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NOTE

From: Presidency
To: Council

Subject: Key elements for the public prosecution services including as regards
judicial cooperation in criminal matters

Delegations will find attached a Presidency paper on the abovementioned topic, in view of the discussion by Ministers for Justice at the meeting of the JHA Council on 7/8 June 2021.

Key elements for public prosecution services, including as regards judicial cooperation in criminal matters

Introduction

Public prosecution services play a key role in upholding the principles of the rule of law, not only in a national context, but also increasingly at EU level.

The importance of the function of public prosecutors has been recognised by the international community, for example in the 1990 UN Guidelines on the role of prosecutors and in the 2000 Council of Europe Recommendation on the role of public prosecution in the criminal justice system.

It therefore seems useful to explore this topic further in the framework of the Council as part of a dialogue on justice-specific topics on the rule of law.

The importance of well-functioning prosecution services for the EU

Public prosecution services are particularly important for the proper functioning of the criminal justice system and for effective prosecutions and judicial cooperation in criminal matters between Member States. Public prosecution services are indispensable for the effective implementation of European Union criminal law. The fight against crime, including cross-border and organised crime, economic and financial crimes, such as money laundering, and corruption, relies on well-functioning national prosecution services.

The Court of Justice of the European Union is developing important case-law regarding the prosecution services, notably in the context of judicial cooperation between Member States in criminal matters based on the European Arrest Warrant (EAW), the first legal instrument giving expression to the principle of mutual recognition of judicial decisions. To qualify as a judicial authority competent to issue and execute an EAW, the Court of Justice considers that the public prosecutor must be independent from the executive. In addition, the prosecutor must exercise his or her responsibility under a procedure which complies with the requirements inherent in effective judicial protection.

Moreover, Council of Europe bodies have established relevant European standards on the role of public prosecution in the criminal justice system, as well as on its independence and accountability. The case-law of the European Court of Human Rights is also pertinent in this respect.

The challenges for well-functioning prosecution services

The organisation of national prosecution services varies throughout the EU. While there is no single model in the EU for the institutional set-up of the prosecution service, or for appointment, dismissal or disciplinary procedures for prosecutors at different levels, institutional safeguards are required to ensure that prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions and without interference.

The Commission's 2020 Rule of Law Report notes a growing tendency to move towards more independent prosecution services. Also, the European Commission for Democracy through Law (the Venice Commission) has underlined, in its Rule of Law Checklist, that 'sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence'.

The COVID-19 pandemic has highlighted challenges for the prosecution service and underlined the importance of digitalised justice. The unprecedented situation further strengthened the need to have in place appropriate tools and infrastructure allowing for distance communication and secure remote access to the workplace for prosecution services. Adequate infrastructure and equipment are also needed for secure electronic communication between courts, prosecution services and legal professionals and institutions. Information and communication technology play an important role in supporting the work of judicial authorities and can significantly contribute to the quality of justice systems.

Finally, effective justice systems, including prosecution services, rely on adequate human and financial resources. In a number of Member States, the justice system has to cope with limited resources. The economic and social effects of the COVID-19 crisis have underlined the need to strengthen the resilience of the justice system, not least because the caseload can be expected to grow.

Questions for Ministers

There is a common interest for the Ministers for Justice to engage in this matter in the framework of the Council and to start reflecting on possible ways to address existing and future challenges. The exchange of views on prosecution services could be the beginning of further and more targeted discussions. The forthcoming 2021 EU Justice Scoreboard and the 2021 Rule of Law Report could be used as a basis for more specific debates of this kind.

In the context of a dialogue on justice-specific topics on the rule of law, Ministers for Justice are invited to exchange views on the following questions:

- *What, in your view, are the key challenges to a well-functioning prosecution service?*
- *How could the Ministers for Justice in the JHA Council further engage in a more specific discussion on this topic?*