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Subject: The European Judicial Network's Perspective on the Eurojust National
Coordination System

Delegations will find attached a paper presented at the 6th National Correspondents meeting of the EJM held on 8 October 2014.

The European Judicial Network's Perspective on the Eurojust National Coordination System



Table of Contents

1. Introduction	3
a. Background Information.....	3
b. Methodology for this Report.....	4
c. Relevant Legal Provisions	4
2. The Role of the ENCS	5
a. Distribution of Cases.....	5
b. Relation to Exchange of Information	7
c. Experience and Best Practices.....	8
3. Composition of the ENCS.....	10
a. Number of Contact Points Involved	10
b. Experiences and Best Practices	11
4. ENCS Meetings.....	12
a. Meetings Benefits and Recommendations	12
b. Use or Potential Use of EJM National Meetings for ENCS Meetings.....	13
c. Experiences and Best practices	14
5. General Conclusions	15
EJM Cooperation with Eurojust.....	17

The European Judicial Network's Perspective on the Eurojust National Coordination System

1. Introduction

a. Background Information

The European Judicial Network (EJN) Secretariat (the Secretariat) launched in 2008 an initiative to identify the steps to be taken for the implementation of the EJN¹ and Eurojust² Decisions in aspects concerning the EJN. This project was conceived to allow the EJN community to provide a valid contribution to the new challenges of international judicial cooperation.

To enhance the functioning of the ENCS in their own Member States, a number of representatives from different Member States approached the EJN Secretariat through their Contact Points to obtain information and best practice on the implementation and functioning of the ENCS in other Member States. Knowledge of the legislation and its practical application in the other Member States are essential tools for Ministries of Justice, in particular for drafting legislation and for transposing EU legislation.

The objective of this document, *The European Judicial Network's Perspective on the Eurojust National Coordination System*, is to provide the European institutions, Member States, Eurojust and particularly the EJN with a practitioner's perspective on the implementation of the ENCS. In this way, the EJN Secretariat can provide the Member States with best practices and practical examples on application of legislation in other Member States and the possibility to create a better understanding of the legislation in other Member States, thus enhancing mutual trust and the application of the principle of mutual recognition.

¹ **Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.**

² Council Decision on the strengthening of Eurojust and amending Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

b. Methodology for this Report

The EJM Secretariat produced this report by analysing the information obtained from several sources. To begin with, the EJM Contact Points provided an update on ENCS implementation and practice through a *tour de table* at the 34th Regular Meeting of the EJM in February 2014. The Secretariat collected this information and presented it to the Contact Points at the 42nd Plenary Meeting of the European Judicial Network held in Athens from 23 to 25 June 2014.

The EJM Contact Points found this report to be very valuable for their MS. The Secretariat therefore decided to complete the information obtained by means of a new questionnaire directed to the EJM National Correspondents.

Taking into consideration the replies to the above, the information obtained by the available reports on the Sixth Mutual Round of Evaluation and the *Fiches Suédoises* provided to the Secretariat by many of our National Correspondents, the EJM Secretariat drafted this report with the most relevant points raised by practitioners.

c. Relevant Legal Provisions

According to Article 12 of the revised Eurojust Decision, the ENCS should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for Eurojust for terrorism matters, the national correspondent for the European Judicial Network and up to three other contact points of the EJM, as well as representatives in the Networks for Joint Investigation Teams, War Crimes, Asset Recovery and Corruption.

The ENCS shall facilitate at national level the carrying out of the tasks of Eurojust, in particular by ensuring that the Case Management System (CMS) receives information related to the Member State concerned in an efficient and reliable manner as well as by assisting in determining whether a case should be dealt with by Eurojust or the EJM. The objective is to create a link at national level between Eurojust, the EJM and other European networks.

Besides it has been interpreted that Article 13 of the revised Eurojust Decision could be related to the functions of the ENCS. In this provision is stated that the Member States shall inform Eurojust of the cases in which at least three Member States are directly involved and for which requests for judicial cooperation have been transmitted to at least two Member States, and one of the following alternatives applies: (a) factual indications point to the involvement of a criminal organisation, (b) the case may have a serious cross-border dimension, or (c) the offence involves trafficking in human beings, sexual exploitation of children and child pornography, drug trafficking, trafficking in firearms, corruption, fraud affecting the financial interests of the European Communities or counterfeiting of the euro.

