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| **RAPPORTEUR GROUP** | External relations | **GR-EXT(2019)3-rev** | 27 March 2019[[1]](#footnote-1) |

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| **Report of the 45th consultation meeting between the European Union’s Troika of the Article 36 Committee (CATS) and the Council of Europe**(Strasbourg, 30 November 2018)Document prepared by the Directorate General of Human Rights and Rule of Law (DGI)*Item to be considered by the GR-EXT at its meeting on 26 March 2019* |

At the 45th consultation meeting between the European Union’s Troika of the Article 36 Committee (CATS) and the Council of Europe in Strasbourg on 30 November 2018, the following themes were discussed:

**Criminal justice in cyberspace**

1. The Council of Europe (CoE) presented the latest developments in its work in the field of cybercrime: new accessions to the Budapest Convention(CoE Convention on Cybercrime) **-** Morocco and Paraguay, as well as ten countries preparing for accession; new discussion with the Commission to extend activities within the Eastern Partnership, the CoE´s “Cyber south” project with a focus on Algeria, Morocco and Lebanon and the First African forum on Cybercrime. During the recent plenary meeting of the Cybercrime Convention Committee (T-CY), it was decided to initiate the drafting of a Guidance Note on election interference. T-CY has been supporting Nigeria and Kenya in drafting their Data Protection Rules.
2. On the Second Additional Protocol to the Budapest Convention, CoE informed the meeting that the drafting is not limited to judicial co-operation but also includes police co-operation and issues related to ICANN (Internet Corporation for Assigned Names and Numbers). There is need to ensure consistency, discuss emergency legal assistance and facilitate co-operation between public and private actors. CoE encouraged the (EU) Commission to provide negotiating mandates for the Second Additional Protocol, and for an EU-US agreement.
3. The (EU) Presidency informed the meeting that the proposed regulation for establishing a European Production and a European Preservation Order had been examined at technical level and that the December JHA (Justice and Home Affairs) Council would adopt a general approach.
4. On data retention, issues such as limiting data categories, data retention periods, storage in the territory of the EU or encryption, and the various substantive and procedural legal requirements for targeted access to retained data had been examined and a report summarising the outcomes would be presented by the Presidency to the December JHA Council.
5. There is commitment to present mandates for international negotiations on e-evidence in the near future. E-evidence remains a priority for both the incumbent and the incoming Presidencies. The e-evidence package reflects the EU approach to the Protocol to the Budapest Convention. In this respect, the outcomes of two cases at CJEU (Court of Justice of the European Union) are important for the clarifying the legal situation.
6. CoE voiced the hope that the complexity and the timeline of the EU data protection standards development would not be a delaying factor for the negotiations on the protocol. The Presidency expressed its hope to see the Protocol ratified as soon as possible.

**Data protection**

1. CoE informed the meeting about the state of ratifications of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108 is in force for 53 countries, of them for Mexico and Cabo Verde since October 2018). On 10 October 2018, the Amending Protocol was opened for signature and was signed the same day by 21 states. CoE called for ratification of the Protocol.
2. The Presidency noted that in June 2018 the (EU) Council had adopted a Decision authorising EU member States to sign the Amending Protocol. However, the consent of the EP (European Parliament) is required before ratification. A request has been filed with the EP and a reaction is expected in the beginning of 2019.
3. CoE’s recent work is focusing on artificial intelligence, health data and a monitoring mechanism for the convention. CoE is drafting two guides, on “Police and data protection”, and on “Data protection principles in ICANN”.
4. The Commission reported on the implementation of GDPR (General Data Protection Regulation), including on international data flows and reviewing of adequacy decisions (mention was made of Brazil, Chile, India, Indonesia, Japan, Korea, Colombia and Mexico). The Commission reiterated its strong support for ETS 108.

