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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

To: Delegations

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Subject: Outcome of proceedings of the meeting of the Working Party on
Cooperation in Criminal Matters on 19 June 2019

1. Adoption of the agenda

The agenda was adopted as set out in CM 3139/1/19 REV 1, with a slight change in the order of business (item 3 was discussed before item 2). Items 2 and 7 were discussed together.

2. Judgments of the CJEU of 27 May 2019 in joined cases C-508/18 and C-82/19 PPU and in case C-509/18 - public prosecutors offices acting as judicial authorities

The Romanian Presidency reminded delegates that a first discussion on this matter had been held at the Friends of Presidency COPEN (FOP COPEN) meeting on 21 May 2019. The discussions had been based on the opinion of the Advocate General.

Following the delivery of the judgments by the CJEU on 27 May 2019, the Presidency considered that it would be appropriate to continue the discussions on the notion of 'issuing authority', as provided for in Article 6 of Framework Decision 2002/584/JHA. The basis for the discussions in this COPEN meeting were 9974/19 (Paper by the Presidency) and 10016/19 (Questionnaire by Eurojust).

The Commission said it was still examining the CJEU judgments and their impact on the various mutual recognition instruments. The Commission also mentioned that it was important to take stock of the state of play in the Member States, and that some additions could be made to the Handbook on how to issue and execute a European arrest warrant in order to reflect recent developments.

DE stated that following the judgments, EAWs in Germany were now issued by judges, and that there was no need for new legislation to implement this change. As regards existing EAWs, DE stressed the need to ensure immediate and smooth contacts between German issuing authorities and executing authorities of other 27 Member States. In that context, DE considered that the role played by Eurojust and SIRENE was very important. DE said it was trying to replace the existing EAWs issued by German prosecutors (approximately 5600) with new ones issued by judges. Priority was being given to those cases where the sought person had already been arrested. Various Member States (SE, BE, FR, LU, BG, HR, IT, LV, LT, EE) presented information on the guarantees provided under their judicial systems with regard to the independence of prosecutors.

Several other states intervened (UK, CZ, CY, ES, SK), since they were affected as executing States. They presented their experience from the perspective of an executing State.

In addition to DE, some other Member States (NL, DK, AT) mentioned the significant impact of the CJEU judgments for their legal systems. Explanations were given on measures that had been taken to modify the domestic legal framework so as to enable judges to issue EAWs. NL mentioned that it intended to have the relevant bill adopted in July 2019. With regard to the pending EAWs issued by NL prosecutors, NL expressed the hope to find a pragmatic solution together with the executing Member States, so that no one would be released as a result of the CJEU judgments.

DK admitted that its prosecutors did not meet the requirements of independence indicated in the CJEU judgments, but due to the current political situation in DK (the period shortly after the DK parliamentary elections), DK was not able to provide any indication on the possible changes in its national legislation. However, DK expected that if its national legislation was interpreted in such a way that the prosecutors cannot be given instruction by the executive, the national legislation could be seen as compliant with the CJEU judgments.

AT again explained that its prosecutors, not entirely independent, were competent to issue EAWs, since a prior judicial authorisation of EAWs is required in AT. Therefore AT felt that it fulfilled the CJEU requirements.

Some Member States also took the view that the interpretation given by the CJEU in these cases should not be extended to other legal instruments and should not be interpreted in an excessive manner, as this could create additional grounds for non-recognition; moreover, it may undermine the key principles of mutual trust and mutual recognition.

Delegates stressed the role of Eurojust and of the European Judicial Network (EJN) in this context, in particular in terms of collecting relevant materials from the Member States concerning the role of prosecutors in their own legal systems.

For future cases, various Member States saw the need for close cooperation between Eurojust and the EJN, and also with the Commission and the General Secretariat of the Council, so as to avoid any duplication of efforts.

3. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States - rule of speciality

The Presidency referred to its note with 5 questions on matters of interpretation of the speciality rule and how this principle is applied in practice (9975/19).

Most of the Member States that intervened mentioned that the EAW is based on a decentralised system of collection of data on the practical operation of the EAW, as a result of which it was impossible to have a clear view and provide straight answers to the questions raised.

However, a couple of Member States said that they have centralised systems that enable their authorities to check whether the person has been surrendered in accordance with the speciality rule. Other Member States explained their alternative methods (e.g. keeping persons' files in prisons). Some Member States mentioned that they transmitted this kind of information ex officio.

According to the data in the possession of certain Member States' central authorities, no reports had been received as regards potential breaches of the speciality rule. Some Member States reported of cases of refusal.

The EJM informed that there is a form/template, in an annex to the EAW handbook and electronically available on the EJM website, for the executing authority to inform the issuing authority about the execution of the EAW, including if the speciality principle has been renounced.

