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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Outcome of proceedings COPEN meeting 16 December 2016

1. Adoption of the agenda

The agenda was adopted as set out in doc. CM 5063/2/16 REV 2. However, following a request of the Commission, it was decided to deal with point 7 immediately after point 2.

2. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

The DE delegation presented the work on the draft forms and agreement, as carried out by a group of experts of DE/NL/PL/FI together with the Commission (doc. 14898/16). The DE delegation underlined that the forms, which should be made available in all languages and be published on the EJM website, could substantially improve cooperation between judicial authorities and save translation costs.

Delegations generally welcomed the work carried out by the experts group. Some delegations considered, however, that the forms could be made clearer and more succinct, or even merged together (e.g. forms 2 and 4). It was also observed that due attention should be paid to compatibility with e-justice, and some delegations referred to possible problems of interaction with their national legal systems. As regards the draft agreement presented by PL, the question was raised whether this would fall within the scope of the Framework Decision.

The Presidency invited Member States to present any comments in writing to the Council General Secretariat by **Friday 27 January 2017**. The comments will then be forwarded to the experts group and to the Commission. On the basis of the comments, the draft forms will be reviewed and be presented for a new discussion at a later meeting.

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

The CZ delegation presented the paper by the CZ and DE delegations containing questions regarding recent decisions of the Court of Justice of the European Union (doc. 15002/16).

As regards the questions under A, regarding "judicial authority", the SE and LT delegations indicated that the problems indicated in the paper had in the meantime been addressed.

SE stated that in Sweden EAW's were not anymore issued by the police, and that as from Monday 19 December 2016 new rules would come into force, as a result of which old EAW's, issued by the police, would be replaced by new EAW's issued by prosecutors.

LT stated that in 2013 already, its law had been changed so that the Ministry of Justice would not anymore issue EAW's. Old EAW's, issued by the said Ministry, are in the process of being replaced by new EAW's issued by courts. This process takes into account the principle of proportionality and statute of limitation.

FI also indicated that its law was in the process of being changed. In the meantime, the practice that EAW's are issued by the criminal sanction agency has stopped.

As regards the questions under B, regarding the judgment in the Petruhhin case (C-182/15), some delegations observed that in case the person concerned consented to be extradited to a third country, it should not be necessary to proceed to consultations with the Member State of his/her nationality. Such consultations could only be imperative, it was said, in case the person so requested.

Several delegations also observed that there was a need to impose a deadline on the Member State of nationality to respond to consultations, so as to limit the time spent in detention in the Member State which received the extradition request.

Further, it was suggested to draw up a list of authorities of the Member States that could be consulted as authorities of the Member State of nationality in application of the judgment.

Almost all delegations observed that the judgment raised various issues and needed to be further clarified; it was therefore welcomed that additional preliminary questions had been posed to the CJEU.

The Commission offered organising an experts meeting in order to discuss the subject more in detail, in particular as regards the application of the system of EAW.

The Presidency concluded that it would be appropriate to return to this issue in the near future.

4. Alerts pursuant to Article 26 of the SIS II Decision - practical issues following a hit

The Presidency drew the attention of the delegations to the issue set out in doc. 13210/16, doc. 13210/16 ADD 1 and doc. 15311/16, and – on request of delegations – promised to keep them up-to-date regarding any developments.

5. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

The Commission informed that it did not plan to organise further experts' meetings before the entry into application of the Directive on the European Investigation Order in May 2017. Nor were the preparation of a handbook or of guidelines envisaged at this early stage.

The Commission invited all Member States to notify the national implementation measures to the MNE database as soon as the implementation is completed, without waiting for the implementation deadline. The Commission also stressed that it is important to notify the necessary practical information provided for in the Directive (notably about the contact points and the languages accepted by Member States) to the e-Justice portal ahead of the implementation deadline to make the system operative in time. The information from Member States will be communicated to the EJM for publication.

EJM provided an explanation concerning its table regarding the state of play of the implementation of the Directive, as set out in doc. 15007/1/16 REV 1. EJM also said that it wanted to assist pro-actively with the implementation of the Directive, e.g. by providing guidance on how to fill in the EIO form and by being involved in drafting a handbook. EJM also said that it would put this issue on the agenda of its meeting in June 2017 in Malta.

