



Council of the
European Union

181112/EU XXVII. GP
Eingelangt am 22/04/24

Brussels, 22 April 2024
(OR. en)

8712/24

JAI 606
COPEN 182
EJN 11

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	61st Plenary meeting of the European Judicial Network (EJN) (Madrid, Spain, 7-9 November 2023) - Conclusions of the workshops

Delegations will find attached the above-mentioned document.

61st Plenary meeting of the European Judicial Network

7-9 November 2023

Madrid, Spain

CONCLUSIONS OF THE WORKSHOPS

From 7 to 9 November 2023, the 61st Plenary Meeting of the European Judicial Network, under the Spanish Presidency of the Council of the EU, took place in Madrid with the participation of approximately 130 EJM Contact Points. The EJM Contact Points discussed the following:

- WORKSHOP 1: Relations between EIO and other instruments: coordination challenges and solutions, including digitalization.
- WORKSHOP 2: Cooperation EU/ Latin America: best practice, practical problems and proposals for improvement.
- WORKSHOP 3: Practical problems of transfer of custodial sentences and measures involving deprivation of liberty and the consequences thereof.

Workshop 1:

Relations between EIO and other instruments: coordination challenges and solutions, including digitalization

Part I: European Investigation Order (EIO) and other legal cooperation instruments

- **EIO and MLA requests**

Directive 2014/41 on the European Investigation Order (EIO Directive) is a milestone in the new mutual recognition regime in the evidence-gathering field. Though one stand-alone legal instrument covering, with the few exceptions, all types of investigative measures improves the consistency of the EU legal framework, there are still questions that remain relatively unclear for practitioners, for example, whether a specific measure falls within the scope of the EIO Directive or how the EIO Directive can be used in relation to other legal instruments.

In principle, EIO may be applicable in all phases of the criminal proceedings. However, under the Articles 1 and 3 of the EIO Directive, EIO must only be used for the purpose of gathering evidence. For example, it is clear that if a copy of a judicial decision is needed to prove a predicate offence in money laundering investigations, an EIO should be issued. However, it becomes less certain whether it is appropriate to issue an EIO during the post-trial phase to gather legal information to check double criminality; or to obtain a report on the evaluation of the behaviour of the convicted person during parole. Would it be more correct to issue an MLA request in these situations?

The service of documents is another example. On one hand, an EIO should not be issued for the service of documents unless the service of documents is inextricably linked to the investigative measure that is the subject of the EIO (for example, house search). From the other side, how the executing authorities should react if they receive an EIO with the multiple measures, one of them being a service of documents or any other measure that falls out of the scope of the EIO Directive?

Having been asked how they would deal with the situation described above, acting as executing authority, the vast majority of the present EJM Contact Points indicated that they would still execute the EIO, despite the fact that some of the requested measures fall out of the scope of the EIO Directive. After all, the main goal is to provide the assistance in the investigation, so it is not a form of request what is crucial, be it EIO or MLA request, but the fact that all necessary information is submitted to the executing authority and that there are no violations of fundamental rights.

Nevertheless, the flexible approach from executing authorities is not something issuing authorities should just rely on. On the contrary, acting as issuing authorities practitioners should always carefully examine the legal basis and the purpose of the request, and, depending on that - choose the most appropriate legal instrument and form, even if it is more than one.

In brief, the EJM Contact Points agreed that, as an issuing authority, a strict position on the use of the EIO for the evidence gathering purpose should be maintained, whereas, as an executing authority, flexibility should be the rule.

The EJM Contact Points also indicated that, from the point of execution, in general there is no prioritization due to the form of request. All the requests, be it EIO or MLA, are treated equally, depending on the urgency, nature of crime and overall workload of the executing authority. The channels of communications, however, can vary depending on the form of the request: in case of an EIO direct communication is more common than that with an MLA request, and, subsequently, this can affect the time for execution.

