



**Brussels, 9 November 2017
(OR. en)**

14131/17

**CATS 111
JAIEX 96
RELEX 959
COPEN 337
DROIPEN 153**

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	13312/17
Subject:	EU (CATS) - Council of Europe meeting, Strasbourg, 23 October 2017

The Estonian Chair of CATS together with representatives of the incoming Bulgarian Presidency, Commission and the EEAS met with representatives of the Council of Europe (CoE) in Strasbourg on 23 October 2017. A list of participants to the meeting is set out in the Annex to this note. Issues of common interest were discussed and information was exchanged about the most recent developments in the areas concerned.

In its introductory remarks the CoE informed that rule of law and corruption will be a cross cutting theme in the CoE next year, linked also to the recent murder of Maltese journalist Daphne Caruana Galizia. It is expected that a reference to this end is made in the next annual report of the Secretary General of the Council of Europe. It was also highlighted that the Rules of Procedure of the Parliamentary Assembly were amended recently to include stricter anti-corruption safeguards, based on a specific report of GRECO. In this context it was underlined that the EU accession of GRECO remains an open issue.

Furthermore, a platform for cooperation with Internet companies was set up granting them an observer status in the CoE meetings, aligning it with the status of NGOs. A signing ceremony will take place on 8 November 2017 in Strasbourg on the occasion of the World Forum for Democracy 2017.

A reference was made to the budgetary issues experienced by the CoE following the suspended instalments of the Russian federation to the organisation budget in 2017.

Presidency highlighted that the results of the discussion will be incorporated in the preparations for the next CATS meeting on 13 November 2017.

Counter-terrorism - recent developments

Presidency recalled that the new Directive on combating terrorism was adopted in March 2017 and the transposition deadline expires on 8/09/2018.

COM referred to the proposal for the conclusion on behalf of the EU of the CoE Convention on the Prevention of Terrorism and its Additional Protocol, as part of the CT package published on 18 October 2017. Presidency confirmed their preparedness to work towards swift conclusion of the accession process.

COM referred further to the transposition workshops it organises to support the implementation by the MSs of EU instruments. The next workshops on the Terrorism Directive will take place on 26 October and 10 January. The issues of victims, humanitarian action, training for terrorism, travel offences and measures against terrorism related content online will be discussed at the October workshop. Input of CoE will be welcome in this context.

It was underlined that EU action on tackling illegal content online is based on a voluntary approach with service providers¹. A parallel work with civil society, including allocating funding to that effect is pursued, to encourage developing of positive counter narrative. In this respect there is a concern with the ongoing work in the CoE on a draft Recommendation of the Committee of Ministers on the roles and of responsibilities of Internet intermediaries, which might put into cause the voluntary approach.

¹ Most recently Communication on tackling illegal content online of 28 September 2017 (COM(2017) 555 final)

CoE confirmed that the Committee of experts on internet intermediaries (MSI-NET) works on the draft Recommendation with the objective to present it for adoption by the Committee of Ministers in December. It was clarified that the draft is in line with the case law of ECHR, embedding a strong judicial control of the measures online to facilitate a rapid cooperation with providers.

CoE further noted a high ratification rate of the CoE Convention on the prevention of terrorism (39 ratifications to date). Increased ratification rates of the Additional Protocol are also expected (10 ratifications to date). Good level of implementation is observed.

CoE updated on the current CODEXTER activities. The Terms of Reference for 2018 -2019 will be possibly adopted in November. The conclusions from the 2nd international conference on terrorism and organised crime that took place on 21/22 September 2017 in Malaga, Spain provide useful insights on the work of the Committee on the links between terrorism and transnational organised crime. The draft recommendation on terrorists acting alone is under finalisation and due for approval by CODEXTER at the next plenary in the end of November. In the future the Committee will examine the possibility to develop a pan-European legal definition of terrorism, while building on existing instruments, such as the EU aquis.

As from 1/12/2016 a new 24/7 network on FTFs is running and operational. It is an important tool in preventive action. Regular meetings of the Contact points of the MSs are convened to improve efficiency.

Furthermore CoE informed about the new Convention on offences related to cultural property, which was open for signature in May 2017. CoE called for close contacts with the EU in the context of the announced initiative by the COM on new rules on trafficking of cultural goods.

The issue of returning foreign terrorist fighters was outlined as a main concern which will define the policy agendas across Europe.

