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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	Mutual recognition in criminal matters - Conclusions - Adoption

At the meeting of CATS on 21 November, delegations broadly welcomed the draft conclusions on mutual recognition as submitted by the Presidency (14194/18).

In the light of the comments made by several Member States and the Commission, the Presidency has redrafted the conclusions, see the text in the Annex. Changes are marked by **bold** type and (...).

The Council is invited to adopt these conclusions and decide to publish them in the *Official Journal of the EU*.

(draft)

Council conclusions

'Promoting mutual recognition by enhancing mutual trust'

THE COUNCIL OF THE EUROPEAN UNION,

Recalling that in accordance with Article 82(1) TFEU, judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions;

Noting that in application of this principle, a competent authority in one Member State forwards a judgment or judicial decision to a competent authority in another Member State, which then executes that decision as if it was its own (subject to the applicable rules), **it being understood that there is a new approach in the e-evidence proposal**¹;

Affirming that the principle of mutual recognition is founded on mutual trust developed through the shared values of the Member States concerning respect for human dignity, freedom, democracy, equality, the rule of law and human rights, so that each authority has confidence that the other authorities apply equivalent standards of protection of rights across their criminal justice systems;

Emphasising that the right to a fair trial, including, inter alia, the requirement of judicial independence, is of cardinal importance for the effective protection of fundamental rights, as it guarantees the protection of all individual rights deriving from EU and national law and the safeguarding of the Member States' common values as set out in Article 2 TEU, in particular the rule of law;

¹ COM/2018/225 final - 2018/0108 (COD) (Regulation) and COM/2018/226 final - 2018/0107 (COD) (Directive).

Noting that various issues – **notably** of a practical (...) or policy nature – can impair mutual trust, and that an ongoing effort is therefore required to foster and enhance this trust;

Considering that such issues relate, *inter alia*, to differences in the implementation and application of Union law, the rule of law, and areas with a particular sensitivity with regard to fundamental rights, such as detention conditions and the length of pre-trial detention;

Recalling that at their informal meeting on 12 and 13 July 2018, Ministers discussed recent developments that pose challenges to the principle of mutual recognition, as well as relevant case-law of the Court of Justice of the EU (CJEU);

Recalling moreover that at the CATS meeting of 18 September 2018, delegations discussed a Presidency paper setting out the problems and obstacles that arise in relation to the application of mutual recognition instruments as well as proposals for potential action (11956/18);

Recalling finally that at the meeting of the Council (Justice and Home Affairs) on 11 October 2018, Ministers provided input on best practices and action taken to enhance mutual recognition and mutual trust, and on practical and legal measures taken to address recent developments, in particular developments in the case-law of the CJEU and in the case-law of the European Court of Human Rights (12492/18);

HAS ADOPTED THE FOLLOWING CONCLUSIONS:

1. The **Member States** are reminded that the efficiency and effectiveness of EU mutual recognition instruments, in particular those that have the legal form of Framework Decisions or Directives, is to a large extent dependent on the relevant national legislation being drafted and adopted in line with those instruments;

2. The **Member States** are urged to note the importance of implementing the procedural rights Directives ² in a timely and correct manner with a view to guarantee the right to a fair trial;
3. The **Member States** should continue to ensure the independence and impartiality of the courts and of the judges, since this forms part of the essence of the fundamental right to a fair trial as guaranteed by the second paragraph of Article 47 of the Charter;
4. The **Member States** are reminded that in accordance with the case-law of the Court of Justice of the European Union, a refusal to execute a decision or judgment that has been issued on the basis of a mutual recognition instrument can only be justified in exceptional circumstances, and taking into account that by virtue of the principle of primacy of EU law, Member States cannot demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law. As a consequence, any **case for non-execution** based on an infringement of fundamental rights should be applied restrictively, following the approach developed by the CJEU in its case law;
5. The **Member States** are encouraged to have legislation in place that allows, where appropriate, to make use of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded prisons;
6. The **Member States** and the **European Commission** are encouraged to promote continuous training of judges, prosecutors and other practitioners, including in the field of fundamental rights in criminal proceedings, as this can enhance the application of the EU instruments based on mutual recognition, to foster mutual trust amongst the European judicial area through the organization of judicial training seminars and exchanges, and to give due consideration to the adequate funding of training activities in this field at national and European level, especially the ones organised by the European Judicial Training Network (EJTN);

² Directives 2010/64, 2012/13, 2013/48, 2016/343, 2016/800 and 2016/1919 for the Member States bound by them.

7. The **Member States** are encouraged to designate practitioners – **which can be national contact points for the European Judicial Network (EJN)** – in their jurisdiction as specialists in judicial cooperation in criminal matters so that they can assist (...) other practitioners in the application of all relevant instruments, including EU instruments based on the principle of mutual recognition;
8. The **Member States** are encouraged, where possible with the support of EU financing, to promote exchanges between practitioners of different Member States and stimulate other contacts between such practitioners, as this can enhance mutual trust and promote the efficient application of the principle of mutual recognition;
9. The **Member States** are encouraged to share best practices to enhance mutual recognition and mutual trust, including in COPEN or in CATS;
10. The **Member States** are encouraged to establish (non-binding) guidelines on the application of the EU mutual recognition instruments so as to help practitioners understand how the national legislation implementing the EU instruments is to be interpreted and applied;
11. The **Member States** are **invited to** encourage practitioners to make full use of the possibilities of the EJN and Eurojust, in accordance with their respective mandates, to assist practitioners in handling judicial cooperation in criminal matters,
12. The **Member States** are **in particular** invited to encourage practitioners to use the practical tools for judicial cooperation and the (electronic) forms and certificates of mutual recognition instruments that are available on the website of the EJN, as this may facilitate the application of these instruments;

12a. The **Member States** are invited to encourage practitioners that act as executing authorities in mutual recognition procedures to enter into dialogue and direct consultations with the issuing authorities in other Member States **whenever this may be appropriate**, in particular before considering not to recognize or execute a decision or judgment that is sent in the context of such procedures;

13. The **Member States** are invited to ensure that the EJM Contact Points have the capacity to perform their tasks as EJM Contact Points along with their regular duties and tasks, as was highlighted in the Final Report of the of the Sixth Round of mutual evaluations (Recommendation No.7), so that the EJM can continue exercising its task effectively, including in the field of mutual recognition;

13a. The Member States who have made a declaration (reservation) in relation to a mutual recognition instrument are invited to verify whether such declaration can be withdrawn, so as to foster a uniform application of the instrument concerned;

14. The **Member States** are invited to promote the active participation of competent representatives in the conference on prison overcrowding that will be organised by the Council of Europe, with the support of the European Commission, on 24 and 25 April 2019, as well as in the conference on current challenges for the European penitentiary systems to be held under the Romanian Presidency of the Council of the European Union;

15. The **Member States** and the **Commission** are invited to set up as a matter of priority the e-Evidence Digital Exchange System as a secure way of sending the European Investigation Order and MLA requests and responses;

15a. The **Commission** is invited to make use of its competences, where appropriate, to ensure that the EU instruments on judicial cooperation in criminal matters and procedural rights are implemented in a timely and correct manner;

16. The **Commission** is invited to provide practical guidance on (...) the recent case-law of the CJEU, notably the *Aranyosi* case-law, as well as on where to find relevant sources for practitioners containing objective, reliable and properly updated information on penitentiary establishments and prison conditions in the Member States;

17. The **Council** invites the Member States to consider arranging for a translation of the Fact sheet of the Council of Europe on Detention conditions and treatment of prisoners into their official language and to offer such translations to the Council of Europe for publication on its website³;

18. The **Commission** is invited, in consultations with the Member States, to further develop and regularly update its handbook on the European arrest warrant, including by taking account of recent case-law of the CJEU and best practices for its correct application, and to develop handbooks on the other mutual recognition instruments once fully implemented by the Member States, e.g. the Framework Decisions on custodial sanctions⁴ and on probation⁵, as well as, in the future, the Directive on the EIO⁶ and the Regulation on freezing and confiscation orders⁷, so as to promote the correct implementation and application of these instruments;

19. The **Commission** is invited to communicate notifications by Member States on the EU mutual recognition instruments and other instruments relevant for judicial cooperation in criminal matters in at least one commonly understandable language of the EU to the EJN, **so that it can publish these on its website**;

³ AT commits itself to producing a translation of the Fact sheet of the CoE on Detention conditions and treatment of prisoners into German and offering this translation - after coordination with the other German speaking countries - to the CoE for publication on its website. The Presidency invites other MS to follow this example.

⁴ Framework Decision 2008/909.

⁵ Framework Decision 2008/947.

⁶ Directive 2014/41.

⁷ Regulation signed on 14 November 2018 and to be published in the *Official Journal of the European Union* on 28 November 2018.

20. The **Commission** is encouraged to continue organising meetings with experts and practitioners to discuss issues relating to mutual recognition, to step up the frequency and intensity of such meetings, if deemed useful, and to make the outcome of such meetings available to practitioners;

21. The **Commission** is invited to promote making optimal use of the funds (...) under the EU financial programmes, **in case they are made available**, in order to **strengthen and promote judicial cooperation between the Member States, including in order** to modernise detention facilities in the Member States and support the Member States to address the problem of deficient detention conditions, as this can be detrimental to the application of the mutual recognition instruments;

22. The **Commission**, the **Council** and the **European Parliament** are encouraged to draft instruments on mutual recognition, including the forms and certificates, in a more clear, precise and user-friendly way, and to seek more consistency in such drafting, so as to facilitate the application of these instruments by practitioners. Where appropriate, support should be requested from Eurojust and the EJM to that effect;

23. **Eurojust** is encouraged to continue its operational and strategic work in relation to mutual recognition instruments in order to facilitate the application of these instruments;

24. **Eurojust** and the **EJM** are invited to continue playing an active role in addressing obstacles for and identifying best practices in mutual recognition and to continue paying regular attention to instruments of mutual recognition in their meetings with practitioners;

25. The **EJM** is encouraged to continue improving its website with practical information on mutual recognition instruments, among other things, since this has proven to be a very helpful tool for practitioners;

26. The **EJTN** is encouraged to continue organising training on Union law, including on the relevance of the Charter of Fundamental Rights for the functioning of mutual recognition instruments in criminal matters, and exchanges between practitioners;

27. The **Council** is invited to designate the practical operation of certain mutual recognition instruments as the topic for the ninth round of mutual evaluations;

28. The **Presidency** is invited to continue devoting appropriate attention, including at political level, to the issue of mutual recognition and mutual trust, in particular by ensuring a regular exchange of views on this subject, so as to promote the application of the instruments based on the principle of mutual recognition.
