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## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
To: Delegations  
Subject: Outcome of proceedings of the meeting of the Working Party on  
Cooperation in Criminal Matters on 11 December 2019

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### 1. Adoption of the agenda

The agenda was adopted as set out in CM 4935/19.

The Presidency reaffirmed that items 4 and 5 would be dealt with in the presence of representatives of Norway and Iceland, item 8 in the presence of a representative of the Fundamental Rights Agency (FRA), item 10 in the presence of a representative of the Genocide Network, item 11 in the presence of a representative of the European Data Protection Supervisor (EDPS) and that representatives of Eurojust and the European Judicial Network (EJN) would be present during the entire meeting.

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

### – Guidelines and editable pdf version of the forms annexed to the EIO Directive

Subject to some refinements, the Working Party agreed to the guidelines and editable pdf version of the forms annexed to the EIO Directive, as set out in 13775/19. The texts as agreed will be distributed in a separate document. The Commission recommended that Member States inform their competent authorities about these guidelines and editable forms and encourage their use, both in practice and during any relevant teaching activities.

### – Recent developments and practical application - Exchange of views

#### = CJEU judgment in case C-324/17 (Gavanozov)

The Presidency presented its paper, as set out in 14497/19. The Presidency observed that the Court of Justice of the European Union (CJEU) in its judgment in case C-324/17 had taken a different avenue than the one which had been proposed by the Advocate General, and which was heavily criticised by some Member States in the June COPEN meeting (see 12149/19, point 4.ii).

In the ensuing discussion, it was observed that the CJEU had rephrased the questions posed by the Bulgarian judge, and that the same questions might therefore arise again in the future.

#### = Joint Note by Eurojust and the European Judicial Network on the practical application of the European Investigation Order

Eurojust and the European Judicial Network (EJN) presented their note on the practical application of the European Investigation Order, as set out in 11168/1/19 REV 1.

### 3. e-Evidence Digital Exchange System

The Commission presented the e-evidence digital exchange system as it currently stands. The Commission observed that, while the system was initially designed for the European Investigation Order (EIO), it was envisaged that its use could be extended to other instruments, such as the European Arrest Warrant.

### 4. Agreement of 28 June 2006 on the surrender procedure between the Member States of the European Union and Iceland and Norway

#### – Practical matters following the entry into force on 1 November 2019

The Presidency presented its paper 14499/19, which signals *inter alia* that there are differences, as regards 'in absentia' judgments, between the Arrest Warrant as annexed to the EU-ISL-NOR Surrender Agreement, and the European Arrest Warrant used under FD 2002/584/JHA, as modified by FD 2009/299/JHA.

The Commission indicated that the SIS would be used for the surrender procedure with Norway and Iceland after the entry into force of the Agreement. The updates would be mainly procedural and the changes minor. The Commission was looking forward to receiving feedback from Member States within the experts group.

Norway and Iceland stated that they aimed to apply the EU-ISL-NOR Surrender Agreement in a practical manner, and that under this Agreement they would also accept receiving and executing *European Arrest Warrants* in the form as amended by FD 2009/299/JHA.

The EJM referred in this respect to footnote 1 under the Arrest Warrant as annexed to the EU-ISL-NOR Surrender Agreement, which states that the EAW shall be considered as 'equivalent' to the Arrest Warrant.

The idea was brought up by few delegations to consider amending the Agreement in order to bring it in conformity with the current rules of the FD 2002/584/JHA, relating to ‘in absentia’ judgments, as modified by FD 2009/299/JHA. Norway stated that it would accept Arrest Warrants / EAWs in the following languages: Norwegian, Swedish, Danish and English.

Iceland stated that it would accept Arrest Warrants / EAWs in the following languages: Icelandic and English.

Both Norway and Iceland indicated that they would act upon Arrest Warrants / EAWs that were submitted through the SIS, and that they would not require a physical copy to be submitted. Norway stated that, where appropriate, a translated EAW should be sent within one week (7 days).

Norway also pointed to a possible problem relating to Article 5(1)(f) and Article 8(3) of the Surrender Agreement, due to the fact that Norway is not part to FD 2008/909/JHA on mutual recognition of custodial sentences and not all EU Member States are party to the Council of Europe Convention on the International Validity of Criminal Judgments.

RO stated that it is currently reviewing its declarations and will submit them soon. This is due to a change in legislation, which allows for requests issued and executed under the EU-ISL-NOR Surrender Agreement to be dealt with following the same procedure as regards European Arrest Warrants.

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

### **– Recent CJEU judgments and application of existing case law - Exchange of views**

The Presidency presented its paper on the CJEU judgments in case C-489/19 PPU (NJ) and C-128/18 (Dorobantu), as set out in 14498/19.

As regards the Dorobantu case, the Commission made reference to the implicit invitation by the CJEU to establish minimum standards on detention conditions on the basis of Article 82(2) TFEU. The Commission wanted to hear Member States' opinions on this matter and wanted to know whether, taking into account the developments in the case law (*Aranyosi, ML, Dorobantu, ECtHR judgment in Romeo Castaño v. Belgium*) and the launch of the FRA database on detention conditions, there was still a need to develop guidelines or a common working methodology in this area.

Eurojust and the European Judicial Network presented their paper on the impact of the CJEU judgments of 27 May 2019 in joined cases C-508/18 (OG) and C-82/19 PPU (PI) and in case C-509/18 (PF), as set out in 10016/1/19 REV 1 + COR 1.

Further to the ensuing discussion, Eurojust and the EJM were invited to update their paper in the light of the recent judgments of the CJEU, and of those to be pronounced on 12 December 2019.