2. The Role of the ENCS

a. Distribution of Cases

To facilitate at national level the carrying out of the tasks of Eurojust, the ENCS main objective has been to improve the coordination of work carried out by the main key players in the area of judicial cooperation in criminal matters.

Gradual implementation of the ENCS began with the entry into force of the revised Eurojust Decision on 4 June 2009. To date, not all Member States have completed implementation³, and even in some Member States in which the legislative procedure has been finalised, the ENCS is not yet fully operational. For example, in Malta, the ENCS could, when necessary, start working without a legislative instrument, as the structure has been informally set up. In the Slovak Republic, the ENCS has been established through the act that implemented the Eurojust Decision, but the ENCS is still not operating in practice.

³ Cyprus, Greece, Italy and Spain have not implemented the ENCS to date – August 2014.

In most Member States in which the ENCS has been implemented and is operational, one of the main identified roles has been to assist in the distribution of cases between Eurojust and the EJM. For example, in the Netherlands, the internal working procedure of the National Prosecution Service has tasked the ENCS with an advisory function for determining whether a case should be dealt with by the EJM or Eurojust. In Malta, the EJM Contact Points also work within the Attorney General's Office, placing them in a better position to assess whether requests for mutual legal assistance should be forwarded to Eurojust or the EJM.

In many of these cases, the Member States were already working with a similar system before the establishment of the ENCS. The comparable structures in these Member States provided the information, for instance, to the General Prosecutors Office, which decided which cases were going to need the assistance of Eurojust or the EJM. Currently, with this formalised structure, the Member States are able to rely on a system where a number of members are representing all key players in the area of judicial cooperation in criminal matters in each Member State. This situation also guarantees continuity of work.

In Member States in which the ENCS is starting to operate, its role has not been clearly defined. In cases like Bulgaria, the EJM Contact Points expressed in their opinion that the system has been improved since the ENCS provides assistance in the distribution of cases and brings together national authorities. A positive outcome that is already detected is that the EJM Contact Points who are part of the ENCS are placed in a position in which they can swiftly support the work of the other ENCS members and the internal work of the prosecutors around the country.

Another working mechanism that does not directly involve the ENCS could be gathered from Slovenia. The Eurojust National Member liaises directly with the EJM National Correspondent on a case-by-case basis to determine which structure should deal with each request/case.

In general, the information gathered shows that the Member States that use the ENCS have consolidated their methods to properly distribute the cases to the EJM or Eurojust. The Contact Points are experts in international cooperation in criminal matters and on the role of each structure, and, thus, when consulted, are in the best position to provide clear advice on that matter as well.

b.Relation to Exchange of Information

The exchange of information among the ENCS members is essential to allow them to perform their functions. Additionally, in relation to Article 13 of the revised Eurojust Decision, the ENCS could also function as the information hub for Eurojust. Even when the CMS has not yet been connected by Eurojust to any MS, there are active and informal channels to provide information to Eurojust.

Many Member States claim that first the principle of direct contact should be respected. In the case of Sweden, the national authorities and Eurojust have direct, non-bureaucratic contact, and do not see the need to involve the central authorities or the ENCS, although they have found that keeping the ENCS informed of the activities of the National Member is useful in most cases.

Denmark has clarified to the EJM Secretariat that they have not benefitted greatly from the ENCS regarding the exchange of information. According to the Danish authorities, the forms that are currently in use complicate matters. In this regard, contact between the national authorities and the National Member and Danish Desk are made by telephone or mail and do not involve personal data.

For Belgium, the exchange of information between Eurojust and the Belgian national authorities is generally done through the Federal Prosecutor's Office. The National Correspondent for Eurojust also receives the information from the local Prosecutor's Office.