Criminal justice in cyberspace: data retention and e-evidence

CoE updated on an increasing number of signatures and ratifications of the CoE Convention on Cybercrime from non CoE members. Recent efforts are devoted to developing closer relations with other international/regional organisations, where cooperation with Africa is strengthening in particular.

It was recalled that the recently adopted guidance note on production of subscriber information under Article 18 offers a more open interpretation of the principle of territoriality. In June 2017 T-CY agreed to start work on a new Protocol along 4 main themes: 1/ enhancing the efficiency of MLA, 2/ direct cooperation with foreign service providers regarding subscriber information, preservation requests, and emergency requests; 3/ framing existing practices on crossborder access to data; 4/ safeguards, including data protection.

Further to the first meeting of the T-CY Protocol Drafting Group in September, both the EU and CoE reiterate the need to pursue work in close cooperation on access of competent authorities to electronic evidence and to seek a broad consensus on these matters. Furthermore, the need to involve closer the private sector was identified by the drafting group. Drafting process is expected to last until the end of 2019.

Considering the high rate of direct requests by EU MSs to USA providers, the impact of the entry into force of the GDPR and the need for intermediary solutions will have to be assessed. CoE referred to the possibility to draw on the CoE Guidance note on Article 18 for a solution for WHOIS data under ICANN.

COM informed that it considers requesting a mandate from the Council to enter in negotiations of the T-CY Protocol on behalf of the EU. It also updated on progress in the context of the e-evidence expert process. Public consultation in view of the announced legislative initiative on e-evidence is open till 27 October 2017. The proposal is expected in the beginning of 2018.

Presidency updated on the current work on data retention in the context of the common reflection process in the Council. The state of play and next steps will be discussed at the December Council. COM confirmed the complexity of the issue following the 2016 Tele 2 Judgment of the Court and informed that no legislative initiative is envisaged at this stage.

European Public Prosecutor's Office – information

PRES informed about the formal adoption of the EPPO Regulation by the Council on 12 October 2017 under enhanced cooperation with 20 participating Member States. In the next 3 years work will focus on the setting up of the office, including adopting staff rules, putting in place a case management system, ensuring its interoperability with national systems, etc. The issue of the relations with non- participating MSs will need further consideration.

Commission clarified that a Communication on the extension of the mandate of EPPO, *e.g.* to terrorism is expected in the autumn of 2018, but the concrete action to that end is for the long term.

CoE Conventions

On 5 July 2017, the Committee of Ministers adopted the Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons. The Protocol will be open for signature on the occasion of the 73rd plenary meeting of the Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC OC) in Strasbourg on 22 November 2017. It is open for signature by the Parties to the Additional Protocol. The mother Convention and its Additional protocol are not open for signature by the European Union.

The Riga Protocol² entered into force on 1/07/2017. The new Convention on Offences relating to Cultural Property (CETS 221) was open for signature on 19/05/2017. The Convention is not open for the EU, but it was underlined that EU can play a very important role for encouraging MSs to accede.

The negotiations on the modernised CoE Convention 108 on Data Protection is ongoing in Strasbourg and are entering a decisive phase. By the end of November, where a vote in GR-J is expected it should become clear whether CoE member states move towards a Protocol to modernize the Convention or an entirely new legal instrument. The Presidency underlined the active engagement of the EU in the negotiations and reiterated the preference for continuing work on the Additional Protocol.

² Additional Protocol to the CoE Convention on the Prevention of Terrorism (CETS No:217)

Presidency also confirmed the EU commitment for the ECHR accession, while the Council is awaiting the Commission analysis on the remaining aspects of the CJEU opinion, in particular the analysis of CFSP aspects after the Rosneft case. It was recalled that on 12 October, the Council adopted conclusions on fundamental rights highlighting once again the importance of taking forward EU accession to ECHR.

Further to the signing on behalf of the Union of the Istanbul Convention³ on 13 June 2017, work on an EU Internal Code of Conduct is proceeding. The EE Presidency is planning to meet the GREVIO monitoring body of the Convention soon and considers the possibility to invite CoE representatives to FREMP once the discussions on the Code of Conduct are more advanced.

COM noted that further to the adoption of the Directive on countering money laundering by criminal law, possibly in 2018, the finalisation of the EU accession process to the Warsaw Convention⁴ could be expected.

CoE highlighted the impact of EU internal proceedings, including issues related to the scope and nature of EU competences, on the negotiations of CoE instruments. A reference was made to Recommendation 2114 (2017) of the Parliamentary assembly calling among others for "a consideration of the desirability of a European Union–Council of Europe memorandum of understanding on the participation of the European Union in Council of Europe conventions which could provide for general operating rules (such as voting rights, speaking rights, reporting, and financial arrangements)".