- **EIO and EAW**

More discussions occurs when it comes to the relations between the European Arrest Warrant (EAW) and the EIO. May an EAW serve as a basis for the executing authorities to apply the coercive measures, such as house search, to locate the wanted person? Should the issuing authority send a separate EIO/MLA for this purpose?

The majority of EJM Contact Points indicated that, according to the national rules, an EAW is enough to enable executing authorities to perform necessary measures for locating and arresting the wanted person. An EIO/MLA is needed only if evidence is needed along with the arrest and surrender of a person.

In some countries, however, it depends on the case. For example, the EIO/MLA request is needed to perform the measures to locate the wanted person. In these situations though it would be better to use the EU 2000 Convention on mutual assistance in criminal matters instead of the EIO Directive, since the scope of the former is broader and goes beyond gathering of evidence. In this context, the coordination between EAW and MLA is essential, especially if there are different executing authorities for both instruments.

Another point of interoperability between EAW and EIO/MLA becomes actual when the temporary transfer of a person is needed. There are no doubts that videoconference is a less intrusive measure than temporary surrender, and is widely used in the EU Member States and outside. However, it entails certain problems:

- many countries do not accept the possibility to hear a defendant via videoconference;
- the presence of a representative of the executing authority is required during videoconferencing, and there might be not enough personnel to fulfil this requirement;
- technical incompatibility is often a challenge to make videoconference happen.

SUMMARY:

1. When it comes to the execution of the requests, flexibility is the key. However, before issuing the request, authorities should be strict and should thoroughly examine the purpose of the request, applicable legal basis and form.

2. Although in general terms all the requests are treated equally, without instrument-based prioritization of execution, the form of the request nevertheless determines the channel of communication – direct contacts in the case of EIO - that can affect the execution time-wise.

3. Usually the EAW is a sufficient legal instrument to find, arrest and surrender a wanted person. However, in the situations when also evidence is required, an EIO/MLA request is needed.

4. The EIO is a less intrusive alternative to a temporary surrender of a person, but there are number of technical, legal and practical obstacles that hinder wider applicability of the EIO for this purpose.

Part II – The future and the development of the e-EDES platform

The e-Evidence Digital Exchange System (e-EDES) enables the digital exchange of EIOs, MLAs and NIT (Notification about the interception of telecommunication without the technical assistance of a Member State, Annex C of the EIO) between the national competent authorities of the Member States in a secure way. Eleven Member States are currently taking part in a reference implementation portal.

When the e-EDES becomes fully operational within the EU, it will be the required way to transmit EIOs. Already in advance, the EJM Contact Points can indicate that such an inflexible approach to the communication might create a lot of problems in practice. To mention some of them:

- there could be situations when use of the e-EDES is just impossible due to technical or other reasons. In light of the obligatory use of the e-EDES, how could practitioners then send an EIO, especially in urgent situations?
- there might be legal and technical restraints for sending the evidence via e-EDES platform;
- training of practitioners is essential, but it could be problematic to train every practitioner involved, especially in the bigger countries, before the launch of the e-EDES.

Therefore, more flexible approach to the use of the e-EDES is needed, with adequate exceptions from the mandatory use of the e-EDES.

Meanwhile, with the development of e-EDES it would be desirable to use the potential this platform possesses. As it was mentioned before, often videoconference cannot be performed due to incompatibility. It would be avoided if an application for the videoconference could be integrated into the e-EDES that would be accessible for all the practitioners across the EU.

Additionally, broadening the scope of the legal instruments that can be transmitted via e-EDES platform would be a solution for better coordination between them, avoiding a situation when the different executing authorities in the same country are not aware about the related, but different, requests in the same investigation.

Moreover, the extraction of the various statistical data should be possible and user-friendly in the e-EDES.

