commission also supported the text and reiterated its readiness to continue working on the data retention issue.

While delegations generally expressed support for the text, some suggestions were made to further improve the clarity of the text and take into account certain specific national situations. The Presidency took note of those suggestions and informed delegations that it would consider including them in the final text of the conclusions, which would be presented to Coreper for approval before their adoption by the June Council.

## 12. External relations (EU-US, China/Russia, Western Balkans)

The Presidency informed delegations about two upcoming meetings of Justice and Home Affairs dialogues with third partners:

- on 15 May, a Senior Officials Meeting with Western Balkan partners (agenda in 8542/19);
- on 19 June, a Ministerial meeting in Bucharest with the United States (draft agenda in 8539/19).

Both meetings would cover the usual topics of dialogue between the EU and those partners; the Presidency would, as usual, debrief delegations on the outcome of the meetings in the JAIEX Working Party.

The Presidency also expressed thanks to delegations for the information submitted in reply to the Presidency's request, following the CATS meeting of February, for statistics on MLA and extradition requests to and from China and Russia (8915/1/19). Member States which had not yet submitted their data were urged to do so as soon as possible, so that a full picture could be obtained.

## 13. EU-IS-NO Surrender Agreement

Italy informed the Committee that the Italian Parliament and Senate had passed a law enabling it to deposit its notifications and declarations relating to the 2006 EU-IS-NO Surrender Agreement.

The Presidency welcomed this news and urged Italy to deposit its notifications and declarations as soon as possible.

In accordance with Article 38(4), the Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council has established that all formal requirements concerning the expression of the consent by the Contracting Parties to this Agreement have been fulfilled.

14. **Meeting EU (CATS, COM, EEAS) – Council of Europe of 10 May 2019**

The Presidency provided a debriefing of the good and positive meeting of the EU (CATS Presidency, Commission, EEAS) with the Council of Europe on Friday 10 May 2019 (see agenda in CM 8406/19).

15. **Recent developments in the case law of the CJEU**

The Council Legal Service drew the attention of delegations to two opinions of Advocate-General Campos Sánchez-Bordona, of 30 April 2019, in the following cases:

- case C- 128/18, Dorobantu, reference for a preliminary ruling, regarding the obligation on the part of the executing judicial authorities to assess the conditions of detention in the issuing Member State (follow-up of the Aranyosi judgement);
- joined Cases C 508/18 and C 82/19 PPU, Minister for Justice and Equality, reference for a preliminary ruling, regarding the question of whether a public prosecutor's office falls within the notion of 'judicial authority' (see also case C-154/19).

16. **AOB**

- Europol made an oral presentation on the issue of 'Challenges posed by new technologies, the case of 5G';
- The incoming Finnish Presidency made a presentation on the priorities and practical arrangements for its term in office (WK 4160/2019). The next meetings of the CATS would be on 19 September and 12 November 2019.