**CoE conventions**

1. Since the last CATS meeting on (14 June 2018) and up to 30 November 2018, CoE conventions received 23 signatures and 14 ratifications from EU member States.
2. CoE drew attention to its upcoming 70th anniversary, notably to the ceremonies to be held in 2019 and its wish to give them the best visibility.
3. The Presidency informed the group about the work on EU accession to the ECHR(Convention for the Protection of Human Rights and Fundamental Freedoms). All aspects referred to in Opinion 2/13 of CJEU have been addressed at the expert level and the Council. The Commission is working on a paper summarising the discussions on all legal issues between 2014 and 2018 and formulating a “negotiation package”.
4. The Commission and the Presidency are currently working bilaterally to advance with EU accession to the Istanbul Convention(CoE Convention on Preventing and Combating Violence against Women and Domestic Violence). The Presidency and the CoE shared common concerns about the blocking of the accession due to the position taken by three EU member States. On 19 September 2018, FREMP (Working Party on Fundamental Rights, Citizen’s Rights and Free Movement of Persons) reached a technical agreement on the Code of Conduct and the Council decisions on conclusion of the Convention in the Council. However, at this stage there is no political endorsement of the texts. Work is also ongoing on the implementation of the Convention by the EU institutions, which must comply with the obligations internally and to analyse the existing EU acquis in light of the Convention with a view to ensuring compliance.

**Relationship of the EU with GRECO**

1. The Presidency highlighted the importance of GRECO (CoE Group of States against Corruption) and the full EU support to its activities. EU accession to GRECO is under discussion and CoE will be kept informed about the developments. The incoming Romanian Presidency indicated that it is willing to continue working on the EU accession to GRECO. Previous discussions had not lead to concrete result because the Commission and the Council did not agree on the legal basis of the relationship with GRECO.
2. CoE drew attention to the slow pace of the process - over 20 years by now. There remains a divergence of views among EU member States on whether the EU should look for observer status or for full membership. CoE urged the EU to join GRECO as soon as possible.

**EPPO (European Public Prosecutor's Office)**

1. The Commission informed about the appointment of the ad-interim Administrative Director, Mr Olivier Salles, and the start of the selection for Chief Prosecutor (vacancy notice published on 19 November, applications deadline 14 December 2018). The appointment of the person selected by the Council and the EP is expected to be finalised before the end of the EP current term. An EPPO Expert Working Group is drafting conditions of employment of the European Prosecutors and internal rules of procedure. It is planned that the EPPO staff could start working in its premises before the end 2019.
2. CoE asked how the EPPO would be able to co-operate with third countries. The Presidency urged the Commission to move forward and underlined the importance of the EPPO being able to co-operate internationally.

**Mutual recognition in criminal matters**

1. The Commission gave information about upcoming Council conclusions on mutual recognition in criminal matters; noted the stepped-up EU-CoE co-operation through the establishment of a European network of bodies monitoring detention conditions and expressed support for the High Level Conference on detention conditions and prison overcrowding, to be held in Strasbourg on 24 and 25 April 2019.
2. The Presidency and CoE noted the importance of trust for mutual recognition. The incoming Romanian Presidency stated that a Conference on current challenges for the European prison systems will be held in April 2019 in Prahova (Romania).

**Migration**

1. CoE reported on the on-going activities carried out by its working group on prevention of smuggling of migrants. The first meeting of this group (21 June 2018) gathered experts from 25 countries including from Tunisia and Nigeria, as well as a representative of Europol. The Presidency considered this issue as one of its main priorities. CoE drew attention to the reports of the Special Representative for Migrants and Refugees, which also cover aspects of migrant smuggling.
2. EU informed the meeting that the December Council is expected to adopt a comprehensive set of measures to strengthen the prevention and fight against migrant smuggling from a law enforcement perspective.
3. CoE presented the divergent points as regards the scope of the draft CoE recommendation on the administrative detention of migrants. The CoE Committee on Legal Co-operation considered the issue to be political and referred it to the Committee of Ministers.
4. Whereas migration continues to dominate the agenda of the Council, on the judicial co-operation side the work is essentially within the national responsibility of the EU member States. Currently no common actions are seen to be necessary by the JHA Council.