The connection between e-EDES and the EJM website is another point that requires further elaboration. The current solution implies that a user is directed to the EJM Atlas on the EJM website to find a particular authority that is competent to receive a request. More advanced connection to the EJM Atlas, without the need to use two different webpages, would be recommended in this context. Apart from that, there could be more reference to the EJM website in the e-EDES, for example, links to the *Fiches Belges* and/or EJM Contact Point related to the particular receiving authority could be useful for practitioners.

Summary:

1. There should be adequate exceptions from the mandatory use of the e-EDES platform.
2. The possibility to use e-EDES as a platform for videoconference could help to avoid incompatibility issues.
3. It would be useful to elaborate the integration of the EJM resources into the e-EDES platform (for example, more advanced connection to the EJM Atlas; indication of the EJM Contact Points for the competent authorities).
4. Broadening the scope of the legal instruments that can be transmitted via e-EDES would improve the coordination of the execution.

Part III – Role of the EJM

During the discussions, the EJM Contact Points emphasized the essential role the EJM plays in the judicial cooperation, being a source of knowledge, experience sharing and direct contacts for practitioners.

However, it is not necessary to turn to the EJM Contact Points in every cross-border case. In problematic situations they provide necessary assistance at any stage of proceedings, for example, they:

- provide advice on which legal instrument to use in the particular situation;
- indicate where to address a request with the multiple measures;
- answer questions regarding double criminality;
- provide guidance regarding the videoconference, amongst many possibilities to assist.

Furthermore, the EJM website is a well-known source of necessary information related to judicial cooperation. For example, after the EIO Directive became applicable, for many EJM Contact Points and other practitioners it was the EJM website (guidebooks, reports and other documents) that helped understand how to issue and execute an EIO. The same relates also to other instruments, therefore it is important to develop the EJM website further and to keep it updated.

Summary:

1. The EJM Contact Points should be consulted mostly in the situations when there is a problem, not in any cross-border case.
2. The assistance of the EJM Contact Points is effective and necessary regarding the correct choice of the applicable legal instrument, finding a competent authority, questions about double criminality, videoconference amongst many possibilities to assist.
3. The EJM website is a necessary source of information for practitioners, therefore it is essential to develop it further, maintain and update it. Moreover, better integration between the e-EDES platform and the EJM website would greatly benefit practitioners and judicial cooperation in criminal matters across borders.

Workshop 2: Cooperation EU/ Latin American Countries (LAC): best practice, practical problems and proposals for improvement

The 61st Plenary meeting of the European Judicial Network (EJM) Contact Points took place in Madrid, Spain from 6 to 8 November 2023 under the Spanish Presidency of the Council of the EU.

The EJM Contact Points discussed in the Workshop 2 practical problems and best practices in relation to cooperation between the EU and Latin American countries (LAC). The Contact Points proposed ways to improve cooperation with LAC, and highlighted aspects where the role of the EJM could be developed as well as the activities that should be focused on in order to further support the practitioners in the EU in cooperating with LAC.

STRATEGIC APPROACH

The discussions started by setting the context of cooperation between the EU and LAC and cooperation of LAC with the EJM specifically. The strategic approach for cooperation with LAC was underlined as follows:

- 1) In 2018 “**EJM in retrospective and way forward**” was adopted. In this document, the EJM Contact Points reaffirmed the approach taken, and “*acknowledged the need for expanding its activities outside of the EU*”. The EJM Contact Points also “*confirmed the importance of connecting to other regional judicial networks around the world*”.
- 2) A statement “**New Agenda for Relations between the EU and Latin America and the Caribbean**” was made. It emphasized that the EU and LAC are natural partners, key allies to strengthen the rules-based international system and step-up joint action to promote peace, security, democracy, the rule of law and human rights. Its Priority 4 is dedicated to “*Joining forces for justice, citizen security and the fight against transnational organised crime*”, and states that the EU and LAC face common challenges around security and justice, which call for strengthening the bi-regional partnership and cooperation at all levels.
- 3) “**EU-CELAC Summit Declaration**” was adopted by the Heads of State or Government of the European Union (EU) and of the Community of Latin American and Caribbean States (CELAC) in 2023. It was agreed to consolidate and strengthen cooperation initiatives between the EU and CELAC in the field of citizen security and social justice by combating organised crime in all its forms, as well as corruption and money laundering, in particular through capacity building.
- 4) **The first EU-LAC shared policy cycle on Justice**, was adopted in 2022. The first objective agreed on is “*the promotion of rapid, effective and respectful international legal cooperation, with particular attention to the creation and electronic transmission of requests for legal cooperation, the use of joint investigation teams and data protection*”.