The Commission indicated that they had received notifications about changes in national legislation from BG, DE, LT and NL. The Commission would appreciate receiving information from DK as well.

DE presented its paper on the application of the CJEU judgment in case C-182/15 (Petruhhin), as set out in 14500/19, and AT presented its paper on the application of the CJEU judgment in case C-247/17 (Raugevicius), as set out in 14568/19.

As regards the DE paper, the Commission drew the attention of delegations to the recently introduced case C-897/19 PPU (request for a preliminary ruling from HR), which concerns the question of whether the Petruhhin mechanism also applies to non-EU Schengen countries.

As regards the AT paper, the Commission considered that there remained many open questions. The issue of informing the Member State of nationality was not relevant in the *Raugevicius* case, because it concerned the execution of a sentence rather than a surrender for the purpose of prosecution. The Commission proposed that there should be a joint declaration by the Council and that the Commission could bring the matter up at the next CoE/CATS meeting.

RO referred to the discussions that had taken place on these issues in December 2018 (see 6665/19, points 2 and 3), stating that the position had not changed in respect of the issue of consent of the extraditable person (Petruhhin), while the *Raugevicius* judgment is quite difficult to apply into practice. Further reflection would be needed.

The Presidency invited the Member States that so wished to submit replies in writing after the meeting.

– **Guidelines for deciding on competing requests for surrender and extradition**

Eurojust presented its paper on 'Guidelines for deciding on competing requests for surrender and extradition', as set out in 13301/19. The paper had been revised in the light of new developments and experience, deriving particularly from case work by Eurojust.

– **Statistics: application in practice and a new online tool for submitting data**

The Commission explained that it was setting up an online tool that would enable Member States to submit data and statistics to the Commission. According to the Commission, more information on this issue would be provided in writing, probably at the beginning of 2020.

**6. 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**

The Commission presented its handbook on Framework Decision 2008/909/JHA, which was issued on 29 November and published in OJ C 403, 29.11.2019, p. 2–62.

The Commission underlined that it had avoided providing an interpretation of provisions of the Framework Decision in the handbook, since this was a task for the CJEU. The Commission signalled that within EUROPRIS, the network of directors of prisons in the European Union, regular discussions were held on the manner in which the Framework Decision could best be applied.

**7. Presentations by the European Judicial Network (EJN)**

The EJN presented conclusions from its 52nd Plenary Meeting (Bucharest, 26-28 June 2019) on the issues of ‘Current developments on the application of the EAW’ (14400/19), ‘Mutual recognition’ (14501/19) and the ‘EIO’ (14502/19).

The EJN also presented conclusions from its 53rd Plenary Meeting (Helsinki, 20-22 November 2019) on the ‘EAW’ (14503/19).

**8. Presentations by the Fundamental Rights Agency (FRA)**

The representative of the FRA presented two reports: 'Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings', set out in 12802/19, and 'Focus report and online database on criminal detention conditions in the European Union: rules and reality', set out in 14504/19. She also informed about a new database on detention conditions, which had gone online on the same day (<https://fra.europa.eu/en/databases/criminal-detention/criminal-detention/home>).

The Commission thanked the FRA for the presentation and for the work carried out. The Commission referred to its report on the implementation of Directive 2013/48/EU on the right of access to a lawyer, which had been published simultaneously with the FRA report. The Commission also reminded Member States of the importance of the timely and correct implementation of all six Directives on procedural rights.

As regards the FRA's database on detention conditions, it was underlined that this database should be kept up-to-date in order to be useful and retain added value.

## 9. Victims' rights

The Commission provided a summary of the proceedings at the conference on Victims' Rights, which took place on 6 November 2019. The Commission noted that the following conclusions were drawn from this conference:

- ensuring more effective ways of communicating with victims;
- providing for genuine training activities that considerably change the approach to victims;
- strengthening cooperation and coordination activities that break down silos (at EU and national levels);
- strengthening protection of victims – notably the most vulnerable victims, including victims of gender-based violence and victims of other crimes committed with a discriminatory motive;
- ensuring high quality support services guaranteed by standards and evaluation schemes;
- ensuring that victims are supported and protected when claiming compensation;
- ensuring policy making based on reliable and comparable data and funding;



- the international dimension of victims' rights - by taking care of the EU nationals/residents victimised in third countries and by ensuring non-discriminatory access to justice for all persons victimised in the EU – independently of their residence status.

The Commission said that these conclusions would be taken into account during the Commission's future work on victims' rights.

#### **10. Presentation/information by the Genocide Network**

In relation to the 27th meeting of the Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network), which was held in The Hague on 6 and 7 November 2019, the Secretariat of this Network presented the report of this meeting, as set out in 14506/19, and the conclusions of this meeting, as set out in 14507/19.

A central theme at the meeting was cumulative prosecution of 'foreign fighters', returning from the armed conflict in Syria and Northern Iraq to EU, for terrorism related offences and war crimes, crimes against humanity and genocide.

The Commission thanked the Network for the presentation and for the work carried out.

#### **11. Presentation by the office of the European Data Protection Supervisor (EDPS) about its (future) supervisory role for Eurojust and the EPPO**

Representatives of the European Data Protection Supervisor (EDPS) provided an explanation of the future supervisory role of the EDPS as regards Eurojust and the EPPO. The EDPS indicated that it envisaged inspecting Eurojust in autumn 2020. The EDPS drew the attention of delegations to the usefulness, for the Council, of the supervisory experience of the EDPS in the JHA field in the context of any review of the data protection framework in this area.

12. **Plans of the incoming Croatian Presidency**

The Croatian delegation presented its plans for the upcoming semester, during which it would hold the Presidency of the Council of the European Union.

13. **AOB**

There was no item under this agenda point.

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