According to the Estonian national authorities, the exchange of information is decentralised. All competent authorities have the right to send relevant information to Eurojust directly. The Office of the Prosecutor General is always involved, receiving all the information exchanged. The national authorities do not seem to find the implementation of formalised channels for information to be necessary.

For the UK, the evaluators for the sixth round of mutual evaluations recommended raising awareness amongst all competent authorities, including law enforcement, of the usefulness of the exchange of information with Eurojust.

The presence of the EJM Contact Points in the ENCS also greatly contributes to the exchange of information between Eurojust and the EJM. In other words, the EJM Contact Points further a significant flow of information from the Member States to Eurojust. In some Member States, the ENCS has provided a natural platform between the EJM and Eurojust, which leads to a regular exchange of information between both organisations.

c. Experience and Best Practices

The presence of the EJM Contact Points in the ENCS has proved very positive in distribution of cases. The EJM Contact Points are experts in the area of judicial cooperation in criminal matters and experienced in the roles of the EJM and Eurojust for their own Member States. Furthermore, their position gives them constant exposure to the 30 EU legal systems and links them to both, the national EJM Contact Points and the ones from the other Member States. This helps them to facilitate, easily understand, and allocate the requests they receive.

Authorities in the Netherlands clarified that since each of the prosecutors responsible for international mutual legal assistance centres are also EJM Contact Points, they are well positioned to determine the best channel for cooperation between either the EJM or Eurojust.

A joint paper from the EJM and Eurojust has been adopted to provide information to all practitioners on how these two organisations can assist them. The paper will be translated into all official EU languages. The paper will be available through the EJM and Eurojust websites and will be distributed internally by the national authorities in the Member States.

The best tool is the internal policy guidelines, which explain whether a case should be dealt by the EJM or Eurojust. These internal policy guidelines exist in several Member States: Croatia, Malta, Spain, Sweden and the UK. These guidelines are also mostly available through the intranet of each Member State, facilitating access. Practitioners have recommended and found as a best practice that the EJM Secretariat and Eurojust also have access to, and ability to distribute, these policy guidelines to other Member States.

When guidelines are not available, countries such as France have a mechanism in place to advise or decide on the best place to direct a request. The Office of Mutual Assistance (BEPI) steers the magistrates to the EJM Contact Points or Eurojust on a case-by-case basis. In Slovenia, participants in the sixth round of mutual evaluations recommended that these sorts of findings and/or internal communications should be published on the intranet to benefit all Slovenian practitioners.

Trainings in case allocation have also been adopted as a useful tool for all practitioners in the Member States. Training material should be available to all practitioners. In Romania, specific trainings have been successfully delivered at the National Institute of Magistracy to clarify the complementarity and differences between Eurojust and the EJM; these trainings will continue. Detailed information on the functions of the EJM and Eurojust should be also explained to all practitioners.

The EJM Secretariat has found that training practitioners on the e-tools provided by the EJM website is valuable in providing answers to their requests without the need to seek further assistance.

In most Member States, practitioners who are outside the scope of the ENCS have not yet fully understood the role of the ENCS and the respective tasks and roles of the EJM and Eurojust. Therefore, creating awareness and providing information through different channels is recommended.

Sweden and the Netherlands stressed that the procedure in place regarding the exchange of information requested by Article 13 of the revised Eurojust Decision is impossible to implement. The forms designed to be used by the Member States require an excessive amount of information and disproportionately increase the workload of practitioners. In some cases, the work already being done by Europol is duplicated. This observation has been made by many other Member States, which have decided not to work with the fixed forms provided to them.

3. Composition of the ENCS

a. Number of Contact Points Involved

Each Member State has determined a different number of Contact Points to be involved in the ENCS depending on the way they have structured their system. Some Member States have implemented the ENCS as per Article 12 of the revised Eurojust Decision and others have extended the number to include all Contact Points available.

General observations have revealed that the countries where a decentralised system is in place, the legislators' instinctive solution is to involve all EJM Contact Points in the ENCS, the explanation being that, as per Article 2(2) of the EJM Decision, the EJM Contact Points shall be established with care being taken to ensure effective coverage of the entire territory. In this way, the ENCS ensures that the EJM experts in the field contribute to the work of Eurojust and improve internal and external coordination in general.

