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NOTE

from : The Presidency

to : CATS

Subject: Future of CATS

1. Background

The area of justice and home affairs has been long characterized by specific institutional arrangements, which were not necessarily a simple reflection of organization structures within other EU policies. Even before the formal cooperation in the area of justice and home affairs was established under III pillar, a so-called TREVI Group had started to meet in 1975. Subsequently, the Maastricht Treaty provided a legal basis for the K4 Committee, which consisted of senior officials of the Member States. Finally, the Article 36 Committee (CATS) was established by the Treaty of Amsterdam. In addition to its coordinating role, its task was to give opinions for the attention of the Council and contribute to the preparation of Council's discussions in the area of police and judicial cooperation in criminal matters, as a part of general policy in the Area of Freedom, Security and Justice (AFSJ).

The Lisbon Treaty brought about changes in the existing structure. It no longer provides for the existence of CATS. However, COREPER decided on 24 November 2009¹ to continue the work of the Committee until 1 January 2012.

Before that time, the necessity of having CATS shall be re-evaluated by COREPER, taking into account the efficiency and coherence of Council working structures. In this light, the Polish Presidency aims to organize a discussion with a view to reaching an agreement on the necessity to maintain CATS and, as the case may be, to define its future possible role. The results of this discussion will be put forward for a decision of COREPER.

2. The relation of CATS with other Council working structures

As indicated in the COREPER decision of 24 November 2009 referred to above, while making an evaluation of CATS, account should be taken of the efficiency and coherence of Council working structures. This kind of assessment would have varied over time. On the one hand, CATS clearly proved its usefulness on numerous occasions by contributing to the decision-making process, where other fora could not offer an appropriate setting to make progress. On the other hand, the role of CATS was at certain instances subject to skepticism, where it tended to overlap with works carried out in other fora, or host discussions which did not necessarily have to be raised to this level. Consequently, a decision on the future existence should be made in view of increasing the potential of CATS while eliminating the previous shortcomings.

A standard model for a negotiating process in the Council consists of three levels:

1. working group,
2. COREPER
3. Council.

¹ Doc. 16072/09.

However, specific high-level committees support decision-making in certain policy fields². In the area of freedom, security and justice a Standing Committee on Internal Security (COSI) was established in line with Article 71 TFEU. Moreover, the SCIFA Committee dealing with borders, asylum and immigration still continues to convene (although its future has also to be reviewed by COREPER, by 1 January 2012).

It is therefore necessary to establish whether CATS remains in a position to add value to the institutional architecture, without prejudice to the competence of existing bodies, i.e. working groups, COSI and COREPER.

Concerning the interplay with the working groups, it is clear that CATS should not take over their role, by engaging in regular legislative tasks. However, it could be the right forum to hold strategic discussions on proposals of instruments, in particular at the initial stage of negotiations, in order to provide a steer to the experts. Certain important points, where a working group is not in a position to reach an agreement, could be also put forward to CATS for a decision. Moreover, CATS could host discussions related not so much to individual instruments, but rather to policy lines, where a combination of expertise and higher rank decision-making powers is necessary (see also point 2 b).

As far as the relation with COSI is concerned, the current discussion on the future of CATS takes place in parallel with a debate on ways of enhancing the role of COSI. The latter may be of relevance in this regard, taking into account a partly supplementary position of both committees. However, the efforts to ensure a proper role for COSI are not directly dependent on the decision whether to maintain CATS, given the different tasks they are entrusted with. While COSI is inherently security-oriented, CATS takes on board a significant proportion of policy issues, in both Home affairs and Justice fields. Moreover, COSI shall not be involved in preparing legislative acts³. It may be also pointed out that a more outstanding role of COSI, coupled with a possible dissolution of CATS, could give rise to an institutional imbalance to the advantage of law enforcement activities, thus setting aside the remaining components of the area of freedom, security and justice. This would not be in line with the orientations of the Stockholm Programme.

² E.g. the Political and Security Committee, the Economic and Financial Committee, the Employment Committee, the Social Protection Committee or the Special Committee for Trade Policy.