LEGAL BASIS FOR COOPERATION

The legal framework for cooperation between the EU and the LAC is the following:

1) **Bilateral agreements with LAC**

Most EU MSs have bilateral agreements with LA countries.

2) **Multilateral conventions** (UN Conventions against Drug Trafficking, Organised Crime and against Corruption are of the utmost relevance in EU-LAC cooperation relations (for instance, when it comes to setting up JITs)

3) **Budapest convention**

4) **Treaty Relating to the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities** (Treaty of Medellín)

The Contact Points also discussed several multilateral agreements accessible to iberoamerican countries (LAC, Spain and Portugal), that can apply in the framework of COMJIB (*Conference of ministers of justice of the Iberoamerican countries*), related to the use of videoconference or setting up of JITS among others. One of these regional Conventions is the **Treaty Relating to the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities (Treaty of Medellín)** that offers the possibility for accession by any third state, so any EU MS could be part of it. This international instrument makes it possible to modernize and streamline international legal cooperation through the Iber@ platform, a computer system that has the guarantees of maximum security and confidentiality for the electronic transmission of requests for international legal cooperation between central authorities, with legal validity and without the need for subsequent physical communication.

With its entry into force on 9 May 2022, the Treaty opened for accession by any country in the world. Five countries are currently part of the Treaty of Medellín: Andorra, Cuba, Spain, Paraguay and Uruguay. The agreement was also signed by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador and Portugal. Colombia has already ratified it in its Congress and the other States are making progress in the corresponding procedures for ratification.

AVAILABLE TOOLS

In order to cooperate with the LAC, the following tools were identified as available for the practitioners:

1) European Judicial Network (EJN)

EJN as a network of national contact points for the facilitation of judicial cooperation in criminal matters. Cooperation with LAC countries is channelled through the submission of MLAs or extradition requests and can be facilitated through the Contact Points of the **European Judicial Network**.

2) Ibero-American Association of Public Prosecutors (AIAMP)

The EJM also has established cooperation with the **Ibero-American Association of Public Prosecutors (AIAMP)**. AIAMP aims to strengthen ties of solidarity and professional development, as well as to promote international cooperation among member Public Prosecutors' Offices and to build up common strategies that allow them to improve their institutional capacities, understood as an essential requirement to provide proper rights protection. Furthermore, AIAMP seeks to facilitate linkages and communications with non-member Public Prosecutors' Offices in order to contribute to their institutional strengthening, while operating within the respective legal and political framework.

AIAMP has set up seven permanent specialised Ibero-American cooperation networks comprised of specialised public prosecutors from all the Ibero-American Public Prosecutor's Offices.

3) Ibero-American Network of International Legal Cooperation (IberRed)

Cooperation and close coordination between EU and LAC judicial authorities and prosecutors can also be enhanced via the different specialised Networks already in place. For example, the **Ibero-American Network of International Legal Cooperation (IberRed)** is a cooperation tool in civil and criminal matters, made available for all legal agents from the 22 Ibero-American countries and the Supreme Court of Puerto Rico. In June 2010, the EJM and IberRed concluded a **Memorandum of Understanding**.

COOPERATION PROGRAMMES EU/LAC

Different dedicated EU programmes and initiatives also open possibilities for EU and LAC judicial authorities and prosecutors to enhance mutual knowledge, strengthen capacity-building and operational coordination in their transnational criminal investigations.