Eurojust noticed that whilst sometimes the executing authorities use the **SIRENE** to communicate surrender decisions, including the information on the speciality rule, this is not the best way of notification. In the Eurojust's opinion, both the decision and the information should be communicated directly to the issuing authority.

The Commission considered that the discussion was an important one and that (further) specific guidelines could be inserted in the EAW Handbook.

The Presidency concluded that it might be advisable to come back to this issue in the future.

4. Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters

Under this agenda item three separate issues were analysed, all of which are of relevance to application of the provisions of Directive 2014/41/EU on the European Investigation Order:

i) the use of an agent in investigations of serious crime

SK referred to its paper (10200/19) and asked Member States to provide information on their *modus operandi* when they use an undercover agent from another Member State in order to solve a domestic case. The question is whether Article 29 of Directive 2014/41/EU (EIO) or Article 14 of the 2000 MLA Convention would apply.

The Commission and the Member States that intervened underlined that this matter needs to be closely examined.

The Presidency took the view that the matter could continue to be examined by the incoming (Finnish) Presidency.

ii) Conclusions of AG Bot in case C-324/17(Gazanov) dated 11 April 2019

This point was examined on the basis of 9976/19.

CY supported the conclusions. CZ explained that if the CJEU endorsed the opinion of AG Bot, some Member States, such as CZ, would no longer be able to issue European Investigation Orders. Eurojust stated that it was looking at possible steps to be taken to prepare for the possible consequences of the upcoming judgement.

iii) Information from the Commission on the editable pdf version of the forms annexed to the EIO Directive and on the draft practical guidance for practitioners

The Commission referred to 10261/19 and updated Member States on this project. The editable pdf forms were to be finalised and sent after the meeting.

DE took the view that the form presented by the Commission would require a change to the existing forms, which would not be possible without amending the Directive.

BE, on the other hand, suggested an additional change in the editable pdf forms, relating to the persons concerned, whereby the name of the suspect/accused person would be inserted in all cases under section E of the form.

In response to DE, the Commission explained that the forms would not be changed, since the editable pdf version was only meant to provide a tool to facilitate the filling in of the forms for the issuing authorities. As far as the BE suggestion was concerned, EJM suggested giving its views after consulting its Contact Points. The Commission indicated that it would look into this together with BE and EJM.

5. e-Evidence Digital Exchange System

The Commission presented the e-Evidence Digital Exchange System, as a follow-up to the presentation made by the Commission at the FOP COPEN meeting held on 21 May 2019.

The Commission re-explained the advantages that the e-Evidence Digital Exchange System would bring to practitioners – faster, cheaper and secured communication, without any risk of information loss. While the test version is currently available only in English, the actual system will be available in all EU languages.

The platform will be made available by the end of 2019.

DE expressed its wish to start using the system as soon as possible, including for other judicial cooperation instruments.

The Presidency underlined that it was important for all authorities involved in issuing or receiving EIO's to be part of the process.

6. Adoption of/accession to the 2000 MLA Convention and its protocol

The document prepared by the Presidency under this agenda item (9978/19) underlined the importance of enhancing the use of existing instruments in the context of EU cooperation in criminal matters, in particular the 2000 MLA Convention and its Protocol. The Member States that had not become party to either the Convention or the Protocol were invited to provide information on whether they still aimed to adopt/accede (to) the Convention and its protocol.

The Commission underlined that the 2000 MLA Convention and its Protocol are part of the EU *acquis* and some of their provisions are still into force. In addition, the Convention and the Protocol are the main instruments applicable between Denmark, which is not bound by the EIO Directive, and the other Member States.

EE, EL, HR, IE and IT intervened. Some Member States indicated that they were still reflecting on whether to adopt / accede (to) the Convention and its Protocol. Other Member States indicated that they were not considering adoption/accession, since this instrument had lost much of its usefulness in view of more recently adopted instruments, such as Directive 2014/41/EU on the European Investigation Order. One Member State (HR) recalled that the Council needed to adopt a decision determining the date of entry into force of the Convention and its Protocol for Croatia.

The Commission supported HR and insisted that the draft decision determining the date of application of the Convention to HR should be placed swiftly on the Council's agenda for adoption.

7. EU-IS-NO Surrender Agreement

The discussion under this item was based on the information set out in 10224/19 and 10262/19.

Further to the discussions under agenda time 2, it was pointed out that in the light of the recent case-law, it was important for the Member States to revisit their notifications, not only with regard to Framework Decision 2002/584/JHA, but also with regard to the EU-Norway-Iceland Agreement, and to see to what extent changes might need to be made.

