

IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COUNCIL

COUNCIL CONCLUSIONS

**‘Synergies between Eurojust and the networks established by the Council in the area of judicial
cooperation in criminal matters’**

(2019/C 207/01)

THE COUNCIL OF THE EUROPEAN UNION,

ACKNOWLEDGING the vital role played, in the area of cooperation in criminal matters in the European Union, by Eurojust and by four networks established by the Council, namely the European Judicial Network (EJN), the Network of Contact Points for persons responsible for genocide, crimes against humanity and war crimes (the Genocide Network), the Network of Experts on Joint Investigation Teams (the JITs Network) and the European Judicial Cybercrime Network (EJCN) (hereafter: the networks),

RECALLING that each of the networks has a specific role to play in fighting serious crime and facilitating judicial cooperation, but that they are complementary to each other and to Eurojust,

CONVINCED of the need to preserve and further strengthen the operational autonomy of the networks,

NOTING that the coordination and synergies between Eurojust and the networks have considerably improved in recent years,

OBSERVING, however, that there is still room for further improvement in this regard,

DETERMINED to assist and facilitate Eurojust and the networks to achieve the goal of further improving the coordination and synergies between them,

TAKING INTO ACCOUNT the positive assessment of the activities carried out by the EJCN since its establishment in June 2016 and CONSIDERING that the setting-up of a formalised EJCN Secretariat would increase the level of implementation of the Network's work programme and activities and further develop the synergies between the EJCN and the other networks and the synergies between the EJCN and Eurojust,

HAVING REGARD to the Joint Paper drafted by Eurojust and the networks, set out in the Annex to these conclusions,

HAS ADOPTED THE FOLLOWING CONCLUSIONS:

The Council welcomes the analysis by Eurojust and the networks, set out in their Joint Paper, regarding the existing coordination and synergies between them.

The Council equally welcomes the analysis in this paper regarding the possibility of further developing such coordination and synergies.

The Council encourages Eurojust and the networks to further develop the coordination and synergies between them, in line with the possibilities and proposed line of action described in the joint paper.

The Council also encourages Eurojust and the networks to continue their cooperation with a view to further developing their coordination and synergies, and with a view to fighting serious crime and facilitating cooperation in criminal matters in the European Union even more effectively.

The Council considers that, while all networks are important and have a unique role, the privileged partnership between Eurojust and the EJM resulting from Article 85(1) of the Treaty on the Functioning of the European Union, Article 25a of the Eurojust Decision ⁽¹⁾, Article 48 of the Eurojust Regulation ⁽²⁾, and Article 10 of the EJM Decision ⁽³⁾, should be reflected both at operational and strategic level, including by continuing to contribute to an appropriate allocation of cases between these two actors of judicial cooperation and by ensuring the functioning of the secretariat of EJM as a separate unit responsible for the administration of that network.

Without prejudice to the outcome of the discussions on the new multiannual financial framework, the Council acknowledges that Eurojust and the networks need to be able to carry out their tasks properly, and that Eurojust — and by extension the networks — should therefore have adequate resources at its disposal.

The Council supports further exploring the possibility of the establishment of a lean secretariat within Eurojust, which would provide assistance to the EJM, enabling it to meet the needs and expectations of practitioners involved in the field of cybercrime.

The Presidency is invited to continue to devote appropriate attention, including at political level, to the issue of coordination and synergies between Eurojust and the networks.

⁽¹⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view of reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1), as last amended by Council Decision 2009/426/JHA of 16 December 2008.

⁽²⁾ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

⁽³⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

JOINT PAPER

From: — Eurojust,
— The European Judicial Network (EJN),
— The European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (the Genocide Network),
— The Joint Investigation Teams Network (JITs Network), and
— The European Judicial Cybercrime Network (EJCN)

Date: 3.4.2019

To: Romanian Presidency of the Council of the EU
General Secretariat of the Council of the EU

Subject: Joint paper of Eurojust, the EJN, the Genocide Network, the JITs Network, and the EJCN on synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters

Purpose

At the request of the Romanian Presidency of the Council of the EU⁽¹⁾, the European Judicial Network (EJN), the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (the Genocide Network), the Joint Investigation Teams Network (JITs Network), the European Judicial Cybercrime Network (EJCN) and Eurojust are pleased to provide a **joint paper** expressing their views on the existing synergies between these networks⁽²⁾ and between these networks and Eurojust, and on potential areas to further develop such synergies.