1) EL PACCTO (Europe Latin America Assistance Program against Transnational Organized Crime)

EL PACCTO (Europe Latin America Assistance Program against Transnational Organized Crime) is an international cooperation program funded by the European Union that seeks to contribute to security and justice in Latin America through support for the fight against transnational organized crime. EL PACCTO addresses the entire criminal chain from a comprehensive perspective through its work in three components: police, justice and penitentiary. With EL PACCTO, the European Union aims to disseminate and share successful experiences and good practices, as well as to promote the interconnection of European actors linked to security and justice with their Latin American counterparts. The Programme also aims to facilitate cooperation and the exchange of good practices between participating countries.

2) EMPACT (European Multidisciplinary Platform Against Criminal Threats)

EMPACT (European Multidisciplinary Platform Against Criminal Threats) is a security initiative driven by EU Member States to identify, prioritise and address threats posed by organised and serious international crime. EMPACT brings together a broad range of professionals from Member States and third countries, including law enforcement authorities, prosecutors and judicial authorities, to take concrete actions against criminal networks. EMPACT widens the scope for prosecutors and investigative judges, enabling an integrated and long-term approach to tackle major crimes in the identified key areas. One of these Operational Actions involves, in fact, LA countries. The Spanish Antidrug Prosecutor's Office, on cooperation with the RFAI (Iberoamerican Antidrug Prosecutor's Network), is leading an Operational Action aiming to strengthen the operational level to disrupt OCGs by establishing a straight line of communication between anti-drug prosecutor's offices, both in LAC and in the EU, in order to conduct transnational investigations, controlled deliveries, better prepare cases and exchange information and appropriate intelligence.

CHALLENGES AND BEST PRACTICES

The EJM Contact Points discussed the common threats and challenges faced by both regions in tackling serious and organised criminal groups, and how cooperation between the two regions can be improved, taking into account legal, procedural, and cultural barriers.

One of the issues identified by the participants was **channels of communication**. A lot of communication continues to be done through diplomatic channels. Based on the treaties, though, many times it is possible to address the request directly to the competent authority and, should this be the case, those **direct channels should be used**. On the other hand, even when involvement of central authorities is needed, direct communication and direct contacts help to better understand the request to be issued and the requirements needed, and also to provide any further information or clarification during the execution. These direct communication and direct contacts can speed up the execution of the requests. Networks are also used and are functioning very well in some countries.

All participants agreed that electronic communication save months of work time.

In addition, the need for a **proper use of legal instruments available** for cooperation between EU-LAC was emphasized. Transmission to a proper central authority in LAC becomes particularly important considering that there tends to be several central authorities for different legal instruments in LAC. Overall, the Contact Points admitted that there is a need for understanding that every LAC has its legal system just like in the EU (no one-size-fits-all approach possible). Against this background, it was discussed that it might therefore be useful to carry out a mapping exercise by the EJN Secretariat, identifying who and where the appropriate contact person is in LAC depending on the legal instrument.

Further, the EJN Contact Points expressed **different views on using JITS in cooperation with LAC**. For more operational cooperation, JITS could potentially be set up. Some participants have had good experience forming a JIT with LAC, others have had no experience or the experience so far had not been successful. However, a JIT might not always be the best choice in cooperation between EU MS-LAC. The obstacles and downsides of using a JIT, for example, were lengthy processes to set up a JIT, financing issues, operational challenges, and delays (evidence can be hidden/ destroyed in the meantime as some of the obstacles with regard to JITS). Ways to improve the setting up of JITS between EU countries and LAC countries could however be explored since this could be a much more extended tool. In this respect, the role of Eurojust could be kept in mind in order to facilitate setting up a JIT.

Many participants mentioned that **GDPR restrictions and relevant limitations** have to be born in mind in cooperation with LAC as with other parts of the world.