IT also informed the Working Party about the latest steps that it had taken on finalising its internal procedures.

The Presidency and the Commission expressed the hope that the Agreement could enter into force in September 2019.

8. Follow-up to the Council Conclusions of December 2018 (OJ C 449, 13.12.2019, p.6), in particular points 5 and 22 thereof

On the basis of the document prepared by the Romanian Presidency (9977/19), the discussion focused on two issues from the 2018 Council Conclusions: point 5 on alternative measures to detention, and point 22 on declarations/notification by Member States concerning EU mutual recognition instruments and other instruments relevant to judicial cooperation.

As regards alternative measures to detention, several Member States presented their own legal provisions in this area. It was agreed that this issue should be further explored in the future, in order to gain a better understanding of the Member States' legal provisions in this respect.

As regards the issue of declarations/notifications by Member States, the Commission explained the procedure that it is using and how the information is passed on to the EJM Secretariat. The Commission mentioned that two notifications were still missing in relation to the Directive on the European Investigation Order. The Commission also stressed the need for regular updates of declarations/notifications made in the past.

The EJM stated that as regards the declarations/notifications, while for some instruments the information is complete, for others work remained to be done. As regards the transposition of the instruments, the EJM Secretariat is depending on receiving information from the Commission, since the EJM Secretariat cannot check online (in EurLex) whether a transposition is complete or only partial, as indicated by the Member States.

9. Ninth round of mutual evaluations - Order of Member States' interventions during COPEN meetings

The Presidency referred to a draft list that it had prepared on the order of interventions by the Member States at the Working Party meeting where a particular report would be discussed (10007/19).

DE considered that the idea was a very good one, but drew attention to the fact that DE was mentioned only once as an intervening Member State, whilst all the other Member States were mentioned twice, and one Member State three times.

CZ requested to know the exact date when the evaluation for their Member State would be carried out, bearing in mind that it was one of the first Member States to be evaluated.

The Presidency noted the comment made by DE and said the error would be rectified in a revised version of the document (see 10007/1/19 REV 1). As regards the dates of the evaluations, the Presidency said that the General Secretariat would contact the Member States concerned.

10. Victims-report by special advisor Milquet, 'From compensation to reparation'

The Commission referred to the Milquet report (8629/19), which had been published on 11 March 2019 and was presented in CATS on 13 May 2019.

The Commission also referred to 10134/19, containing questions for the Member States and corresponding to the four clusters of the Milquet report: cooperation and coordination, access to information and training, state compensation and access to support services, and offender compensation schemes.

Several Member States intervened in the discussion. They welcomed the report and emphasised that it contained important issues from both the criminal law and civil law perspective. A need was felt for further analysis; one delegation suggested that a more in-depth discussion could be held in another Working Party, such as the Civil Law Working Party.

One delegation said that the proposals should focus on added value, while another expressed the view that some recommendations might have implications for domestic law.

It was felt that the report should remain on the EU's agenda, as it was important for EU citizens. One Member State considered that before adopting new rules, one should also take a look at the existing ones and how they were actually functioning. Specific recommendations were mentioned, such as 1, 2, 7, 10 and 13- as particularly valuable.

Compensation for victims of terrorism and setting up a European Centre of expertise for victims were seen by one delegation as priorities, along with participation of victims in criminal proceedings.

The Presidency mentioned that Member States could send written comments on the questions raised by the Commission.

11. Presentation/information by Eurojust

Eurojust presented the Report on Eurojust's Casework in Asset Recovery (8719/19), which was the first in-depth document prepared by Eurojust on this topic and covered three years of activities. The report focuses on asset tracing, freezing, confiscation and disposal. There is also an abbreviated version of the report available (Eurojust's Casework in Asset Recovery at a Glance, 8722/19).

12. Presentation/information by the European Judicial Network (EJN)

The Secretary of the EJN Secretariat presented the Report on activities and management of the EJN for 2017-2018 (10017/19).

13. Presentation/information by the Genocide Network-Report

With reference to 9979/19, 9980/19 and 9981/19, the Head of the Genocide Network Secretariat presented the conclusions and report of the 26th meeting of this network (The Hague, 22-23 May 2019), and provided information on the 4th EU Day Against Impunity (The Hague, 23 May 2019).

The Head of the Genocide Network Secretariat emphasised the growing relevance of the network and the increase in its workload.

14. Presentation/information by the JITs Network

The representative of the JITs Network Secretariat presented the outcome of the 15th annual meeting of this network, which took place in The Hague on 5-6 June 2019.

15. Plans of the incoming FI Presidency

The incoming Finnish Presidency provided information on its plans regarding COPEN during its upcoming term in office.

16. AOB

No points were raised under this agenda item.