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From: General Secretariat of the Council
To: Delegations
Subject: 64th plenary meeting of the EJN (Warsaw, 7-9 November 2025)
- Conclusions of Workshop I: the future of EU criminal justice

Delegations will find attached the above-mentioned conclusions.



64th PLENARY MEETING OF THE EJN

7-9 MAY 2025
WARSAW, POLAND

EJN Conclusions

Future of the EU Criminal Justice

Introduction

The EU Commission has set up a 'High Level Forum on the Future of Criminal Justice in the EU' involving the Member States, the Council, EPPO, OLAF, EU-Lisa, Eurojust, the European Judicial Network (EJN) and selected academia. The ambition is to reflect on how the EU can best support the effective fight against threats such as organised crime or corruption throughout the criminal justice chain and to develop a common vision for actions of legislative and non-legislative means for the next five years.

The discussions in **Workshop I during the 64th Plenary meeting of the EJN in Warsaw under the Polish Presidency of the Council of the EU** reflect the first attempt to develop an EJN perspective on the future of the EU Criminal Justice. The EJN Contact Points and other participants in the Workshop were invited to discuss the following topics and discussion points in order to provide the reflection of the EJN on the topics relevant for the future of the EU Criminal Justice as well as the key questions on the future of the EJN.

1. Cross-border surveillance and video conference: challenges and way forward

1.1. Introductory remarks and general conclusions

To begin with, workshop 1 provided an open and constructive forum to discuss challenges and opportunities related to cross-border surveillance and the use of video conferencing in criminal proceedings. EJN Contact Points shared legal, operational, and technical perspectives, confirming substantial differences in national approaches and

pointing to areas where greater EU-level coordination may be beneficial. The participants of the workshop agreed that in the context of the future of the EU Criminal Justice, the same underlying problem arises in both topics. Namely, both topics highlight a tension between legal issues and practicality. The practitioners expressed concern that outdated and/or fragmented legal framework was not keeping pace with operational realities and with the development of the technology.

There was a broad consensus that both topics—**cross-border surveillance and video conferencing—require regulatory clarification and practical improvements. However, participants remained cautious against over-regulation or creating new burdens without resolving existing issues.** Hence, it was agreed:

- 1) **Harmonization must respect national legal approaches to an extent possible as well as fundamental rights.**
- 2) **New instruments should complement—not duplicate—existing tools like the EIO.**
- 3) **Any EU initiative must prioritize:**
 - **Legal certainty** (i.e. for admissibility of evidence).
 - **Technical feasibility** (interoperable systems and secure platforms).
 - **Operational efficiency** (especially in urgent or sensitive cases).

The aim of future developments should therefore be to **establish a clear legal basis and to make sure that the practical needs are considered while making use of the opportunities modern technology offers.** Overall, the workshop **highlighted the value of regular, practitioner-led dialogue and reaffirmed the role of the EJN in supporting informed and balanced evolution of EU criminal justice cooperation.**

1.2. Cross-border surveillance: detailed comments

Cross-border observation typically involves law enforcement officers from one EU Member State following a suspect into another Member State's territory without prior authorization — usually in the context of urgent criminal investigations, especially serious organized crime or terrorism. There are two main instruments; however, confusion often arises regarding which to use, when, and how:

Schengen Convention (Articles 40 and 41): These articles allow for cross-border observation without prior consent in urgent cases, but the rules are outdated (from the

1990s). The conditions differ from one Member State to another (for example, what constitutes "urgent" or "serious" crime is not consistently interpreted).

European Investigation Order (EIO) – Directive 2014/41/EU: it requires judicial approval, and is generally not suited for real-time or covert operations like surveillance and it is better suited to planned investigative acts, not urgent cross-border surveillance. Furthermore, recital 9 of the EIO Directive states: (9) *This Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement (OJ L 239, 22.9.2000, p. 19).*

Prior to the 64th Plenary meeting of the EJM, the EJM Contact Points discussed this in detail during the 59th Plenary meeting in Prague on 9 – 11 November 2022 under the CZ Presidency of the Council of the EU. It was already back then stated that *there was no uniform legal regulation of cross-border surveillance at the EU level if the surveillance records are to be used as evidence in criminal proceedings* and that *except for Article 31 on cross-border interception without technical assistance, which is rarely used in practice, there is no regulation of urgent cross-border investigative measures with subsequent authorization in the EIO Directive.*