During the discussions, the EJN Contact Points highlighted the following best practices in cooperation with LAC:

- 1) **Appropriate use and interpretation of the provisions in the conventions** in order to avoid unnecessary use of diplomatic channels
- 2) **Electronic communication** – there was an overall agreement that using electronic channels of communication saves months of time
- 3) **Informal cooperation/ direct contacts** through EJN in preparation of the requests for smooth execution. This approach is best to be taken in parallel with the formal procedures that must be followed.
- 4) **Early consultation** through formal (central authority if known) or informal communication channels (i.e. EJN, other networks in LAC). Early consultation is very useful already in the preparation phase of a request as in this stage it is possible to identify shortcomings (i.e. reference to an inappropriate legal basis) in the request and as such to speed up the actual execution of the request.

- 5) For time being the use of the **EJN Secretariat** when **immediate assistance** needed to provide relevant contact details is recommended. The EJN Secretariat has contact with other secretariats of similar networks and based on such bilateral cooperation between the secretariats, contacts would be provided on case-by-case basis.

SUPPORT TO THE PRACTITIONERS/ SUPPORT BY THE EJN

With regard to further support, the EJN Contact Points admitted that there is **need to increase the awareness of the Contact Points/ practitioners of the existence of the tools**. For example, **more information** could be provided within the Network on the activities of Latin American Networks dealing with judicial cooperation, such as AIAMP or IberRed. The Contact Points also welcomed further involvement of the EJN in programmes such as EL PAcCTO or EMPACT. Where appropriate, intensified cooperation, for example, **through a Memorandum of Understanding** should be considered.

The EJN Contact Points were also in favour of a possible mapping exercise by the EJN Secretariat on who and where the appropriate contact/authority is in LAC depending on the legal instrument. Currently, there is a section on the EJN Website for cooperation with Networks and non-EU countries, which was mentioned by the Contact Points to be highly useful. This section, for example, could be further elaborated and developed.

The Contact Points were asked about how EJN could help in case one would like to engage with LAC and what would they consider most and least relevant in relation to different activities. The following activities were highlighted:

- 1) **Sharing contacts** – contact details of LAC networks could be available on the EJN website directly accessible for EJN Contact Points;
- 2) Participating in **operational training activities**;
- 3) Promoting **joint operational meetings**;
- 4) Continued use of the operational **IT tools** created by EJN and other Networks;
- 5) Maintaining a **permanent contact** between the Networks;
- 6) **Providing experience and training** for the secretariats and the CPs
- 7) Collaborating with the agencies and organizations involved in the **creation of new networks**;
- 8) Establishing **channels for operational exchange of information**.

Workshop 3:

Practical problems in the application of FD 909/2008¹

Since its entry into force in 2008 Framework Decision 909/2008 (FD 909), on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, has been one of the most frequently applied EU instrument in criminal matters. The instrument can be used as an alternative to the European Arrest Warrant, reducing unnecessary requests and costs and safeguarding rights of subject persons. FD 909 was included in the instruments evaluated during the Council 9th Round of Mutual Evaluations², together with the EAW FD. The EJM subsequently catalogued the relevant recommendations.

However, the procedure for the transfer of sentenced persons, outlined by the Framework Decision still gives rise to outstanding legal issues that prevent its full effective application in practice. Due to this, the support of the EJM Contact Points in the execution and application of the instrument is frequently requested by the national judicial authorities.

The 61st EJM Plenary meeting provided an opportunity for the EJM Contact Points to discuss some of the aspects related to the application of FD 909, such as deadlines for execution, consent of the sentenced person and identification of competent authorities to execute the requests. The discussions during the meeting aimed to streamline the processes of application and to address the best practices identified by the EJM Contact Points. In addition, the participants deliberated on the possibilities for the EJM to support the national judicial authorities when applying FD 909.

I. Main obstacles in the application of FD 909

In the discussions, the participants identified various difficulties that they encountered in their daily practice in relation to the application and execution of requests based on FD 909. The EJM Contact Points discussed certain difficulties they experienced in the procedures invoking the instrument, both as issuing and executing judicial authorities.

