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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Informal video conference of the members of the Working Party on Judicial Cooperation in Criminal Matters (COPEN) on 8 December 2021 - Presentation by the Commission on points 4 and 5

Delegations will find attached the presentation used by the Commission on the issue of the proposals on digital criminal justice (points 4 and 5 on the agenda, see CM 5647/1/21 REV 1) at the informal video conference of the COPEN Working Party on Wednesday 8 December 2021.


European Commission
Digitalisation of justice
COPEN Meeting - 08 December 2021
European Commission
DG Justice and Consumers
Unit B1

I. Background

- September 2020: Final report of the Digital Criminal Justice study published
- December 2020: Communication on the Digitalisation of Justice
- Impact of COVID-19
  - Council conclusions on the impact of COVID-19
  - Eurojust report on the impact of COVID-19 on judicial cooperation in criminal matters

II. The Digitalisation of Justice package

On December 1, the European Commission adopted 3 legislative initiatives (consisting of 5 individual legislative instruments) in a package called “Security and Justice in the Digital World”:

1. Digitalisation of cross-border judicial cooperation
2. Digital information exchange in cross-border terrorism cases
3. Joint Investigation Teams collaboration platform

1. Digitalisation of cross-border judicial cooperation

To improve access to justice and the efficiency of cross-border judicial cooperation by:

- compulsory establishment of digital communication channel: court to court/parties to court;
- legal basis for videoconference for oral hearings;
- ensuring that electronic documents are not refused or denied legal;
- validity and acceptance of electronic signatures and seals.

IT solution

- Decentralised IT system – built upon e-EDES (e-Evidence Digital Exchange System) and Service of documents/Taking of evidence system.
- Underlying technical solution – e-CODEX.

2. Digital information exchange on cross-border terrorism cases

Background:

- 2015 Paris and 2016 Brussels attacks: need to improve judicial cooperation in terrorism matters became obvious
- September 2019: establishment of the European Judicial Counter-Terrorism Register at Eurojust
- Objective: to identify links between ongoing and concluded investigations and court proceedings in cross-border terrorism cases
- Legal basis: Council Decision 2005/671/JHA



Key objectives of the initiative

- To improve the functioning of the European Judicial Counter-Terrrorism Register, to enable Eurojust to identify links between cross-border terrorism cases and to provide proactive feedback and support to Member States' competent authorities.
- To upgrade Eurojust into an digital agency, better equipped for the 21st century. This includes to digitalise the data exchange between Eurojust and the Member States' competent authorities.
- To clarify access of 3rd country Liaison Prosecutors to the Eurojust Case Management System (CMS).

Key measures of the initiative

- Strengthening the obligation to share information in terrorism cases
- Modernisation of the Eurojust CMS to integrate the European Judicial Counter Terrorism Register and its functionalities (especially link identification)
- Set-up of (obligatory) secure digital communication channel(s) between competent authorities and Eurojust
- Clear legal basis in the Eurojust Regulation for cooperation with third country liaison prosecutors



Two legislative acts

A regulation amending Regulation (EU) 2018/1727 and Council Decision 2005/671/JHA:

- Detailed substantive amendments (described in the following)
- Carving-out the provisions relating to Eurojust from Council Decision 2005/671/JHA

- A seperate directive aligning Council Decision 2005/671/JHA with the Law Enforcement Directive

Amendments to the Eurojust Regulation – obligations deriving from Council Decision 2005/671/JHA

- The obligation to share information in terrorism cases with Eurojust:
  - More precise as to what information should be shared
  - Obligation reinforced (e.g. biometric data can be shared)
  - Integrated into Eurojust Regulation, providing a coherent legal framework
- The obligation for a national correspondent for terrorism matters included in the Eurojust Regulation



Amendments to the Eurojust Regulation – data processing environment

- Deleting technical details on the current CMS from the Eurojust Regulation
- Creating the possibility to establish a data base for data on counter-terrorism cases and serious cross-border crime under Article 21 EJR within the CMS
- Longer retention periods for CT data
- Data processing remains possible after cases is concluded in CT cases

Amendments to the Eurojust Regulation – establishment of secure communication channels

- Obligatory use of secure digital communication channels for data exchanged between competent authorities and Eurojust
- Underlying technical solution – e-CODEX
- Exception in case secure digital channels are unavailable

Amendments to the Eurojust Regulation - cooperation with third country liaison prosecutors

- Legal basis for (limited) access of third country liaison prosecutors to the Eurojust Case Management System
- Enables Member States and third countries to exchange data securely and in full compliance with data protection standards

Timeline

- Depending on the negotiations, adoption in 2023 expected
- Modernisation of the Eurojust Case Management System over two years (2024/ 2025)
- Implementation of secure communication channels: 2 years for the implementing act, another 2 years for implementation

Estimated costs

- Modernisation of the CMS:
  - Estimated costs to modernise the Eurojust CMS and operational costs for 2 years: 31 Mio EUR
  - Eurojust already received 9,5 Mio EUR budget transfer in advance to start renovation of the CMS end of 2021
  - Additional 21,5 Mio EUR needed under the LFS
- Additional staffing needs: 25 FTEs (11, 3 Mio EUR under the LFS)

3. Joint Investigation Teams collaboration platform (JITs CP)

Background:

- JITs are one of the most successful tools for cross-border investigations and prosecutions in the EU
- Practice shows they have been facing several technical difficulties (confirmed by opinions of stakeholders, the second evaluation report on JITs and the Digital Criminal Justice study)
- A digital tool is missing to allow for secure communication and exchange of data



Key objectives of the initiative

To provide a dedicated IT platform in order to increase the efficiency and effectiveness of JITs, in particular by:

- Ensuring that information and evidence is shared more easily.
- Ensuring easy and secure communication tools.
- Facilitating the joint daily management of a JIT (e.g. planning, coordination, traceability of shared evidence, cooperation with third countries, etc.).

Key characteristics of the JITs CP

- Voluntary
- Composed of a centralised system as well as a mobile application
- Covering operational and post-operational phases of a JIT
- Consisting of separate (non-interoperable) spaces specific to each JIT
- Easily accessible over the internet through desktops and mobile devices
- Implemented and maintained by eu-LISA

Main functions of the JITs CP

- Secure, untraceable communication stored locally at the devices of the users
- An upload/download system to exchange information and evidence
- Evidence traceability
- Functions related to daily management of the JIT
- Support for the administrative and financial processes
- Various technical capabilities

Access rights to the JITs CP

- The key role of the JIT space administrators
- Access rights deriving from the JIT agreements
- Access to individual JIT spaces can be granted to representatives of the Member States, third countries, competent Union bodies, offices and agencies (e.g. Eurojust, Europol, the EPPO, OLAF) as well as the JIT Secretariat.
- No access rights to JIT spaces for eu-LISA

Implementation timeline
(subject to the negotiations with the co-legislators)

- Collection of business requirements in 2022/2023
- Tender procedures and hiring of staff in 2023/2024
- Implementation kick-off in 2024
- Start of operations beginning of 2026 at the latest

Estimated costs

- Development cost – €8.65 million
- Annual maintenance cost - €1.7 million
- Staff for eu-LISA – 10 FTEs in total
- Staff for Eurojust/JIT Secretariat – 3 FTEs in total

Thank you