During the workshop, the Contact Points discussed real life situations that cannot be dealt with, using current legislation, for example, unpredictable border crossings. Surveillance operations, particularly with GPS trackers or hidden audio devices, become legally and operationally complex when suspects cross borders unexpectedly. The EIO is ill-suited to urgent or real-time operations and there are differences in interpretation across Member States which lead to delays and evidence admissibility issues. In addition, national definitions and thresholds for police vs. judicial measures vary widely. For example, Polish law distinguishes between observation and interception, while Austrian law requires judicial approval for acoustic/GPS surveillance. It was also mentioned by the Contact Points that the absence of CJEU jurisprudence on these specific issues create further legal uncertainty.

Overall, the EJM Contact Points invited to consider the following proposals to overcome the shortcomings:

- 1) EU-Level Instrument:** There is wide support among the Contact Points for an EU legal act clarifying the legal basis for real-time cross-border surveillance, distinction between police cooperation and judicial cooperation tools and rules on admissibility and procedural safeguards for evidence collection in urgent situations.
- 2) Council of Europe (CoE) 3rd Additional Protocol to the 1959 Convention¹:** There is expectation among the practitioners that the new potential instrument will aim to address use of technical surveillance (e.g., GPS), while requires immediate (but so far undefined) notification to the state whose territory is affected. It would also give the notified state discretion to accept or reject the validity of evidence.
- 3) Bilateral Agreements:** Contact Points found that this approach could still be useful as a practical, though limited, workaround in the absence of harmonized rules.

1.3. Video conferencing: detailed comments

With the increasing digitization of criminal justice, videoconferencing (VC) has become a vital tool in proceedings, enabling the hearing of witnesses, the questioning of suspects, and broader participation in trials. Its significance is particularly evident in cross-border cases, where witnesses or suspects are located in different Member States.

Technical challenges arise, above all, in relation to lack of VC tools used across the Member States. Existing EU legislation does not regulate the interoperability of VC tools used and this is said to be one of the concrete obstacles to cross-border VC as Member States frequently employ different platforms. At present, no justice-specific or pan-European videoconferencing solution exists for cross-border court proceedings within the EU.

¹ CoE is working on a new instrument related to the 1959 European Convention on Mutual Assistance in Criminal Matters. This initiative is being developed by the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC). This would be relevant for cross-border surveillance and evidence collection, as it seeks to address legal uncertainties and enhance mutual assistance in criminal matters across Europe.

In November 2021, the PC-OC invited the European Committee on Crime Problems (CDPC) to seek a mandate from the Committee of Ministers to negotiate a binding agreement between the EU and non-EU parties to the 1959 Convention. As of now, the proposal is under consideration, with ongoing discussions among EU and non-EU member states to determine the most appropriate way forward.

With regard to legal challenges, there is a need to clarify the application of EU legal instruments:

EIO – Directive 2014/41/EU: The EIO Directive provides for hearing by VC or other audio-visual transmission of a witness, or expert, suspect or accused person by the competent authorities for the purpose of obtaining evidence through videoconferencing or other audio-visual transmission. It generally applies to the investigation phase (pre-trial). Article 10 allows for hearings via VC — but explicitly in the context of evidence gathering, not trial participation. There is the limitation: the instrument is not designed for trials. Still, in practice, some Member States use EIOs for trial-stage hearings too.

Charter of Fundamental Rights & fair trial standards: any use of videoconferencing must comply with Article 47 and 48, ensuring: right to be present, right to a fair and public hearing, right to legal counsel and to communicate confidentially.

2000 Mutual Legal Assistance (MLA) Convention: For the Member States not bound to the EIO, the 2000 MLA Convention Article 20 allows for hearing witnesses via telephone or video conferencing, under certain conditions and with the consent of the person to be heard but it is limited in scope.

During the workshop, the following problems were discussed:

- 1) **Unclear legal basis for trial-stage hearings:** Many Member States are reluctant to use EIO for trial participation because it is meant for collecting evidence. Others have taken a pragmatic approach, especially when it is the only feasible solution. As a result, there is inconsistent practice, legal uncertainty and the risk of challenges to trial fairness.
- 2) **No dedicated legal instrument for remote trial participation:** There is no EU-level legal framework specifically allowing a defendant to participate via VC throughout a criminal trial. No common rules exist on how it should be done, what safeguards must be in place, or under what conditions it is acceptable.