¹ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement

² Final report available here: <https://data.consilium.europa.eu/doc/document/ST-6741-2023-INIT/en/pdf>

In the case of application of the FD as **executing authorities**, the EJM Contact Points identified that the most commonly encountered practical problems related to **translations of documents, missing information in the received certificates and not enough information on the sentences and provisional arrests**.

In the case of application of the FD as **issuing authority**, the EJM Contact Points concluded that common obstacles related to the **long duration of the proceedings, requests for additional documents not provided for in the FD 909 and respective translations**. In addition, throughout the discussions it became apparent that sometimes issues arise when there is a subsequent conviction for shorter prison sentences. In particular, in some Member States the executing authorities would not execute one of the (subsequent) sentences in case one of them is already being served. Some of the participants indicated that they have experience difficulties in the procedures in their own country, such as obtaining the expulsion or deportation order in the cases where the order is not issued together with the sentences.

The participants, however, identified that online resources are available to facilitate the work of the judicial practitioners, namely the [EJM website](#)³ (Fiches Belges and Atlas), [Europris website](#)⁴ and [FRA detention conditions database](#)⁵.

Role of the EJM

The EJM Contact Points are experienced in dealing with the execution of requests under FD 909 and resolving issues that arise in the process. The EJM Contact Points are encouraged to keep supporting the national authorities in drafting the requests, and to advise them on the information to be included in the certificates. Additionally, the EJM Secretariat and EJM Contact Points should look for opportunities to raise awareness of the resources available on the EJM website among the national judicial authorities where all the correct forms and legal instruments are uploaded.

The EJM should assess the possibility to organize training sessions on the instruments for judicial cooperation as provided in the EJM Decision, including training on FD 909.

³ <https://www.ejm-crimjust.europa.eu/ejm2021/Home/EN>

⁴ <https://www.europris.org/topics/framework-decision-909/>

⁵ <https://fra.europa.eu/en/databases/criminal-detention/>

II. Direct contacts between the national authorities: difficulties and best practices

Facilitating the direct contact between the national judicial authorities is essential to swiftly overcome the arising legal issues in the application of FD 909 and recognition of sentences that were identified by the EJM Contact Points. **Issuing and executing authorities are encouraged to communicate timely in order to prevent lengthy procedures** and in particular where the sentenced person consents to the transfer.

During the discussions it became apparent that the national (issuing) judicial authorities frequently contact the EJM Contact Points with questions related to the identification of the competent authorities to execute their requests under FD 909. Some of the difficulties arise from the **different organization of the judiciary in the EU Member States – some Member States have a specialized central authority to execute the requests, while in others this is not the case**. Additionally, despite the availability of this information in the [EJM Atlas](#), judicial practitioners are not sufficiently trained on the use of the EJM website.

Role of the EJM

The EJM was identified as a key channel for facilitating the communication between the competent authorities. The resources on the EJM website were identified as useful for judicial practitioners. According to the EJM Contact Points they have not encountered difficulties in establishing contacts with the other Member States and swiftly obtaining the requested information on detention conditions.

It was noted that it is essential that the information on the EJM website (Atlas) is up to date as this is one of the main reference points for the national practitioners to identify the competent authority to execute their request. The EJM Secretariat has been invited to assess the possibility to expand the translations of the EJM website to also cover the titles of the investigative measures in the Atlas and in the Fiches Belges.

The EJM Secretariat is encouraged to assess the possibility to organize online training sessions on the EJM website e-tools. The EJM Contact Points in the EU Member States are encouraged to promote the use of the website further.

III. Consent of the sentenced person

As foreseen in the FD, the EU Member States should ensure that their competent authorities inform the sentenced person about the possibility to serve the sentence in another Member State and the relevant procedure for the transfer.

