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INFORMAL MEETING OF THE JUSTICE AND HOME AFFAIRS MINISTERS

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Discussion paper

The future of judicial cooperation in criminal matters within the common judicial area of the European Union

I. Introduction

Judicial cooperation in criminal matters has developed considerably in the European Union since the European Council of Tampere (1999) decided that mutual recognition should become the cornerstone of such cooperation.

Nowadays, the EU has a comprehensive legal framework in the area of judicial cooperation in criminal matters, founded on shared values regarding the rule of law and fundamental rights. Instruments based on the principle of mutual recognition constitute the core of this framework.

Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States remains one of the most efficient legal instruments in this area. Some of the various other legal instruments are used relatively often (e.g. Framework Decision 2008/909/JHA on custodial sentences), and some are used rather rarely (e.g. Framework Decision 2009/829/JHA on supervision measures).

Directive 2014/41/EU regarding the European Investigation Order in criminal matters replaces conventional mutual legal assistance with a cooperation mechanism based on mutual recognition as regards, in particular, obtaining of evidence. Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders and the new proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters will further complement the EU's mutual recognition instruments for judicial cooperation in criminal matters.

II. Evaluation

The time seems ripe to undertake an evaluation of the current framework in the field of judicial cooperation in criminal matters, in order to gauge what has been achieved so far, assess whether there are any deficiencies or gaps, and examine how these could be addressed in an efficient manner.

Under the Austrian Presidency, the Council already focused on mutual trust as a condition for mutual recognition, and issues related thereto. To this end, on 7 December 2018, the Council adopted conclusions on 'Promoting mutual recognition by enhancing mutual trust' (OJ C 449, 13.12.2018, p. 6).

This paper aims to address other aspects of the evaluation of the framework for judicial cooperation in criminal matters in the European Union, in respect of which the Presidency invites Ministers to share their views.

After an initial evaluation by Ministers, the Presidency intends to discuss the issues concerned at other (technical and political) levels. Based on the input thus collected, the Presidency aims to present a report to the JHA Council in June 2019, so as to help future presidencies to continue work on this important matter.

III. Topics for debate

a) Deficiencies in existing mutual recognition instruments

Some of the existing mutual recognition instruments are rarely used, or at least are used less frequently than intended. It would seem worthwhile to examine the underlying reasons for this, as well as whether these instruments have deficiencies that could and should be addressed in order to make them more effective.

It may be noted that relevant information in this context is also gathered in expert reports, reports on previous mutual evaluations, and documents drawn up by Eurojust, the EJN and other relevant networks. The intention is that the ninth round of mutual evaluations will also assess four mutual recognition instruments, so a lot of up-to-date information will be obtained in that context, too.

b) Identifying gaps in the current legal framework

Although many areas have been addressed in the framework of judicial cooperation in criminal matters in the European Union, the Presidency wonders whether the current legislative framework is exhaustive, or whether there are still some gaps that need to be filled.

In the Presidency's view, recent developments have shown that there is a need to examine the advisability and feasibility of a legislative proposal on the transfer of criminal proceedings, in order to avoid impunity as a result of a country's refusal to execute an EAW on the basis of a possible infringement of human rights. There may also be other gaps that need to be addressed, e.g. in the field of procedural rights.

c) Action needed in view of the case-law of the Court of Justice of the European Union (CJEU)

In recent years, the CJEU has rendered a lot of judgments in the field of judicial cooperation in criminal matters, in particular as regards the EAW. It may be advisable to examine whether this case-law requires any action to be taken by the Union legislator, such as by updating existing mutual recognition instruments.

d) Digitalisation

Last but not least, there is the aspect of digitalisation. In a European Union where electronic communication is increasingly used instead of postal and fax services, digitalisation will be a necessity in the years to come. A lot of work has already gone into improving the situation. This includes the (new) 2019-2023 Strategy on European e-Justice[1], which is the overarching policy document on digital justice, including criminal justice. In the Presidency's view, a very important step forward is the e-Evidence Digital Exchange System, which would be a very important tool for EU practitioners. In addition, Eurojust has recently called for moves towards 'Digital Criminal Justice in the EU', an idea largely supported by ministers. This initiative should help Eurojust modernise its case management system, allow synergies with the existing systems of JHA agencies (Europol) and future systems (EPPO), and ensure interoperability between those agencies and JHA-related IT systems, within the broader context of developing European e-Justice.

IV. Questions

In the light of the above, Ministers are kindly invited to debate the following questions:

1. Which mutual recognition instruments do not work well in practice? What are the reasons for this? Do you see any deficiencies in the instruments that could and should be addressed in order to make them more effective?

2. Are there any gaps in the current legal framework? If yes, is there a need for new legislation? In which areas?

3. Is there a need to update certain mutual recognition instruments in order to take into account recent developments in the case-law of the CJEU?

4. Are (further) measures needed in the field of EU judicial cooperation with a view to digitalisation, and if so, what measures?

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[1] ST 12794/18 REV 3