As requested, this joint paper addresses the specific questions raised in Council document 7000/19, and includes specific proposals in this respect.

The networks, which are supported by Eurojust, vary significantly in terms of legal basis (EU legislative act or other Council document), mandate (horizontal or crime-focused) and function (national experts and/or local contact points, judicial and/or law enforcement members). The EJN, for example, has a long-standing existence and has developed, in accordance with its legal framework, 'privileged relations with Eurojust based on consultation and complementarity'⁽³⁾.

In accordance with Eurojust's legal basis⁽⁴⁾, the secretariats of the networks function as separate units and may draw on the administrative resources of Eurojust that are necessary for the performance of their tasks. The coordination of those secretariats, covered by Article 48(2) of the Eurojust Regulation, is ensured by Eurojust.

This joint paper is divided into two main sections: 1) existing synergies between the networks and between the networks and Eurojust, and 2) further developing synergies.

1) Existing synergies between the networks and between the networks and Eurojust

Within Eurojust, the Board on Relations with Partners is the College substructure tasked with enhancing an institutional, coherent, comprehensive and coordinated response to Eurojust's partners, including the networks. The interaction between the networks and Eurojust is facilitated and supported by the dedicated contact points appointed within the Board.

From 1 January 2019, following the reorganisation of the Eurojust Administration, the network secretariats have become part of Eurojust's Operations Department, which enables them to establish even closer relations among themselves and to facilitate coordination between the networks and Eurojust.

⁽¹⁾ Council document 7000/19, issued on 5 March 2019.

⁽²⁾ Besides these 'formalised' networks, Eurojust supports and facilitates synergies with other networks of practitioners: network of national correspondents for terrorism matters, European Intellectual Property Prosecutors Network (EIPPN), and the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union.

⁽³⁾ Article 10 of Council Decision 2008/976/JHA and Article 48 of Regulation (EU) 2018/1727 (Eurojust Regulation). See also Article 85(1)(c) of the Treaty on the Functioning of the European Union (TFEU).

⁽⁴⁾ Article 48 of Regulation (EU) 2018/1727.

a) *Existing synergies and best practice in cooperation between the EJN, the JITs Network, the Genocide Network and the EJCEN*

— Facilitation of contacts, e.g. regular and plenary meetings, sharing of contact lists, access to the restricted section of the websites

The heads of the secretariats of the EJN, the Genocide Network and the JITs Network, as well as the EJCEN support team, meet on a regular basis to exchange views on administrative and substantive issues relevant for the mandate of the respective networks. Their close proximity within Eurojust's premises in The Hague facilitates their constant contacts.

The networks invite each other's members to their respective plenary and annual meetings on a regular basis, with a view to sharing information and expertise in areas of common interest. They consult with each other to avoid overlapping in the organisation of such meetings.

Sharing of contact details of the members/contact persons between the networks is highly crucial for operational support to practitioners. Currently, the contact details of the JITs experts and of the members of the EJCEN have been uploaded onto the EJN website and are updated on a regular basis. JITs experts and the EJCEN members, on their side, have been provided with credentials to have access to the contact details of the EJN Contact Points on the EJN website. The list of the Genocide Network Contact Points is a document published by the Council and shared based on the LIMITE policy of the Council documents.

Concerning access to the restricted section of the websites of the networks, currently, the EJN Contact Points have the possibility to request access to the JITs restricted area.

— Strategic cooperation

Taking into account the different roles and mandates of the respective networks, joint strategic activities between two or several of the networks are carried out when relevant, e.g. regarding input to proposals for new instruments on judicial cooperation in criminal matters (EJCEN-EJN opinion regarding the certificates annexed to the e-evidence proposal), consultation on substantive issues relating to their area of expertise (JITs Network-EJCEN consultations on how to enhance the use of JITs in cybercrime cases), etc.

The EJN website is the most important platform for providing information and tools to practitioners on judicial cooperation in criminal matters. Consultations on which documents of the other networks should be published on the EJN website take place on a regular basis.

b) *Existing synergies and best practice in cooperation between the networks and Eurojust*

— Facilitation of contacts, e.g. regular and plenary meetings, sharing of contact lists, access to the restricted section of the websites

Eurojust regularly attends the plenary or annual meetings of the networks — which generally are hosted at Eurojust's premises — and the network secretariats are also regularly invited to Eurojust meetings, including College meetings, at which matters of common interest or relevant budgetary issues are discussed. In general, with a view to avoiding any overlap in the organisation of meetings, preparatory consultations take place between Eurojust and the heads of the network secretariats. After the plenary or annual meetings of the networks, the conclusions of said meetings are generally presented to the College of Eurojust for information, also with a view to ensuring the follow-up of issues of common interest.

