

---

10<sup>TH</sup> MEETING OF THE CONSULTATIVE FORUM  
OF PROSECUTORS GENERAL AND DIRECTORS OF PUBLIC PROSECUTIONS  
OF THE MEMBER STATES OF THE EUROPEAN UNION

*The Hague, 11 December 2015*

---

**CONCLUSIONS OF THE MEETING**

*as presented by the Luxembourg Presidency in the Closing Session*

**Session I: Data Retention**

With regard to the **consequences of the annulment of the Data Retention Directive on investigations and prosecutions**, we can all agree that the organisation of the Workshop yesterday has been instrumental in the effort of identifying obstacles to practitioners resulting from the current fragmented legal framework on data retention and possible solutions, which we discussed also today.

In this regard, I would like to highlight a few points that have been stressed by the Forum Members during Session I and in their replies to the questionnaire:

- We all agree that data retention is an essential investigative tool.
- Considering the different regimes across the EU and the consequent significant difficulties encountered in judicial cooperation, the Consultative Forum calls for a EU solution on data retention. We believe that a European common framework to harmonise retention of and access to data is needed. We therefore invite the European Commission to take action in this regard in line with the requirements established by the Court of Justice in its judgment *Digital Rights Ireland Ltd.*
- The Forum recommends that access to data be submitted to specific conditions, in particular:
  - First: access should be limited to serious forms of crime.
  - Second: access to the data should be authorized by an independent judicial authority.
  - Third: the security of data should be regulated and data should be stored within the EU borders.
- Different retention periods pose significant challenges for investigation and prosecution. To overcome these challenges, common minimum and maximum data retention periods should be foreseen as well as the obligation of destroying the data afterwards.
- Accordingly, the Consultative Forum invites Eurojust to continue its analysis on the impact of the annulment of the Data Retention Directive on national systems and, through an evidence based approach, collect practical examples together with our

prosecution services. This will be of great support in the context of the process leading to a possible new EU instrument on data retention.

- It is crucial to strike a balance between the right to privacy and the security of our citizens in the challenging period we are living.

## **Session II: Terrorism**

- The Consultative Forum strongly condemns the recent Paris attacks of November 2015 and the previous and following attacks and recognizes the increased terrorist threat and the global challenge posed by the phenomenon of foreign terrorist fighters.
- We attentively listened to the lessons learned during the tragic recent events. These include the importance of an early involvement of the judiciary, the speedy exchange of information with other Member States and the positive feedback on the use of JITs in such situations.
- The Forum supports the ongoing extensive efforts of Eurojust to assist Member States which are reflected in the steady increase of cases referred to Eurojust for coordination and assistance.
- The Forum also welcomes the findings of the third Eurojust Foreign Fighter report and notes its main conclusions and recommendations: in particular the need to consider input from the judiciary in de-radicalisation and disengagement programmes and to make a greater use of the ENCS and the National Correspondents for Terrorism.
- The Forum calls for a European and multidisciplinary approach as well as the fostering of judicial cooperation with key third States, also with the support of Eurojust.
- We furthermore call upon the EU to assist practitioners in overcoming major challenges which still persist, such as the gathering and admissibility of e-evidence, the transmission and judicial use of information from the intelligence services and the need to take a European approach to dismantle the organised criminal group behind the trafficking of weapons.

## **Session III: Illegal Immigrant Smuggling**

During **Session III**, we had the opportunity to discuss current **challenges and best practices in the investigation and prosecution of illegal immigrant smuggling**.

- The Forum believes that cooperation between Member States and with key third countries is crucial.
- The support by Eurojust is very appreciated, in particular:

- The creation of the Thematic Group which will definitely assist prosecutors in identifying and analysing obstacles and best practices stemming from national cases and in analysing gaps in legislation also with a view to make proposals to the European Commission.
- The organisation in early 2016 of the first tactical meeting in illegal immigrant smuggling.
- Helping Member States in setting up and running JITs and fostering judicial cooperation.
- The Forum also welcomes all efforts of other EU agencies, including Europol, Frontex and FRA, to counter the migration crisis.
- We consider that the collection of evidence is complex, given that many evidentiary measures require execution in the country of origin. The Forum therefore considers that better systems for collecting the identity of migrants and gathering their testimonies are necessary.
- Considering that illegal immigrant smuggling is by nature a cross-border crime, the Forum calls for a common EU approach to this phenomenon, which should at least include some degree of harmonization of the crime and applicable sanctions.
- The Forum considers with interest the French suggestion for the creation of an “operational group” to enhance regional cooperation amongst some key transit and destination countries in the North of Europe (including France, The Netherlands, Belgium and the United Kingdom).
- Finally, the Forum is willing to support via Eurojust the European Commission in its call for the gathering of additional information on the implementation of relevant EU legislation.

#### **Session IV: Working methodology of the Consultative Forum**

- By a large majority, Forum Members are in favour of having just one meeting of the Consultative Forum per year, preferably under joint EU Presidencies and on a date either end of June or beginning of July.
- We thank our colleagues from The Netherlands and Slovak Republic for their decision to apply the new approach starting from their own Presidencies: the first joint meeting of the Consultative Forum will be held most likely on 2 and 3 June 2016, and will be combined with a Eurojust seminar.

\* \*  
\*