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#### NOTE

From:	Presidency
To:	Delegations
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Subject:	14th United Nations Congress on Crime Prevention and Criminal Justice (Kyoto, Japan, April 2020) - Draft position of the EU and its Member States in view of the governmental expert meeting on 9-11 September 2019 (Kyoto) - Final revised text as approved by Coreper

Delegations will find attached the draft position of the EU and its Member States in view of the governmental expert meeting on 9-11 September 2019 (Kyoto), as approved by Coreper on 24 July 2019.

**FINAL REVISED DRAFT****The position of the EU and its Member States**

The EU and its Member States believe that in a time of rising international crime, it is paramount to strengthen international cooperation, crime prevention and criminal justice, rule of law, sustainable development and respect for human rights and fundamental freedoms as key pillars of security strategy.

The EU and its Member States consider the Kyoto Declaration should be meaningful and concise, with strong and clear political messages and refer to the 2015 Doha Declaration rather than repeating it. The EU and its Member States believe that the Kyoto Declaration should include or be grounded on the following ideas and principles:

- Uphold universal human rights and defend the full range of rights set out in the Universal Declaration of Human Rights and in international human rights treaties.
- Oppose the use of the death penalty and promote its universal abolition, in any circumstances, as a matter of principle.
- Promote building effective, accountable, fair and transparent crime prevention strategies and criminal justice systems respectful of human rights, fundamental freedoms, the rule of law and the principle of proportionality of sentences at all levels.
- Recognize that the respect for human rights and fundamental freedoms, rule of law, crime prevention and criminal justice responses and sustainable development are complementary and mutually reinforcing and that crime prevention and criminal justices responses, as well as international cooperation in criminal matters, significantly contribute to the implementation of the 2030 Agenda for Sustainable Development.
- Enhance international cooperation on crime prevention and criminal justice by basing it on the effective implementation of existing global and regional instruments, in particular the UN Conventions against Transnational Organized Crime (UNTOC) and Corruption (UNCAC), the international conventions and protocols against terrorism, and the three international drug control conventions, as well as the Council of Europe Conventions in this area. In principle, the EU does not support calls for development of new international instruments or bodies in this area.

- Promote that the Parties support and make best use of the review mechanisms of UNCAC and UNTOC. Reaffirm the importance of effective technical assistance and capacity-building.
- Mainstream a gender perspective to crime prevention and criminal justice measures and policies, ensuring that the empowerment of women is taken into account in all crime prevention strategies.
- Strengthen the importance of the role of civil society in crime prevention and criminal justice.
- Enhance judicial and law enforcement cooperation, in particular by strengthening existing regional, interregional and international networks.
- Reaffirm the centrality of the role of the Commission on Crime Prevention and Criminal Justice as the policymaking body of the United Nations with primary responsibility for crime prevention and criminal justice matters and reaffirm the mandate of the United Nations Office on Drugs and Crime (UNODC) in supporting Member States in the implementation of commitments taken in the outcome documents of the UN Crime Congresses and relevant UN resolutions.

#### **1) Comprehensive strategies for crime prevention towards social and economic development**

- Support the development of comprehensive, inclusive, human rights-based and interdisciplinary crime prevention policies and strategies at international, national and local levels that involve all relevant stakeholders, including the private sector and civil society.
- Focus crime prevention strategies and activities in a holistic manner on root causes, vulnerabilities and risk factors, with a special focus on children and youth at risk.
- Strengthen evidence-based crime prevention, including through improving and strengthening of data collection.
- Enhance crime prevention and criminal justice, including by countering impunity, investigating criminal matters, prosecuting suspects and convicting perpetrators. Enhance protection of victims of crime.
- Recognise the need to prevent hate crimes by enhancing capabilities of criminal justice professionals for recognizing, investigating and prosecuting hate crimes, to help to engage effectively with victims and communities and to build public confidence and cooperation with criminal justice agencies. Take appropriate measures to encourage victims to report hate crimes.

- Strengthen efforts to prevent trafficking in human beings, including by countering impunity, untangling the trafficking chain, reducing demand, following the money trail and protecting victims.
- Increase international cooperation and coordination to prevent and counter trafficking in human beings and smuggling of migrants.
- Strengthen inter-agency and international cooperation and promotion of public-private partnerships in crime prevention.
- Enhance, where appropriate, cooperation and information sharing among law enforcement and criminal justice practitioners at national and international level as well as other relevant service providers such as local and regional administrative bodies.
- Promote the development and implementation, as appropriate, of restorative justice programmes.
- Support effective compliance with international standards, such as FATF, on preventing and combatting money laundering and terrorist financing, including by enhancing beneficial ownership transparency, interagency cooperation at national and international level and effective compliance through monitoring.