³ Decision 2010/31/EU.

It is self-evident that a possible future role of CATS must be without prejudice to the position of COREPER, which prepares the discussion of the Council, as defined by the Treaty. However, CATS may play a supplementary role in this regard, given that a large proportion of files submitted to COREPER are prepared for the JHA Council. CATS could be employed in assisting in discussions which require additional examination as to the coherence with policy issues. It may also be worth considering whether CATS could contribute to preparing less formalized deliberations in the Council, such as lunch debates or discussions at Informal Meetings of Ministers.

3. The future of CATS – possible solutions

Given that CATS is no longer embedded in the Treaty, a possible decision on its further existence should be justified by essential reasons.

In particular, it should be preceded by a formulation of expectations with regard to the mandate of CATS and the role it should play in the development of policies within the area of freedom, security and justice. The following fields, where the CATS contribution may remain valid, could be considered:

a) Institutional developments

While a three-pillar structure of the EU was abolished with the entry into force of the Treaty of Lisbon, it could be argued that there is little need to maintain a specific body, such as CATS, in the institutional architecture. However, the area of police and judicial cooperation in criminal matters remains to be affected by a number of mechanisms which are peculiar to this field. Therefore, the future developments may be considerably affected by these institutional specificities. These include:

- the specific conditions for participation of some Member States (opts in or outs)
- an emergency break
- a simplified procedure for enhanced cooperation
- a simplified procedure for the revision of the Treaty⁴.

⁴ For example, to extend aspects of criminal procedure, where the EU can establish minimum standards, -Article 82 (2) 2 and the expansion of areas, where the EU can establish minimum standards for criminal offences and penalties – Article 83.

If such problems arise, CATS would be an appropriate level for preparation of this kind of debate before it is launched at COREPER and at the Council. Due to its horizontal and policy implications, this might reach beyond the powers of experts in working groups. The same applies to institutional issues, such as the possibility of changing the structure of EUROJUST and EUROPOL in the new regulation (Article 85 and 88), or the establishment of the European Public Prosecutor's Office (Article 86).

b) Strategic debates

A number of fields within AFSJ are currently undergoing far-reaching developments. The regular discussion fora, such as working groups, COREPER and Council cannot always offer an opportunity to run guiding debates, which combine a high level of expertise with a more strategic approach.

This is of particular importance in the area of freedom, security and justice, which covers a number of new strands of activity.

For example, in the field of criminal justice, new explicit legal bases were provided for rights of suspects, rights of victims in criminal proceedings and admissibility of evidence, where essential initiatives are being planned or realized. Strategic guidance would also be needed on whether the Union should enter into new agreements on mutual legal assistance and extradition and with which third countries. Other issues relating to external relations may also be of relevance to this level of discussion. In the field of Home affairs new comprehensive legal frameworks for data protection, asset recovery and police code are expected. The new financial programs and funds in the field of Justice and Home Affairs under the next multiannual financial framework is crucial for all actions undertaken in the AFSJ. Thus, a decision at CATS level could provide a useful guidance concerning a presentation and follow-up given to the Commission and Member States' proposals.

CATS could also organize long-term and mid-term debates on policy planning and formulate recommendations in this regard. This would be linked with the coordinating capacity of CATS, which can gather many aspects of complex policies, where a number of experts' fora are involved (e.g. SIS, PNR, TFTP, information exchange mechanisms).

Certain discussions of a more strategic character on methods and results of evaluations, which could not be sufficiently debated by GENVAL, could also be a part of the strategic advice of CATS.

c) Civil justice

The work of CATS was traditionally confined to the area of police and judicial cooperation in criminal matters. While this approach has been long justified by a different institutional setting in the Treaty, at present these divergences may be of smaller significance. Even though the fields of civil and criminal law remain partly distinct, there may be reasons to discuss certain problems jointly at one forum debating justice issues.(e.g. The EPO Directive and corresponding draft Regulation) The current Committee on Civil Matters (General Questions) provides an important contribution, however some issues require a joint discussion with a more horizontal approach. Therefore, it may be considered whether CATS could partly cover strategic issues of civil justice, while striving to keep the debate sufficiently structured and focused.