During the workshop, the EJM Contact Points confirmed that videoconferencing is widespread but unevenly used. Participants from some Member States (e.g., Finland, Spain) mentioned that the use of video conferencing is extensive, including during trials. Others remain cautious, citing legal uncertainty and human rights concerns.

The participants also reaffirmed that there is legal ambiguity as the EIO Directive does not explicitly authorize trial-stage video conferencing. Some Contact Points admitted that using VC in trials might be perceived to impact on fair trial as some systems emphasize the importance of physical presence to assess credibility and demeanour. Finally, in practice, as it was mentioned, the executing state often must ensure security and supervision for the entire duration of proceedings.

3) Concerns about fundamental rights: Compliance with Article 47 and 48 Charter of Fundamental Rights.

With regard to consent and procedural safeguards the participants stated that some Member States allow witnesses to decline participation via VC. Organized crime concerns were raised—remote testimony might enhance safety but also risk manipulation. Earlier practices (e.g., under the 2000 MLA Convention) did not provide a right to refuse video appearance by the defendants.

It was said that courts should retain discretion, but safeguards and legal remedies must be in place. Emphasis was placed on the importance of a judicial authority assessing each case individually, particularly when dealing with vulnerable witnesses (e.g., minors).

4) Technical challenges: Technical possibilities among Member States vary and are not necessarily in line.

With regard to technical and operational issues, lack of interoperability was mentioned. National platforms vary, impeding cross-border coordination. The key message of the participants was that the practitioners need forward-looking solutions.

Overall, the EJM Contact Points invited to consider the following proposals to overcome the shortcomings:

1) Harmonized EU Legal Framework:

- Could define when and how video conferencing may be used.
- Should include rules on consent, legal remedies, and procedural fairness.

2) EU Video Conferencing Platform

- A unified EU video conferencing solution.

- Strong support for an interoperable, secure, EU-funded system

3) **Specialization:**

- A proposal to consider trained judges across the EU for a limited set of offences where applicable.
- Acknowledged as ambitious, but could streamline cooperation.

2. Use of artificial intelligence (AI) to facilitate criminal investigations and proceedings

The EU sees potential in AI for courts and criminal justice but it must be done with caution, ensure strong human oversight, fundamental rights safeguards, and ongoing evaluation and the use of AI to facilitate criminal investigations and proceedings. For the purpose of discussions within the EJM, the discussions focus on the court/proceedings side.

The EJM Contact Points for the time being remain cautious but open on the future use of the AI during the proceedings. While it is generally recognized that AI offers major opportunities — such as improving efficiency, supporting legal research, detecting manipulated content and assisting in sentencing recommendations — its use must respect fundamental rights and procedural safeguards.

3. Future of the EJM (EJM)

3.1. Background

Ever since its establishment, with **Joint Action 98/428 JHA of 29 June 1998**, the EJM in criminal matters has functioned as an essential instrument for facilitating international judicial cooperation in criminal matters, resulting today in about 8,000 cases handled in a year. In December 2008, the current legal basis entered into force, [Council Decision 2008/976/JHA of 16 December 2008](#) on the EJM (**“the EJM Decision”**), which consolidated the 10 years of existence of the EJM and reinforced the legal status of the EJM.

Over the years, the network has grown and as of 2025, there are almost 450 EJM Contact Points nominated within the EU. The expansion of the network, the natural increase of

the number of Contact Points, including in non-EU countries, its growing responsibilities and outreach² bring along the need to discuss the future of the EJP.

Given the priorities of the current Commission (looking at implementation rather than new acts) together with the evaluation of Eurojust and the probable revisit of the mandate of both Eurojust and Europol, it is necessary to ensure that the EJP is 'fit for purpose' and continues to play an important role both within Europe and throughout the world, in facilitating international judicial cooperation in a proactive rather than reactive way.