The annual meetings between the EJN Presidency Board and the Eurojust Presidency Team take place once per year. Eurojust always attends the EJN plenary meetings taking place in the Member State holding the Presidency of the Council of the EU. In addition, members of the Eurojust National Desks attend, upon invitation, the EJN regional/national meetings.

A regular practice has been established by the Eurojust Cybercrime Team of inviting the Board of the EJCEN to team meetings via telephone/videoconference. Furthermore, the EJCEN has set up internal administrative guidelines according to which Eurojust is closely consulted on issues of strategic importance, such as relations to third States and the EJCEN work programmes.

To ensure that the Eurojust National Desks have access to restricted information on the EJN website, the EJN Secretariat has provided them with the necessary credentials for password-protected areas of the website.

Eurojust also hosts dedicated sections for the EJN, the Genocide Network, the JITs Network and the EJCEN on its website.

— Strategic cooperation

Generally, the networks and Eurojust share information on topics relevant to the meetings they organise. They also provide each other with information on their activities and products for the purpose of publication on each other's websites.

Below are several of the many examples of cooperation at strategic level between Eurojust and the networks:

- The EJN and Eurojust have initiated the preparation of a joint document for practitioners on the basis of the discussions and findings within the EJN and Eurojust on the practical application of the European Investigation Order (EIO).
- Eurojust and the EJN have contributed to the discussions on the topics of the 9th round of mutual evaluations.
- Since its establishment, the JITs Network Secretariat, together with Eurojust (as well as Europol and OLAF), has developed several tools to facilitate effective access to JITs by all practitioners: the JITs Manual, the JIT model agreement and the JITs Practical Guide. In addition, the JITs Network and Eurojust have jointly prepared the second JITs evaluation report.
- The EJCEN and Eurojust cooperate on various strategic projects, including EJCEN contributions to Eurojust products such as the Cybercrime Judicial Monitor and the Encryption Observatory, joint opinions regarding new legal instruments, as well as joint contributions to stakeholders.
- In 2018, the Genocide Network and Eurojust cooperated on the preparation of a memorandum on battlefield evidence relating to the gathering and use of information derived from war zones. The Genocide Network Secretariat also participates in the meetings of the Eurojust Counter-Terrorism Team.

The development of a joint promotional presentation of the roles of Eurojust and the networks hosted at Eurojust, which could further assist national authorities in identifying relevant partners, is currently under consideration.

— Operational cooperation

The EJN/Eurojust joint paper, 'Assistance in International Cooperation in Criminal Matters for Practitioners — What can we do for you?' is a central document regarding allocation of cases between them. This paper helps judicial practitioners to decide whether they should contact the EJN or Eurojust for assistance in international cooperation in criminal matters. The joint paper was updated in 2018, and its translation is being carried out in the Member States. Since 2018, the EJN and Eurojust have been working on a joint project on the assessment of the allocation of cases.

The JITs Network Secretariat has developed very close links with the operational work of Eurojust and is increasingly invited to participate in level II meetings (between National Desks on a given case) and level III meetings (coordination meetings) at Eurojust, during which several aspects related to the setting up or operation of a JIT may be discussed. As of 27 August 2018, Eurojust fully implemented its online tool — the JIITs Funding Portal — for submission of JIITs funding applications. Many of the adjustments made to the funding process in the past years have been triggered by the needs of JIIT practitioners, including representatives from the Eurojust National Desks.

A 'case-building' subgroup within the EJCEN, advising judicial authorities from the Member States on making the best possible use of services offered by Eurojust, is currently being developed.

Confidential information exchanged during closed sessions of Genocide Network meetings has provided a starting point for the initiation of Eurojust coordination meetings. The Genocide Network (contact points and secretariat) is invited to Eurojust coordination meetings in cases of core international crimes.

— Outreach

As part of its mission to ensure a coordinated response to Eurojust's partners, the Board on Relations with Partners ensures information sharing and facilitates connections between these partners and the networks.

Eurojust actively involves the relevant networks in several of its external projects (e.g. EuroMed for EJN, Sirius Project for EJN and EJCEN, EL PaCTO for the JIITs Network, and Nuremberg Academy project on collection and preservation of e-evidence for the Genocide Network).