**Counter-terrorism**

1. In his State of the Union address for 2018, the President of the Commission Jean-Claude Juncker presented a proposal for a Regulation on preventing the dissemination of terrorist content online. The proposal introduces new binding removal orders and provides a set of measures to the EU member States to identify terrorist content online. The regulation will seek to improve co-operation between State authorities, Europol and the internet service providers. During the week of 3-7 December 2018, a Council general approach is expected to be reached together with a political agreement with the EP before the elections.
2. CoE gave information about the Thematic Session on Terrorism and the Internet during the latest meeting of the CDCT (CoE Committee on Counter-Terrorism), which brought together experts and practitioners from all member States, representatives of internet and telecommunications private companies and associations, and representatives of the Commission and Europol. The Regulation on preventing the dissemination of terrorist content online was discussed with a view to possibly extending its approaches to the CoE common legal space area.
3. The second EU legislative initiative is a proposal for a Regulation on the marketing and use of explosives precursors. The Austrian Ministry of Agriculture is in charge of its technical organisation. The trilogue is expected to start in early 2019. CoE pointed out that its action against terrorism does not cover technical matters related to explosives.
4. **On 11 October 2018, the** CoE participated in a high-level Conference**, which took place in Luxembourg,** **on child returnees and released prisoners, where practices and views were exchanged on preventing recidivism of those convicted for terrorism-related offences and preventing individuals radicalised in prison from committing acts of violent extremism, while respecting their fundamental rights.**
5. CoE welcomed the ratification by the EU of the CoE Convention on the prevention of terrorism and the Additional Protocol to it.
6. Both CoE and the Commission underlined the importance of continuing the work on the prevention of radicalisation and violent extremism that can lead to terrorism, and on disengagement of radicalised individuals.
7. CoE informed the meeting about its July 2018 Counter-Terrorism Strategy for 2018-2022, built around prevention, prosecution and protection. Currently, the Strategy actions are being implemented: work is underway on a possible definition of terrorism (which is in a “advanced preliminary” stage), as well as on a set of indicators for assessing the risk that a terrorist attack may be carried out by radicalised individuals. CoE highlighted also the recent steps in the co-operation with UNCTED (UN Security Council Counter-Terrorism Committee Executive Directorate).

**Rule of Law**

1. The Presidency mentioned that it becomes increasingly apparent that EU member States are divided as regards the support for fundamental values (e.g., no Council conclusions on the FRA (EU Agency for Fundamental Rights) report - only Presidency conclusions due to the reluctance of one member State over LGBT rights, Art.7 procedure now discussed for a second member State…). The Presidency voiced concerns about the adequacy of the existing EU tools and called for a reflection.
2. The Commission noted that the rule of law and independence of the judiciary are fundamental principles of the Union that all member States should respect. The Commission intends to present in early 2019 an initiative for strengthening the EU's rule of law framework of 2014 and that it has already presented a proposal in the context of the Multi-annual Financial Framework aiming to protect the Union’s budget in the case of generalised deficiencies regarding the rule of law in the member States.
3. The CoE Venice Commission (VC) confirmed the negative trend. As regards Poland, VC expressed full agreement with the Commission. For Hungary, VC informed of an upcoming opinion on the planned reform of the court system (introducing of administrative Courts) and voiced concerns about the restrictions on NGOs dealing with migrants. For Romania, in the recent VC opinion, the legislative process to revise the Criminal Code and the Criminal Procedures Code should be restarted from scratch, taking into account the recent decisions of the Romanian Constitutional Court and the recommendations of the VC and the European Commission. Finally, VC informed the group that it will adopt an opinion on Malta in December, highlighting serious structural problems and recommending significant changes to the system of judicial appointments, the separation of powers and safeguards for independent authorities. The incoming Romanian Presidency thanked the CoE for the open dialogue it had with the Romanian authorities on the matter.
4. CoE informed the meeting about the challenges it is facing internally: using for the first time ever the procedure for bringing a member to the European Court of Human Rights for non-execution of Court’s judgments, and the possible decision to be taken with respect to another member for continued failure to pay its financial contribution.

**Update on recent developments**

1. The CoE referred to the 128th session of the Ministerial Committee and drew particular attention to the Secretary General's document on “State of democracy, human rights and the rule of law - Role of institutions - Threats to institutions - Report by the Secretary General of the Council of Europe – 2018”, and on the “Summary Report on co-operation between the Council of Europe and the European Union”. The CoE also referred to the Presidency conclusions of its ministerial meeting about the future of the CoE. In that context, the CoE had defined as for future priorities the impact of new technologies, combating modern slavery and torture, the protection of human rights defenders and freedom of religion.
2. The Presidency informed the meeting that the trilogue stage has been completed on the draft Directive on countering money laundering by criminal law. At the Conference on e-Justice (Sofia, 14-15 May 2018) the Strategy on e-Justice for 2019-2023 and its Action Plan were discussed.

