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From:	the Polish delegation
To:	Working Group on e-Law (e-Justice) - expert group on the exchange of information on dangerous offenders
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Subject:	Proposal for an expert group on the exchange of information on dangerous offenders

I. Legal context

1. The free movement of persons and the abolition of controls at the internal borders of the EU are among the greatest achievements of European integration but are, at the same time, a major challenge to efforts to safeguard security and public order. For instance, there are currently no suitable national or international rules to enable the fully effective exchange of information on dangerous criminal offenders moving between EU Member States. While existing procedures for cooperation between police services and judicial authorities (SIS II¹ and ECRIS²) do allow information on certain individuals to be supplied and requested, the method, type and scope of the information supplied are limited.

¹ The second generation Schengen Information System under Regulation of the European Parliament and of the Council (EC) No 1987/2006 of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

² European Criminal Records Information System under Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.

There is a dearth of effective tools for exchanging information, for instance on certain penal measures (e.g. a ban on travel to a given country) or data needed to take preventive action against certain categories of offender (e.g. against sexual offenders). This situation undermines preventive action taken at national level, sometimes rendering it entirely ineffective, and may make it impossible to enforce criminal sentences.

II. Factual context

2. Recent events in France in which a Polish national (whom a French court had banned from travelling to France) who was waiting to begin to serve a custodial sentence handed down by a Polish court probably abducted, raped and murdered a 9-year-old girl have demonstrated the categorical need to develop appropriate mechanisms for international cooperation. A lack of information about the subsequent conviction and the fact that the perpetrator was at large and intended to travel to France meant no action which might have prevented the tragedy could be taken.

III. Previous initiatives and proposed course of future action

3. The scope for action to ensure that such situations are avoided by enabling international cooperation on pre-emptive exchange of information concerning certain categories of offender should be examined. That such an initiative is called for is borne out by the interest shown by the Commission's DG HOME³ and the Council of Europe⁴ in the subject of the consequences of serious offenders being able to move across national borders.
4. Since the phenomenon of mobile offenders is so complex and laws and regulations in this area are so numerous and diverse, action aiming to ensure that information on such offenders can be exchanged will have to be overarching.

³ Serious Offending by Mobile European Criminals project (SOMECE).

⁴ Recommendation CM/Rec (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders.

5. An initial analysis not only of the abovementioned initiatives by the European Commission and the Council of Europe but also of experience gained from events in France indicates that in order to be effective, any mechanism for cooperation must not be confined merely to the technical process of exchanging information on isolated judgments and the whereabouts of the offenders. Instead, the proposed solution should consist of a risk management system.
6. The system should include:
 - a procedure for assessing the risks posed by individual offenders;
 - a set of rules for conducting the risk assessments and exchanging the results at national and European (protocol) level; and
 - a technical system to ensure access to specific information by relevant stakeholders (IT aspects).
7. The proposed action should not just be confined to certain types of judgment (e.g. the abovementioned bans on travel to certain States). It should also cover (at least at the risk assessment stage) the broadest possible range of criminal offenders.

IV. Roadmap

8. In order to prepare proposals for regulations, we must undertake a comprehensive analysis of the legal, organisational and technical factors which will determine the shape of the solutions proposed and the course of future work on preparing the appropriate solution.