German national authorities confirmed that because of their federal structure, no solution other than to appoint each EJM Contact Point to the ENCS is feasible.

Austrian national authorities considered that all EJM Contact Points should be included in the ENCS so as to obtain information systematically from all of them. The ENCS in Austria consists of a forum for the exchange of information with the national representatives of networks that do not fall under the competence of the justice sector.

Member States with a more centralised approach, such as Denmark, Slovenia and the UK, place a number of Contact Points that are part of their central authorities within the ENCS structure. In this way, the Contact Points are in a position to provide advice directly on cases and to redirect requests to Eurojust where applicable.

Bulgarian authorities reported that the work of the Contact Points in the ENCS is useful and functional in helping and supporting the work of the other members of the ENCS and internal work of the prosecutors around the country.

b.Experiences and Best Practices

Germany, Romania and Sweden expressed their belief that a combined function for the National Correspondent for Eurojust and EJM Contact Points is the best solution for ensuring exchange of information and handling of requests/cases. In Sweden, the seven National Correspondents for Eurojust are also EJM Contact Points. Since they are aware of all the information available, the Swedish EJM National Correspondent stated that this situation works very well, ensuring an economy of structures and guarantees of optimal coordination and exchange of information. Practitioners should not be required to spend too much time deciding whom to contact.

In the Netherlands, the EJM Contact Point who is also part of the ENCS is also the Deputy National Member for Eurojust Similar situations exist in Denmark and Belgium.

During the sixth round of mutual evaluations, Malta's experience was recommended to other Member States. Considering its small size, Maltese authorities' decision to combine the roles and structures of both the EJM and Eurojust ensures economy of resources and optimal coordination.

In Romania, the sixth round of mutual evaluations brought to light that the ENCS does not seem to work as a separate body or a national background office for the Romanian National Member at Eurojust. The system may have been conceived for such a purpose, as the Romanian authorities acknowledged that the ENCS is a loose system of contact points to assist the National Member on request, rather than an actual organisation. The evaluation committee concluded that, due to the specific background of the Romanian judicial system, this type of informal organisation might be a suitable way of ensuring support for the National Member, since the positions chosen to be part of the ENCS are the ones most frequently asked for assistance.

The EJM Tool Correspondents and the EJM Secretariat have found as a good practice the identification of the Contact Points integrating the ENCS in the secure part of the EJM website. Therefore, some Member States have introduced this information in the website so that all Member States easily find their contact details.

4. ENCS Meetings

a. Meetings Benefits and Recommendations

Planned ENCS meetings have proved to be essential in enhancing cooperation among their members and allow all relevant stakeholders to meet together on a formal basis. In this way, links are strengthened and the exchange of best practice is facilitated.

Member States should also hold meetings to share their results, best practice and conclusions with all practitioners. This information is a crucial means of enhancing the system of international judicial cooperation in criminal matters in the Member States.

Many Member States hold periodic meetings, allowing ENCS members to tackle new topics and follow up on regular work. In Denmark, the ENCS holds two annual meetings, at which all ENCS members meet and exchange information on the latest developments, etc. The ENCS meetings are also used as a platform for general information-sharing between practitioners dealing with cases involving international cooperation. Moreover, the members of the ENCS can on an *ad hoc* and case-by-case basis share information with the relevant members, if so required.

In Finland, the ENCS finds that holding one or two meetings per year is sufficient, as information is already adequately communicated through informal settings. In contrast, the Belgium ENCS holds meetings every three months at the Federal Prosecutor's Office.

Authorities in the Netherlands invite different members of the ENCS to the meetings, depending on the topics of discussion. For general topics on the implementation and progress of the ENCS, all members and Eurojust would be invited.

Some Member States, such as Ireland, the UK and Romania, will hold meetings on an *ad hoc* basis. However, only Romania has organised a meeting since the implementation of the ENCS.