## **2) Integrated approaches to challenges facing the criminal justice system**

- Enhance the use of alternatives to custodial sanctions, in particular for young offenders, also with a view to reduce prison population, as well as alternatives to pre-trial and post-trial preventive detention and invest in capacity building in this area.
- Prevent reoffending through proper identification and assessment of risks and needs of individual offenders. Develop and apply systematically rehabilitation and reintegration programmes, including de-radicalisation, in community-based measures, in prison and after release. Enhance training for prison and probation staff in this area.
- Improve detention conditions for both pre-trial and post-trial detainees and ensure that minimum standards developed at global or regional level, such as the Nelson Mandela Rules or the European Prison Rules, are monitored and applied in practice.
- Develop integrated, inclusive and comprehensive policies to ensure that victims have effective access to their rights, including information, support and protection, in accordance with individual needs as well as procedural rights. Ensure that the victims are treated in a respectful, sensitive, professional, tailored and non-discriminatory manner.

- Encourage and facilitate reporting of crimes in conditions that minimise the risk of secondary victimisation, intimidation and retaliation in order to address the issue of underreporting.
- Examine the impact of using Artificial Intelligence (AI) tools within criminal justice systems and promote measures to ensure that the appropriate safeguards are applied to guarantee fair trial rights of suspects and accused persons. In this context, explore challenges and opportunities of new technologies also for law enforcement and crime prevention.

**3) Multidimensional approaches by Governments to promoting the rule of law by, inter alia, providing access to justice for all; building effective, accountable, impartial and inclusive institutions; and considering social, educational and other relevant measures, including fostering a culture of lawfulness while respecting cultural identities, in line with the Doha Declaration**

- Strengthen the rule of law and in particular the efficiency, quality and independence of national justice systems. Develop integrated, inclusive and comprehensive approaches to promote and support the rule of law that include relevant stakeholders at national, regional and international levels. Raise awareness, in particular among the general public, about rule of law standards, including through education. Civil society has an important role to play in this respect. Improve the prevention of rule of law challenges and address them adequately.
- Promote access to justice for all by building accountable, impartial and inclusive criminal justice institutions, in particular independent courts. Integrate this objective into national and bilateral assistance efforts, as well as into the UNODC's technical assistance programmes.
- Uphold the protection of human rights and fundamental freedoms in criminal proceedings, and in particular strengthen the fair trial rights of suspects and accused persons by ensuring appropriate safeguards in national law. The respect of the right to an independent and impartial judge, the right to a fair hearing and the defense rights are also essential to build trust between judicial authorities.

- Prevent and counter corruption at national and international level. Corruption poses particular challenges for the rule of law, which is the foundation needed for sustainable development. Strengthen measures to prevent corruption, inter alia by increasing integrity, transparency and the use of open data, and protecting whistle-blowers. Ensure an effective criminal law response to corruption by effective prosecution, fair trials and the application of effective, proportionate and dissuasive sentences for corruption-related offences. Improve the criminal justice systems to be able to protect the public institutions, as well as public and private interests against abuse of power and corruption, while at the same time protecting the fair trial rights of suspects and accused persons. Enhance international cooperation and coordination to effectively prevent and combat corruption and concerning recovery and return of stolen assets.
- Work with the relevant UN bodies and States Parties to the UN conventions on Transnational Organised Crime (UNTOC) and against corruption (UNCAC) to enable effective judicial cooperation with the European Public Prosecutor's Office (EPPO), in accordance with their applicable procedures.

#### **4) International cooperation and technical assistance to prevent and address all forms of crime**

##### ***(a) Terrorism in all its forms and manifestations***

- Prevent and combat terrorism in all its forms and manifestations as well as the financing of terrorism. This includes cooperation with communication service providers in order to detect and remove material that incites terrorist acts, developing measures aimed at the prevention of radicalisation leading to violent extremism or terrorism, protecting citizens and infrastructure and reducing vulnerability to attacks, including through enhanced border control management capabilities on land, air and sea, bringing terrorists to justice and prosecuting them, and addressing the possible linkages between terrorism and crime at the global level. Promote international cooperation as a response to fight terrorism globally.
- Share and adopt best practices and strengthen cooperation at all levels, including interagency cooperation, to prevent and counter terrorism, violent extremism and radicalization and to share information about foreign terrorist fighters and prevent and counter the threats they pose.