Several Member States indicated that they were further advanced in their implementation process than it was shown in the table referred to above. The question was asked whether the Commission could produce a list of acts that would be replaced by the Directive. The question was also asked whether there was a report of the useful implementation meeting organised by the Commission in Spring 2016, and whether the Commission could organise one more implementation meeting in the near future (e.g. in February or March 2017, in due time before the deadline for implementation of the Directive would expire).

The Commission took note of the questions and stated that it would look into them. It would in particular look into the possibility and advisability of organising another experts' meeting before the implementation deadline.

6. Implementation of the procedural rights Directives, in particular Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer

The Commission observed that while the deadline for implementation of the Directive has expired on 27 November 2016, only 12 Member States have notified the Commission of their implementation measures, three of which as partial implementation. The Commission observed that this is an important Directive, and it therefore urged the remaining Member States to notify their implementation measures as soon as possible. The Commission underlined that it would not refrain from taking appropriate measures in accordance with the Treaty in case of persistent non-notification.

7. Agreement of 20 November 2009 between the European Union and Japan on mutual legal assistance in criminal matters

The Commission presented its report set out in doc. 15008/16. Since the report was distributed the day before the COPEN meeting, delegations were not able to present comments at this stage.

The Presidency invited Member States to submit any comments in writing to the Council General Secretariat by **Friday 27 January 2017**. At the same time, Japan will be invited to present comments.

EJN alerted Member States to the very useful fact-sheet presented by Japan in relation to the EU-Japan MLA Agreement (doc. 15481/16), which is available on the EJN website.

8. Review of the Agreement of 25 June 2003 on mutual legal assistance between the EU and the USA

The Commission indicated that 1 million euros had been made available for training under the 2016 Annual action Programme for the Partnership Instrument to finance in 2017 targeted action to improve EU-US cooperation on cross-border access to electronic evidence. These funds could notably be used for enhancing knowledge on the probable cause test.

The Commission also drew the attention of delegations to further discussions with the US at technical level in the framework of the EU-US cybercrime working group, which would come together for the first time in February 2017.

9. Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

The Presidency reminded that three delegations (DE/IE/IT) still have to submit their notifications and declarations under the EU-IS-NO agreement. DE and IT explained where they stand in the process of submitting these texts.

The notifications and declarations that have already been submitted by Member States are set out in doc. 15342/1/16 REV 1. Member States that wish to update their texts are kindly invited to inform the Council General Secretariat thereof.

The agreement can only enter into force when the notifications of all participating Member States and of Iceland and Norway have been deposited with the Treaty office. While Norway has already informed the Treaty office of its consent and notifications/declarations, Iceland still has to do so.

10. Report of the Conference 'Ensuring cross-border justice for all in the EU: sharing practices and experiences from the ground' (9 – 10 November 2016, Bratislava)

The Presidency presented the report of the conference as drawn up by the Fundamental Rights Agency, "FRA" (doc. 15338/16). Some Member States expressed serious concerns on this report. The question was raised whether the report actually reflected the proceedings and conclusions of the conference, or whether it was more an expression of the policy-line of the FRA. The question was also put whether the report fell within the mandate of the FRA.

It was observed that the FRA in its report (see e.g. the second conclusion) seemed to ignore that mutual recognition is based on mutual trust. In principle, such trust should not be derogated from on the basis of a human rights test by the executing authority when such test is not foreseen in the instrument concerned.

The Presidency said that it would convey the concerns of the Member States to FRA.

11. Report of the 47th Plenary Meeting of the European Judicial Network (21 – 23 November 2016, Bratislava)

The EJM provided information on its 47th meeting. Some Member States wondered why the EJM also had contact points in countries on the Balkan like Kosovo, which were not recognised by all Member States. EJM responded that the organisation had agreed to look at this matter from a practical point of view: since a majority of its members wanted to have contact points in these countries in order to foster cooperation in criminal matters, it was decided to have such contact points. This would, however, not imply any sort of change regarding the recognition of these countries.

12. Report of the meeting of the European Network for Victims' Rights (21 November 2016, Bratislava)

The Presidency provided information on the meeting on victims' rights (doc. 15333/16).

13. AOB

No subjects were dealt with under this point.