d) Contacts with other bodies and third parties

The operation of police and judicial cooperation in criminal matters involves a number of actors, which was even extended after the entry into force of the Lisbon Treaty. In particular, the European Parliament has gained a much more prominent role in the ordinary legislative procedure. Employment of supplementary fora for an exchange of views, in addition to traditional trilogue settings, could, where necessary, facilitate a better understanding between participants of a discussion and, in effect, to smooth the way for an agreement. CATS could possibly provide ground for such meetings. The same could apply in relation to some other actors, such as EUROJUST, EJM, EUROPOL, FRA, CEPOL where CATS could host more strategic debates involving these bodies.

4. Organization of work.

A possible enhancement and streamlining of the tasks of CATS would need to be accompanied by improvements in its methods of work. This could include several aspects:

a) joint discussions between Home affairs and Justice delegates

CATS meetings have been normally divided into 2 days, which are split between Home affairs and Justice delegates. While such an arrangement is justified for a number of files, more synergy should be encouraged. Certain issues could attract interest of all participants and, if debated jointly, provide a more comprehensive picture and avoid a fragmented approach.

b) a better co-relation between the works of CATS and COSI.

Both committees should receive information on their activities, especially with important policy or operational implications, which may affect their scope of competence. Given the relatively multidisciplinary topics referred to LEWP and GENVAL working groups (i.e. cybercrime, fighting organized crime), it would be advisable to consider the introduction of a clear-cut distribution of competences among those groups, which would make it easier to define the areas of cooperation between CATS and COSI. One possible way would be to decide that when several Ministries are principally involved in a file, GENVAL would have the lead, whereas when only Ministries of Interior are principally concerned, LEWP would have the lead.

c) number of meetings

A decision on the organization of meetings belongs to every Presidency. However, meetings should be called only in cases of real need for substantial discussion. There should be a presumption that in order to allow for a better adaptation of available resources to the importance of planned discussions those meetings should not be convened more than 3 times during the Presidency.

d) preparation of documents

Annotated agendas could become a regular tool, which could help to better prepare a discussion. In principle, exchange of information should be carried out in a written form.

e) agenda planning

Preparing the meeting itself, and setting up the agenda is the sole responsibility of the Presidency. However other delegations should be more involved in enriching the debate. The proposals may have a standardized form (at the end of each meeting Presidency may request proposal for items to be included in the forthcoming meeting) or ad hoc, by individual requests of any delegation including the Commission.

f) composition of the delegations

In order to maintain the strategic and policy orientation debate within the Committee, it is crucial to guarantee a relevant level of representation of all the M.S. delegations . and the Commission This is obviously an individual decision of the Member States on whom to nominate, either from the capital or from the Permanent Representations, but the essential condition is to enable strategic and often sensitive discussions.

5. Possible options

Taking the aforementioned background into account, the Polish Presidency invites delegations to discuss possible options with regard to the future of CATS:

A. Dissolution of CATS

This option would mean that there are no sufficient reasons to maintain CATS in the institutional architecture. It will therefore cease to exist after 1 January 2012.

B. Keeping CATS in the current form

This option would confirm that there is still an added value in the operation of CATS. No major changes would be necessary for its operation. The Committee would continue to cover the field of police and judicial cooperation in criminal matters, which should be in principle discussed separately during the meetings. The number of meetings would correspond to the previous practice, i.e. about 4 meetings per Presidency.

C. Reform of CATS

This option would indicate that there are still essential reasons to maintain CATS. However, as opposed to option 2, a need for a substantial reform is recognized. The scale of this reform could be subject to discussion. This could imply one or more of the possible solutions and organizational arrangements mentioned under points 3 and 4 above.

The delegations are invited to indicate their preferred option and elaborate on possible other elements mentioned under points 3 and 4 with a view to preparing their national positions in view of the future discussions by COREPER.