***(b) New and emerging forms of crime***

**General means to fight these forms of crime more effectively:**

- Adapt crime prevention to include an analysis of recent trends and best practices in preventing and countering, inter alia, corruption, money laundering, organised crime, environmental and maritime crimes (including wildlife crime), trafficking in firearms, trafficking in human beings and child sexual exploitation. Develop, as appropriate, specific crime prevention strategies tailored to each phenomenon.
- Address transnational organised crime as a self-standing serious threat and develop adequate prevention and criminal justice responses. This includes a strengthening of national legislation and related international cooperation on threats posed by new, emerging and persisting forms of crime as well as by the challenges posed by criminal organisations as such.
- Assist Member States in establishing or strengthening regional and cross-regional law enforcement and judicial cooperation networks as platforms for the development and dissemination of specialised knowledge on new and emerging forms of crime, and facilitate the formal and informal exchange of information among relevant authorities, including customs, tax and regional/local administrations.
- Strengthen actions targeting the proceeds of crime, including by using available instruments for tracing, freezing, confiscation and return of illicit assets as means to deter and disrupt organised crime and terrorism-related groups. Enhance international cooperation on asset recovery to target the proceeds of crime.

**Specific actions based on the nature of the crime:**

- Underscore the importance of international cooperation to prevent and counter cybercrime as an evolving challenge affecting every country, inter alia by
  - maximising the number of countries with adequate, compatible cybercrime-related domestic legislation that supports also international cooperation;
  - building the cooperation mechanisms, trust and skills to share data to investigate, prosecute and reduce cybercrime;
  - stepping up efforts to build the capacity of law enforcement and judiciary authorities for effective investigations, prosecutions and convictions of cybercriminals.
- The EU does not support calls for development of a new international instrument on cybercrime.

- The EU supports the Council of Europe Convention on Cybercrime (Budapest Convention), which represents a valid model for national legislations and a valuable framework for international cooperation and which is open to the accession of countries that are not parties to the Council of Europe.
- The EU also supports the on-going negotiations of a second additional Protocol to the Council of Europe Budapest Convention, which will address, among other issues, the need for a better access to electronic evidence.
- Recall that many countries still need to adopt at least some specific provisions to secure electronic evidence, accompanied by appropriate safeguards to ensure the respect for human rights and fundamental freedoms, including the right to privacy and data protection.
- Considering that any type of offence may entail electronic evidence, all judges, prosecutors and investigators may be confronted with e-evidence and need to have at least basic skills in this respect: capacity building should thus remain the priority for the future.
- Ensure continuation of the work of the open-ended intergovernmental Expert Group to Conduct a Comprehensive Study on Cybercrime in accordance with its mandate and agreed work-plan.
- Recognize that many forms of environmental crimes, particularly when involving organized crime groups, are serious crimes, with due consideration to linkages to transnational organized crime, corruption and money laundering, and adopt effective measures and strengthen international cooperation to prevent and counter such crimes.
- Develop, ensure and efficiently implement legal regimes of liability for environmental crimes so that individual offenders and involved legal persons are held liable through effective, proportionate and dissuasive sanctions particularly in areas such as waste trafficking, wildlife crime and serious pollution offences.
- Strengthen and implement national laws and regulations prohibiting illegal trade of protected species, including the illegal ivory trade.
- Combat money laundering and terrorist financing, by enhancing beneficial ownership transparency, ensuring effective and efficient access to relevant financial information by the financial intelligence units and other competent authorities, addressing risks posed by new financial products and services, strengthening inter-agency and international cooperation and reinforcing partnerships with the private sector.



- Tackle illicit trafficking of firearms, inter alia by closing legal loopholes, supporting law enforcement co-operation, ensuring systematic tracing of seized firearms, supporting global data collection to develop a comprehensive intelligence picture, and providing financial support to law enforcement and research.
  - Enhance international cooperation and coordination to effectively address and counter illicit drug trafficking, trafficking in cultural goods, trafficking in falsified medicines and trafficking in counterfeit goods.
  - Combat child sexual exploitation by ensuring that legislation is fit for purpose, protects children against sexual abuse, and sets out effective cross-border cooperation. The EU supports the 'We Protect Global Alliance to End Child Sexual Exploitation Online' and encourages other governments, private sector and civil society to join this multi-stakeholder initiative.
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