Throughout the deliberations, the EJM Contact Points highlighted that it is important that **the consent of the sentenced person should be an informed one, including on the legal consequences** of such transfer. As a best practice, the participants stressed the importance of the measures that are taken at national level. In particular, it has been identified that **the person has to be informed of the possibility to serve the sentence in another Member State on the earliest stage possible**. To achieve this, some Member States have prepared information sheets with the rights of the sentenced persons available in several languages. In addition, the competent national authorities have established close cooperation with the diplomatic missions in order to provide the sentenced persons with information and to ensure consular assistance throughout the procedure.

IV. Social rehabilitation

During the discussions the EJM Contact Points, reaffirmed that the underlying purpose of the FD is to provide possibilities for the sentenced persons for social rehabilitation. This is a concept that is not uniform across the EU Member States but some criteria has been identified by the EJM Contact Points such as nationality, family members in the country, property in the country, language and access to work. Based on these indicators, the competent national authorities would be able to assess whether the transfer of the sentenced person would achieve the purpose of the FD, namely their social rehabilitation after the sentence has been served.

When making this assessment the primary source of information is mainly provided by the sentenced person but there the EJM Contact Points also shared experiences with regards to additional checks and verifications that are undertaken by the national authorities. Checks are made by the **issuing authority and the outcomes are usually incorporated in the certificate** related to FD 909. Additionally, the **executing authorities also undertake checks** but differences have been identified in the procedures in the different Member States, namely in some countries such a check is an administrative procedure before the transfer and in other Member States it is a judicial procedure.

V. Translations

Significant differences in the national requirements were identified in relation to translations. According to Article 23 (1) FD 909 **the only obligation is the translation of the certificate while the translation of the judgment is not required**. The judgment or essential parts of the judgment would only be required if the information in the certificate is insufficient for the executing authority to decide on the execution. In light of this, the EJM Contact Points underlined the importance of including all essential information on the sentence and provisional detention in the certificate to allow the executing authorities to take decisions and to check double criminality. Additionally, the participants concluded that across the EU

Member States **there are differences in the interpretation of “essential parts” of the judgment as foreseen in Article 23 (3) FD 909**. Some Member States translate the full judgment in order to avoid additional questions from the executing authorities while others do not translate any parts of it. Such procedural differences often create delays in the proceedings due to the need for additional consultations between the issuing and executing judicial authorities.

Role of the EJN

The EJN Contact Points indicated that including information on the national requirements related to translations in the EJN *Fiches Belges* might significantly facilitate the daily work of the judicial practitioners. The EJN Secretariat is encouraged to collect this information from the EJN National Correspondents and EJN Tools Correspondents.

VI. Relationship of FD 909 with other EU instruments

Besides the substantive rights of the sentenced persons, provided for under FD 909, the EJN Contact Points underlined that it is equally important to consider the rights of the victims. In particular, they discussed the **relationship of the FD to Directive 2012/29/EU⁶** in light of the right of the victims to be informed. **The FD 909 pre-dates the Directive and thus the application of the rights of the victims are not uniform**. Some of the EU Member States inform victims of the transfer of the sentenced person but others do not. The best practice identified by the EJN Contact Points **is to inform the victims on the conditional release of the offenders, paying particular attention to the protection of the victims and their rights to be compensated**. However, the EJN Contact Points acknowledged that identification of victims poses difficulties for the national judicial authorities.

Apart from the relationship in the domain of substantive rights, the EJN Contact Points discussed the outstanding legal questions related to the relationship between FD 909 and the EAW FD and the interpretation of Article 4(6) EAW FD and Article 25 FD 909 when the executing Member State chooses to recognize the sentence during an EAW procedure. Throughout the discussions, two interpretations of the relationship between the instruments were identified. In particular, **some EU Member States recognize directly the enforcement of the sentence in the same procedure as the refusal to execute the EAW FD. Other Member States still require a certificate to recognize the decision and take over the execution of the sentence**. The CJEU is expected to clarify the interpretation of the provisions in a pending preliminary ruling procedure.

⁶ Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime