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from:	Presidency
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Subject:	Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (EUROJUST) <i>- Cooperation between Eurojust and the European Judicial Network</i>

Cooperation between Eurojust and the European Judicial Network

The Commission's draft Regulation on Eurojust acknowledges the special relationship between Eurojust and the European Judicial Network (EJN) with Recital 24 stating that "*Eurojust should maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Regulation should help to clarify the respective roles of Eurojust and the European Judicial network and their mutual relations, while maintaining the specificity of the European Judicial Network.*"

In this respect, Article 39 of the proposal largely replicates Article 25 of the 2008 Council Decision on Eurojust¹ which recognises this special relationship, establishes the administrative structure for housing the secretariat of the EJN at Eurojust and provides that Eurojust national members shall inform the EJN Contact Points of cases which they consider better suited to the EJN.

¹ Council Decision 2009/426/JHA of 16 December 2008

Furthermore, Article 20 of the draft Regulation provides that the national correspondent for the EJM and up to three other EJM contact points will be part of the Eurojust National Coordination System (ENCS) in each Member State. The ENCS which is intended to provide a forum for national correspondents for Eurojust and EJM contact points to coordinate their work will be tasked with *"assisting in determining whether a case should be dealt with the assistance of Eurojust or the EJM"*. This is also a replication of already existing tasks.

Despite welcoming the retention of these provisions during the first examination of the text at the Copen Working Party, some delegates opined that the draft Regulation provides an opportunity to clarify the distinction between the roles of the two agencies and identify when and under which circumstances cases should be sent to each. Similarly, the majority of reports from the 6th Round of Mutual Evaluation consider that identifying the difficulties faced by practitioners when determining whether a particular case should be directed to EJM or EJ with several reports going so far as to suggest that clear guidelines should be developed.

In response to these findings, the recent Joint Task Force Paper prepared by the EJM and Eurojust on "Assistance in International Cooperation in Criminal Matters for Practitioners"², attached in the Annex, explains the difference between the agencies and their respective roles in Mutual Legal Assistance although it does not go so far as to issue guidelines on when and how each Agency should be contacted.

In light of the above, delegates are invited to consider whether the draft Regulation goes far enough to clarify the respective roles of Eurojust and the EJM or if it should be developed further to include more specific guidance on when each agency should be used?

² This paper was presented to the meeting of the EJM Plenary in Athens 24.06.14

Joint Task Force Paper

Assistance in International Cooperation in Criminal Matters for Practitioners

European Judicial Network and Eurojust

What can we do for you?

6 May 2014



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Introduction

This paper is the result of a common effort of the Joint EJM-Eurojust Task Force (JTF). It aims at assisting practitioners in deciding whether cases should be dealt with by the EJM or Eurojust. The paper also ensures that both the EJM and Eurojust will deal with cases falling within their mandates by using time and resources efficiently and effectively and preventing duplication of work.

The paper informs judicial practitioners in the Member States of the services and assistance in international cooperation in criminal matters that can be provided by the EJM and Eurojust. It also covers the use of the Eurojust National Coordination System (ENCS).

It is not intended to replace any domestic provisions or guidelines regarding streamlining of cases between the EJM and Eurojust.

I What is the European Judicial Network?

The EJM is a network of national Contact Points for the facilitation of judicial cooperation in criminal matters.

National Contact Points are working prosecutors, investigating judges or other persons who deal almost exclusively with matters related to international cooperation. The National Contact Points are designated by each Member State from central or other authorities carrying out international judicial cooperation, both in general and for certain forms of serious crime, such as organised crime, corruption, drug trafficking and terrorism. The EJM is composed of more than 300 national Contact Points throughout the 28 Member States. From among the Contact Points, each Member State designates an EJM National Correspondent. A Tool Correspondent is also appointed by each Member State to deal with matters related to the EJM's electronic tools.

The EJM Secretariat, located in The Hague, is the administrative body of the EJM. To ensure close interaction between Eurojust and the EJM, the Secretariat forms part of Eurojust's staff, but functions as a separate unit. The EJM Secretariat is responsible, inter alia, for providing support to the national Contact Points in fulfilling their tasks, for setting up, maintaining and improving the EJM website and its operational e-tools and for the overall administration of the EJM.

More detailed information about the EJM Secretariat can be found at http://www.ejm-crimjust.europa.eu/ejm/EJM_Secretariat.aspx, or by contacting the EJM Secretariat at ejm@eurojust.europa.eu.

What can the EJM do for you?

If you need assistance from the EJM, you should contact either the Contact Points in your country or a Contact Point in the country involved in the case. More detailed information about the Contact Points can be found in a restricted area of the EJM website - <http://www.ejm-crimjust.europa.eu/ejm/>. Access can be gained via your national authorities.

The EJM should be used in the following situations:

- **To identify competent authorities abroad to enable direct communication**

On the website of the EJM, www.ejm-crimjust.europa.eu, you can find an electronic Atlas for mutual legal assistance (MLA) requests and a European Arrest Warrant (EAW) Atlas. Both of these Atlases will assist you to obtain the addresses and telephone/fax numbers of the competent authorities abroad. The main sections of the Atlases are translated into all of the European Union's official languages. Should you be unable to find the contact information you require in the Atlas, you can ask an EJM Contact Point in your Member State to provide it immediately. The list of EJM Contact Points is password protected for security reasons – but is accessible to the EJM Contact Points of your own Member State. Therefore, should you require assistance in making contacts with the EJM in another Member State, the best method of doing so is to address one of your national EJM-Contact Points.

- **To facilitate judicial cooperation**

If you need information regarding the conditions for receiving assistance from another Member State in a specific case, you can address the Contact Points in your Member State or use the relevant sections of the EJM website:

- ✓ *when issuing a Letter of Request (LoR)*, to obtain more detailed information on the legal requirements laid down by the law of the requested Member State or to discuss special formalities in the application of Article 4 of the EU 2000 MLA Convention. The *Compendium* of the EJM website offers the possibility to electronically create an LoR;
- ✓ *in the execution phase of an LoR*, to obtain supplementary information or to allow for the proper execution of the request;
- ✓ *in the event of a delay or lack of execution of an LoR*, to check the state of execution in the requested Member State and/or speed up execution through the intervention of a national Contact Point; or
- ✓ *when issuing an EAW*, you can use the form provided under the EAW section of the EJM website, where you can also find information on the status of implementation of the EAW, practical information related to the forms, declarations and notifications from different Member States;
- ✓ *when you urgently require information on EAW or MLA cases with a very short deadline*;
- ✓ *when information is needed on the status of implementation of EU legal instruments in judicial cooperation in criminal matters, or on relevant practical documents (i.e. notifications, handbooks, evaluation reports)*, via the EJM Library at:

<http://www.ejm-crimjust.europa.eu/ejm/libcategories.aspx>

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- **To facilitate the exchange of information between judicial authorities**

As working prosecutors and examining magistrates, the EJM Contact Points are often able to share information regarding ongoing investigations or proceedings and their outcomes, detained persons, periods of detention and judicial decisions in specific cases quickly and informally. This type of information exchange can sometimes avoid the necessity of sending a formal LoR. If you require such information during your own investigation or proceedings, especially in urgent situations, and your legislation permits such inquiry, get in touch with an EJM Contact Point, indicate why you need this information, and provide a short description of your own investigation or proceedings.

- **To obtain information on investigative measures**

The EJM website provides, in its Fiches Belges, an overview of relevant national legislation regarding investigative measures in the field of MLA. If you need more information, you can always address your questions to the EJM national Contact Points.

II What is Eurojust?

Eurojust is a European Union body established in 2002 to stimulate and improve coordination and cooperation between the competent authorities of Member States when they deal with serious cross-border crime, such as organised crime, corruption, drug trafficking and terrorism.

Eurojust is based in The Hague. It fulfils its core task by facilitating MLA and the execution of instruments of mutual recognition, such as the EAW.

The activities of Eurojust relate mostly to cooperation between the competent national authorities of Member States. However, Eurojust can also cooperate with third States.

What can Eurojust do for you?

If you require Eurojust's assistance, you should contact your National Desk at Eurojust. See Eurojust's website for further information:

<http://eurojust.europa.eu/Pages/home.aspx>

Eurojust can offer a wide range of practical assistance:

- **To facilitate judicial cooperation**

Eurojust provides support to national authorities through the National Members, their deputies and assistants, all of whom are in a position to facilitate contact between investigating and prosecuting authorities in complex matters, in urgent cases or in situations where other cooperation channels do not appear appropriate or likely to produce results within the necessary timeframe.

Eurojust can assist in obtaining information on the status of a request for MLA or the execution of instruments of mutual recognition (MRIs) when other channels of communication (i.e. direct contact between national authorities or other communication channels) have not been successful.

Eurojust may also provide assistance in cases when MLA requests and MRIs are to be executed urgently. Due to Eurojust's core task of facilitating judicial cooperation, other channels are open for the exchange of police information and for intelligence purposes.

Eurojust receives information on a number of ongoing investigations and prosecutions in the Member States. Where Eurojust has received such information, it will be in a position to provide national authorities with information on relevant pending cases in other Member States.

Eurojust can also support practitioners by examining the draft MLA requests ('quality check').

- ***To help prevent or resolve conflicts of jurisdiction***

In cases where more than one Member State has jurisdiction, Eurojust can, to prevent or resolve conflicts of jurisdiction, be consulted for a non-binding opinion on which Member State is in a better position to undertake an investigation or prosecute the case.

- ***To coordinate investigations or prosecutions***

Due to its structure and level of experience in judicial cooperation, Eurojust is in a favourable position to assist in cases where ongoing investigations in two or more Member States need to be coordinated by exchanging relevant case information. Eurojust also helps to determine if Member States should continue with separate investigations or if they should concentrate investigations and proceedings in one or more Member States.

In addition, Eurojust assists in discussions and agreements between involved Member States on how, when or where to perform a joint action or to prosecute.

- ***To organise and support coordination meetings and coordination centres***

Eurojust can arrange coordination meetings in The Hague or elsewhere between investigators, prosecutors and investigating judges from different Member States. Coordination meetings sometimes include representatives of judicial or law enforcement authorities of third States, Europol and OLAF.

Coordination meetings are highly useful tools that allow practitioners to exchange information in their own language on linked investigations and plan joint actions. Issues that could have taken time and considerable resources to settle under traditional cooperation schemes can often be rapidly resolved during such meetings.

Currently Eurojust covers the costs of accommodation in The Hague and travel expenses for two participants from each Member State Eurojust can also organise coordination centres, which are aimed at supporting and coordinating joint actions (often agreed during coordination meetings) that have to be carried out simultaneously in different Member States. Coordination centres ensure a real-time transmission and coordination of information between competent authorities during an action day, for instance when there is a need to carry out simultaneous house searches in different countries. Coordination centres also allow the resolution of possible issues arising during the execution of EAWs or search and seizure through the amending of LoRs or warrants.

- ***To facilitate and support joint investigation teams***

Eurojust can assist in and facilitate the setting up, functioning and evaluation of joint investigation teams (JITs). Eurojust can identify suitable cases for establishing JITs, it can provide useful legal and practical information, e.g. on national laws, practical obstacles and

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best practice, and can provide assistance in the drafting of JIT agreements and operational action plans. Where considered helpful, Eurojust National Members can also participate in JITs.

Eurojust can also provide financial support to cover some of the expenses arising from JITs and/or equipment, such as mobile telephones. See the following website for more information:

<http://eurojust.europa.eu/Practitioners/Eurojust-Support-JITs/JITs/Pages/history.aspx>

- **To coordinate and facilitate requests for judicial cooperation to and from third States**

If you need to contact a national authority in a third State, you can contact your National Desk at Eurojust. Eurojust has Contact Points in around thirty third States (including Argentina, Brazil, India, Thailand, the Russian Federation, and Ukraine).

Eurojust also has cooperation agreements in place with Norway, the USA, Iceland, Switzerland, the former Yugoslav Republic of Macedonia and Liechtenstein. Such agreements might also include the exchange of personal data. Furthermore, liaison prosecutors from Norway and the USA are posted at Eurojust.

More information is available on the Eurojust website at:

<http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Pages/agreements-concluded-by-eurojust.aspx>

III What is the role of the ENCS?

The ENCS is currently being implemented in the Member States. The ENCS has two main functions: 1) to ensure coordination of the work carried out by the various correspondents/contact points/experts established in the fight against crime, including the EJM National Correspondent and up to three EJM Contact Points; and 2) to facilitate the carrying out of the tasks of Eurojust in the Member States. When several correspondents for Eurojust are designated, one of them shall be responsible for the functioning of the ENCS.

The ENCS is entrusted, *inter alia*, with the tasks of 1) ensuring that Eurojust's Case Management System receives information related to the Member State concerned in an efficient and reliable manner, 2) assisting national judicial authorities and practitioners in determining whether a case should require the assistance of Eurojust or the EJM, and 3) assisting Eurojust National Members in identifying the relevant authorities for the execution of requests for judicial cooperation and MRIs.

IV EUROJUST or EJM – which way to go?

Eurojust and EJM are both at your disposal. If you are not sure which one to contact, it does not matter because the National Desks of EUROJUST and the EJM Contact Points can easily liaise. In conclusion the institutional framework ensures that your request for support will be handed over to the most suitable actor. Therefore there is no need to address both entities with the same problem.

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