Periodic meetings also take place between the Spanish Desk at Eurojust and the Europol National Unit or national authorities in Spain to tackle the coordination or work in Spain even if the ENCS has not been officially set up.

Some Member States claim that the ENCS does not need to hold any meetings since their national authorities work in very close cooperation, such as in Estonia.

b. Use or Potential Use of EJM National Meetings for ENCS Meetings.

During the 35th Regular Meeting, the Contact Points and National Correspondents explained that the EJM National Meetings organised with the funds provided by the EJM Secretariat in accordance with the Annual Work Program also serve as ENCS meetings, as the EJM Contact Points often represent the largest group in the ENCS. Such consolidation helps to save the Member States time and financial resources.

The EJM National Meetings have proven to be essential *fora* for discussing operational, strategic and organisational matters among the EJM Contact Points in the Member States. Since this program was implemented by the EJM Secretariat, the Member States have reported improvements in their work and in the work of the Network in general.

In some cases, these benefits have been transferred to the ENCS as well. For instance representatives from Germany, Poland, Romania and Sweden provided the EJM Secretariat with different reasons why the meetings were extended to the ENCS. In Germany, the annual meeting of the German EJM Contact Points were combined with a meeting of the ENCS, as all EJM Contact Points are also part of the ENCS, thus saving time and money for the German national authorities.

In Poland, the ENCS is a topic included in the most recent EJM National Meeting. The Eurojust National Correspondent participated in the EJM network meeting and the roles of the EJM, Eurojust and the ENCS were clarified. As Eurojust and EJM have to cooperate, meeting and discussing their common subjects of interest is necessary.

Other Member States, such as the Slovak Republic, the Czech Republic and Bulgaria, which have not organised an ENCS meeting, appear to find the EJM National Meetings a good forum for discussion as, in some respects, the EJM and the ENCS are tightly interlinked.

On the agenda of the forthcoming National Meeting in Belgium are EJM matters as well as the implementation of Article 13 of the revised Eurojust Decision regarding the exchange of information between the national authorities and Eurojust. The EJM Contact Points are well-placed to receive and transmit this information when needed.

c. Experiences and Best practices

Scheduled meetings have been recommended by the sixth round of mutual evaluations, allowing for exchange of information and strengthening of professional relationships among the ENCS members.

Austrian representatives found that personal contacts between the people involved should be the most important tool to enhance the proper functioning of the ENCS. Therefore, a minimum annual meeting and continuous communication via telephone and e-mail should take place.

Romania has proposed that Eurojust organise meetings of the persons responsible for the functioning of the ENCS to support the exchange of experience and best practice among the ENCS of all Member States.

According to the feedback received from reports of the sixth round of mutual evaluations, for the majority of cases, the ENCS, as a structure, does not participate in any coordination meetings organised by Eurojust. However, Sweden pointed out that the contribution of ENCS members at meetings has been very useful. The ENCS could play an important role in the future.

To encourage further cooperation with the EJM, Eurojust could invite the EJM Contact Points to coordination meetings, as set out in Article 10 of the Rules of Procedure of Eurojust⁴, either if the Contact Points are involved in the investigation or their expertise is deemed useful. The Contact Points part of the ENCS already engage in many Eurojust activities from the Member States. Extending their participation in coordination meetings could also be beneficial to the operational work of Eurojust and increase the exchange of information.

5. General Conclusions

The information gathered has demonstrated that each of the Member States has implemented or intends to implement the ENCS in different ways. The Member States have not, in most cases, followed the revised Eurojust Decision. However, as the European Union has 30 different legal systems, it was expected that a tailor adaptation was necessary to achieve a working system.

Where the ENCS is actively working, we have observed that it improves the cooperation system with Eurojust. The Contact Points agree that in most Member States that claim to have a working ENCS, a clear vision and division of cases between Eurojust and the EJM exists. The participation of the Contact Points in many cases as Eurojust National Correspondents simplifies matters and ensures knowledgeable decision-making at the time of distribution of cases to the EJM or Eurojust. In addition to an enhancement in communication among the key players in international cooperation in criminal matters, the Member States benefit from improved cooperation.