Eurojust also promotes the work of the networks in its relations with other EU agencies (such as the JHA agencies network), bringing them together if relevant. Examples include FRA's handbook on cybercrime (Eurojust-EJCN) and joint training on JITs (CEPOL and the EJTN).

2) Further developing synergies

a) *Use of the Eurojust National Coordination System (ENCS)*

The ENCS national correspondents for Eurojust, the EJM Contact Points and the members or contact points of the other networks should continue to meet regularly to discuss cooperation between them and to maintain close contacts in operational cases (Article 12 of the Eurojust Decision and Article 20 of the Eurojust Regulation). The ENCS should continue to be used for this purpose and its full potential will be exploited in that regard.

To improve the efficiency of the cooperation between the networks and take full advantage of the synergies created through such cooperation, the networks could consider, if possible, supporting the 'double or multiple-hat' functions of the network members appointed by the Member States, as is already an existing practice in relation to certain double-hatted EJM Contact Points and JIT experts. Some Eurojust National Members or Deputies also carry out the function of EJM Contact Points.

Member States could also explore the possibility to include members of the EJCN in the ENCS on the basis of Article 20(3)(f) of the Eurojust Regulation, which will become applicable in December 2019. This has the potential of further improving the overall interaction between the EJCN, the other networks and Eurojust at national level.

b) *Fully exploit all opportunities to deliver common messages*

The networks and Eurojust will further explore areas in which they can initiate or increase coordination of common messages with a view to a systematic joint approach to a topic, for example through joint topical meetings, joint strategic projects, joint opinions on legal instruments, etc.

With this goal in mind, the development of a joint working methodology between the network secretariats and Eurojust to establish working processes for the preparation of joint initiatives and deliverables will be considered. The contact points within the Eurojust Board on Relations with Partners will play a key role in this respect.

c) *Access to the restricted section of the websites of the networks*

Without prejudice to and in accordance with the legal basis of each network, in order to share the relevant knowledge and expertise of that network and to disseminate information to other practitioners, mutual access to the restricted areas of the websites of the networks is considered a cooperation priority. In this respect, the possibility for the members of the networks to have direct access to the restricted areas of the websites should be analysed and, if appropriate, granted.

d) *Resources linked to Eurojust's support to the networks*

In line with its legal basis, supporting networks of practitioners has always been considered by Eurojust as an integral part of its mission as well as a unique opportunity to share best practice and to strengthen ties with national judicial authorities.

Hosting network secretariats at Eurojust is of mutual benefit: network secretariats are composed of dedicated staff and receive an annual budget allocation that is part of Eurojust's regular budget. They also benefit from Eurojust's general infrastructure (IT for the infrastructure and maintenance of websites, human resources, budget, general services, etc.), thus contributing to economies of scale.

At the same time, Eurojust has been seeking efficiency gains to optimise its support to the networks (e.g. by sharing common services) and will continue to do so.

However, sufficient resources should be secured to allow Eurojust to maintain adequate support to the networks. With the increase in caseload and the cuts in Eurojust's budget, there is a risk that the support to the networks could operate to the detriment of Eurojust's core mandate, i.e. supporting the coordination of cross-border investigations and prosecutions.

e) *Establishing a secretariat to support the EJCN*

In its Report on the functioning of the EJCN (Council document 15521/18), Eurojust indicated that increasing the level of implementation of the EJCN's work programme as well as enhancing the synergies between the EJCN and other actors will depend on the allocation of additional resources. Since 2016, the resources which can be made available to the EJCN by Eurojust within the limits of its existing budget have not enabled the EJCN to consistently and fully develop its own products and website.

The long-term efforts needed to improve this situation (especially with regard to the further development of the EJC� website and the topical subgroups of the EJC�) can only be undertaken on the basis of the allocation of additional resources, which would allow Eurojust to set up a formal EJC� Secretariat.

This secretariat should function as a lean support structure for the EJC�, enabling it to meet the needs and expectations of practitioners involved in the field of cybercrime. This dedicated structure is necessary to maintain and further develop synergies between the EJC� and the other networks and between the EJC� and Eurojust.

Furthermore, in the absence of the allocation of additional resources for the purposes of the Network, and in view of planned budget cuts affecting Eurojust's support capabilities, Eurojust will not even be able to maintain the level of support currently provided to the EJC� (including the financial and human resources needed to conduct two annual plenary meetings).