EU was asked to promote the ratification of CoE instruments by the Member States.

³ Convention on preventing and combating violence against women and domestic violence (CETS No.: 210)

⁴ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No: 198)

Migration - recent developments

On 19 May 2017 in Nicosia, Cyprus, the Committee of Ministers adopted an Action Plan on protecting refugee and migrant children (2017-2019). The process was facilitated by the Special Representative of the Secretary General on Migration and Refugees. The Action Plan proposes concrete support to member states at all stages of the migration process, with a special focus on unaccompanied children, and has three main pillars:

- ensuring access to rights and child-friendly procedures;
- providing effective protection;
- enhancing the integration of children who would remain in Europe.

The measures to be taken in protecting the refugee and migrant children include: new guidelines regarding age assessment and guardianship, alternatives to detention and a handbook on promoting child-friendly information and training on child-friendly procedures.

CoE underlined willingness to identify areas of common interests with the EU in this field and pursue specific initiatives in this context.

PRES highlighted that migration continues to dominate the agenda of the JHA Council as well as the agenda of the European Council. The focus of the latest discussion at the European Council in October was a comprehensive and pragmatic approach to ensure control of external borders, reduce migratory flows and decrease deaths at sea.

Furthermore, on 8 June Council (Justice and Home affairs) adopted conclusions on the protection of children in migration. Work continues on the reform of the Common European Asylum System as a matter of priority.

Rule of Law – information

PRES informed about the annual rule of law dialogue that took place in General Affairs Council on 17/10 on the topic of "Media pluralism and the rule of law in the digital age". The debate was sadly marked by the murder of the Maltese journalist Daphne Caruana Galizia. The CoE participation in the informal seminar on media pluralism was appreciated and encouraged in the future.

In October 2017, the CoE Parliamentary Assembly endorsed two reports entitled "The Rule of Law Checklist" of the Venice Commission" and "New threats against the rule of law in the member states of the Council of Europe - selected examples ". The Assembly decided to use the Checklist systematically in its work, particularly in the preparation of reports of the Committee on Legal Affairs and Human Rights and the Monitoring Committee.

CoE referred also to the Parliamentary Assembly Resolution 2161 (2017) raising a strong concern regarding the use of Interpol red notices recently. PRES informed that the issue will be discussed at the Senior Officials meeting EU-Interpol on 20 November 2017 in Brussels.

Update on recent developments

CoE informed about the recent activities of the PC-OC Committee⁵ operating under CDPC. It was outlined that at the last meeting in May, in the context of the implementation of the Action Plan on Combating Transnational Organised Crime, it was decided to establish 3 working groups to identify reservations to Council of Europe treaties creating obstacles to the fight against TOC and to promote their update or withdrawal where possible.

The preparation of a binding instrument as regards international co-operation on the management, the recovery and sharing of assets in consultation with the COP 198, will also be considered.

The online course on international cooperation in criminal matters developed jointly between the Council of Europe's Human Rights Education for Legal Professionals Programme (HELP) and the PC-OC, with the assistance of the European Judicial Training Network (EJTN), co-financed by the European union and the Council of Europe is now available free on line⁶.

The course explores fundamental principles of international judicial cooperation in criminal matters and a range of legal frameworks and legal instruments for cooperation, including relevant EU instruments - applied under a general consideration for human rights issues.

⁵ Committee of experts on the operation of European conventions on co-operation in criminal matters

⁶ <http://help.elearning.ext.coe.int/course/view.php?id=2040>

PRES informed on ongoing work on current criminal matters legislative files under negotiation in/by the Council.

Priorities of the incoming EU Bulgarian Presidency and the incoming CoE Committee of Ministers Denmark Chairmanship

The incoming Bulgarian Presidency will focus on the implementation of the Trio-programme, with priorities organised around three main themes: consensus, including European prospective of Western Balkans, competition with a focus on digitalisation and eGovernment, incl. cybersecurity and cybercrime and cohesion.

Priority will be given to the incoming proposal of the COM on access to electronic evidence in cyberspace, as well as on the setting up of EPPO. A large conference on eJustice, including e-evidence is planned for May 2018.

Other priorities concerns specific initiatives on combating terrorism, border security, migration with a special focus on interoperability of data systems.

CoE informed that the programme of the incoming CoE Committee of Ministers Denmark Chairmanship is currently under preparation.

Council of Europe

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