⁴ Rules of procedure of Eurojust as adopted unanimously by the College of Eurojust at its meeting of 30 May 2002 and approved by the Council on 13 June 2002.

However, the establishment of a new cooperation system does not necessarily imply that the Member States are providing more resources for its operation. On the contrary, budgets and staffing are in general being severely reduced. The EJM has observed that with these cutbacks have had an impact on the Contact Points, who now have, in addition to their normal functions as magistrates, prosecutors or representatives from the Ministries of Justice, further tasks involving the ENCS or other additional responsibilities. Hence, in the long term, this progressive overload of work could affect the performance of the key actors in judicial cooperation and cause the level of current achievements to drop considerably.

The issuance of national guidelines has been regarded as a positive step to distinguish among the roles of the ENCS, the EJM and Eurojust. National guidelines have been considered during the sixth round of mutual evaluations as a great tool for all practitioners, as they provide details of whom to contact in different situations. However, other forms of active awareness-raising should be addressed by the Member States, the EJM and Eurojust, so that practitioners can learn about the different possibilities and how the system works both in their own Member State and at EU level.

The exchange of information relating to Article 13 has been seen as one of the aspects that should be improved. The Contact Points are burdened by the use of forms and do not possess the time to follow this bureaucratic approach to the exchange of information.

The Contact Points participating in the ENCS depends on the needs of the Member States. As observed there are legal systems that needs to have all the EJM Contact Points involved in the ENCS and some where up to three Contact Points as prescribed in the Eurojust Decision seems sufficient. However, with a future Regulation for Eurojust being currently negotiated, the need to have a larger number of EJM Contact Points should be reflected in the legal instrument to allow the Member States for a flexible and proper implementation of the ENCS.

Holding regular meetings, either formally or informally, has proven to be a promising method to adjust the work of the members of the ENCS in their Member States. The potential or actual use of the EJM National Meetings, organised with funding provided by the EJM Secretariat, is another example of how the EJM continues utilising cooperation with Eurojust as a privileged partner and the interest to participate in and support the ENCS and its work by the Contact Points. In the EJM National Meetings, the Contact Points address several subjects of an organisational and operational nature. Including the ENCS in these meetings allowed practitioners to benefit from the experience of the Contact Points of that Member State. However, taking into consideration the Secretariat's limited budget availability, other means of financing should be secured by the Member States or Eurojust to promote the proper functioning of the ENCS.

EJM Cooperation with Eurojust

Partnership with and cooperation between the EJM and Eurojust and their involvement with the work of the ENCS is demonstrated at many levels.

Operationally, the Contact Points, and occasionally the EJM Secretariat, provide extensive support to the work of a large number of Eurojust National Desks. Furthermore, the finalisation of the document describing the different responsibilities of the EJM and Eurojust, drafted by the Joint Task Force, has been characterised as a step forward in cooperation and understanding of both organisations. The strengthening of the synergy among the EJM, Eurojust and the ENCS is vital to improve procedures for judicial cooperation in criminal matters. However, the EJM Contact Points have functions separate from the role of the ENCS. Due to their position as experts and their level of practical experience in the field, they are also in the best position to cooperate with the ENCS.

As the EJM Contact Points constitute the largest group represented in the ENCS, they share their EJM National Meetings to organise the ENCS meetings, thus saving time and financial resources.

The EJM website is a great instrument that assists the Eurojust National Desks and practitioners with e-tools. Particularly they use the Judicial Atlas and the Judicial Library which contains documentation on the status of implementation of the EU legal instruments for judicial cooperation in criminal matters. Additionally, the EJM website has a new feature to enable contact details of the ENCS members to be shared, should the Member States wish to make that information accessible in the restricted area of the website.

At administrative level, the EJM Secretariat also actively contributes by engaging its limited financial and human resources to enhance the synergy between the EJM and Eurojust and serving as a think-tank, exploring different ways of advising the practitioners on the adequate apply the establish system for judicial cooperation in criminal matters and the use of the EJM and Eurojust and now including the ENCS.