In Council Conclusions of 6 June 2019 on ["on the synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters"](#) adopted under the RO Presidency of the Council of the EU, the Council acknowledged the vital role played, in the area of cooperation in criminal matters in the EU, by Eurojust and by four networks established by the Council, including the EJP. The Council stressed that *synergies and coordination can be further improved in order to combat serious crime and facilitate cooperation in criminal matters more effectively*. Eurojust and the EJP should, in particular, *continue efforts to appropriately allocate cases between these two actors in judicial cooperation*. The conclusions also acknowledged that Eurojust and the networks must have enough resources at their disposal.

Following an analysis of the remaining actions from the **EJP Peer Evaluations Action Plan** and a **proposal during the 60th EJP Plenary meeting**, the EJP established the **EJP Working Group on the Future of the EJP**. Apart from the discussions within the Working Group, the EJP Contact Points were invited to discuss the topic on the occasion of the 64th Plenary meeting of the EJP.

3.2. Conclusions and proposals by the EJP Contact Points

1) EJP provides support to the EU institutions with regard to legislative initiatives and practical application of EU legal instruments³, which, in the

² For example, in 2024 the Council Conclusions on strengthening judicial cooperation with third countries in the fight against organised crime (approved by the Council at its 4031st meeting held on 13-14 June 2024) where the EJP was mandated with several tasks. Also, in the 11th Round of mutual evaluations where the EJP has been invited as an observer for the first time.

³ Art 5(2) EJP Decision (under the heading of purposes and venues of the EJP Plenary meetings) states that "The relevant experience acquired within the European Judicial Network shall be passed on to the Council and the

view of the EJM Contact Points overall is a role that could and should be enhanced:

- There was broad consensus that **EJM should intervene as early as possible** in the EU legislative process — even before the Commission officially launches a proposal (i.e. at the Impact Assessment stage)
- EJM should not only respond to initiatives but **proactively propose areas for new legislation**, drawing from practitioners' experience.
- The **EAW (European Arrest Warrant)** was mentioned as an example where change may be unnecessary or even detrimental; caution was advised regarding reforms that might weaken existing, functional tools.
- EJM's role as a practitioner-driven network was emphasized, with the ability to provide insights of **practical application of EU legal instruments** and highlight **gaps** or **practical issues** that might otherwise be missed in Brussels.

2) The key challenges with regard to the functioning of the EJM and the Contact Points:

- A key challenge is to **maintain EJM's visibility** and **independent voice** alongside more institutional bodies like Eurojust.
- Several participants stressed the importance of **retaining EJM's flexibility** — for example in areas like case allocation, where rigid rules could reduce efficiency.
- The need to **balance collaboration with independence** from Eurojust
- A recurring problem is the **limited responsiveness** from some contact points, affecting trust and credibility.
- It was noted that **national authorities must nominate enthusiastic and responsive contact points**.
- Participants called for **re-emphasis on existing contact point guidelines** and suggested making obligations clearer in any future legal framework.
- Importance of **sufficient funding** of the EJM.

Commission to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation”.

3) Aspects of the EJM legal basis that were emphasized by the participants:

- Several participants expressed that the 2008 EJM Decision is outdated and that **a new legal instrument is necessary** to reflect the network's evolution.
- Preferences were expressed for a **separate legal basis** (not merged with Eurojust), preserving the unique nature of EJM.
- Some practical suggestions were made for the new legal framework:
 - o Clarifying the **decision-making process** within EJM.
 - o Possibly regulating the **number and role of contact points** per country (though this met mixed views).
 - o Ensuring that **contact points** can access necessary contact details, while respecting data protection.
 - o Ensuring that Contact Points have the necessary expertise and experience, preferably with some form of continuous professional development necessary.
 - o Tool Correspondents status be recognised as important players with an EU-wide contribution given their responsibilities in maintaining the accuracy of the website.

4) EJM website and IT infrastructure:

- There are **resource limitations** in maintaining and upgrading the EJM website and its functionalities.
- Data protection, user access, and lack of internal control over development were cited as potential bottlenecks.
- The necessity of a **webmaster** within the EJM Secretariat was emphasised.
- A modern **mobile app** with the EJM website key functions.

5) EJM Outreach:



- Participants stressed the value of **cross-network cooperation**, including with non-EU regions (e.g., Latin America), given shared challenges.
- The EJN could take a leading role in **coordinating efforts** and sharing best practices.