**Priorities of the incoming EU Romanian Presidency and the CoE Committee of Ministers Finland Chairmanship**

1. The incoming Romanian Presidency gave information about its focus on the e-evidence package, mutual recognition, the implementation of the EPPO, the relationship between the EU and GRECO, and the rule of law, notably relying on the opinions of the Venice Commission. Issues related to mutual trust would also be addressed both at ministerial and at expert level, in particular the implications of recent CJEU cases.
2. CoE presented the key priorities of Finland’s Chairmanship of the Committee of Ministers (21 November 2018-17 May 2019): strengthening the system of human rights and the rule of law in Europe, Supporting equality and women’s rights, and openness and inclusion — as well as a focus on young people and the prevention of radicalisation.

Next CATS meeting: 10 May 2019 in Brussels

**List of participants**

***EU Presidency***

Mr Wolfgang PEKEL, Ministry of Justice, Head of CATS

Ms Judith WIMMER, Ministry of Justice

Ms Judith HESTER, Ministry of Justice

Mr Antonio MARTINO, Ministry of Interior

Ms Teresa STUMMER, Ministry of Interior

***EU Future Presidency***

Ms Anamaria STOIA, JHA Counsellor, Justice

***European Commission***

Mr Mike PALMER, team leader in DG JUST/ Unit B2

Ms Georgiana Maria PLEȘU, International Relations Officer, DG Migration and Home Affairs

Ms Irina STEFURIUC, Coordinator of the anti-Corruption team, Unit D.3, Organised Crime and Drugs Policy

***General Secretariat of the European Council***

Mr Pawel NALEWAJKO, political administrator, Horizontal Matters Unit

\* \* \*

Mr Per IBOLD, Deputy to the Head of the European Union Delegation to the Council of Europe

***Council of Europe***

Mr Thomas MARKERT, Director, Secretary of the Venice Commission, Directorate General Human Rights and Rule of Law

Mr [Jörg](https://cs.coe.int/edirectory/Pages/organisation_chart.aspx?NameSimple=pola&SPOCSD=i%3a0%23.f%7ccoemembershipprovider%7cJorg.POLAKIEWICZ%40coe.int) [POLAKIEWICZ](https://cs.coe.int/edirectory/Pages/organisation_chart.aspx?NameSimple=pola&SPOCSD=i%3a0%23.f%7ccoemembershipprovider%7cJorg.POLAKIEWICZ%40coe.int), Director, Directorate of Legal Advice and Public International Law

Mr Ivan KOEDJIKOV, Head of Action against Crime Department, Directorate of Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

Ms Hanne JUNCHER, Head of Justice and Legal Co-operation Department, Directorate General of Human Rights and Rule of Law

Mr Gianluca ESPOSITO, Executive Secretary, Secretariat of the Group of States against Corruption (GRECO), Directorate General of Human Rights and Rule of Law

Mr Alexander SEGER, Head of Cybercrime Division, Information Society Department, Directorate of Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

Mr Carlo CHIAROMONTE, Head of Criminal Law and Counter-Terrorism Divisions, Directorate of Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

Ms Ana GOMEZ, Head of Treaty Office Unit, Treaty Office, Directorate of Legal Advice and Public International Law

Ms Anita VAN DE KAR, Head of Mutual Legal Assistance Unit, Criminal Law Division, Directorate of Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

Ms Sophie KWASNY, Head of Data Protection Unit, Secretary of the CoE Data Protection Commissioner

Ms Elvana THACI, [Office of the Special Representative of the Secretary General on migration and refugees](https://cs.coe.int/_layouts/orgchart/orgchart.aspx?lcid=1033&key=1067&NameSimple=thaci&open=true), Directorate General of Human Rights and Rule of Law

Mr Alexey SAMARIN, Administrator, Typologies and Conference of the Parties to CETS no. 198 Unit, MONEYVAL, Information Society and Action against Crime Directorate, Directorate General of Human Rights and Rule of Law

Ms Teresa ARMENGOL-DE-LA-HOZ, Legal assistant, Action against Crime Department, Directorate of Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

Ms Hasmik ARSHAKYAN, Secretariat of the Action against Crime Department, Directorate of Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

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Mr Humbert de BIOLLEY, Deputy Head of the Council of Europe Liaison Office to the EU

1. This document has been classified restricted until examination by the Committee of Ministers. [↑](#footnote-ref-1)