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from :	European Judicial Network Secretariat
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Subject :	Judicial cooperation: from practitioners' expectations to the Union's legislative policy (on the 10 th anniversary of the European Judicial Network in criminal matters) - General report on the seminar

Delegations will find in the Annex a general report on the seminar above mentioned.

**Judicial cooperation: from practitioners' expectations to the Union's legislative policy
(on the 10th anniversary of the European Judicial Network in criminal matters)**

General report on the seminar

Jean-Marie Huet, Director of Criminal Matters and Pardons

- The French Minister of Justice wished to bring together in Paris all the players involved in criminal legal cooperation in the European Union, i.e. both the representatives of the Member States who are involved in negotiations and practitioners who are the contact points of the European Judicial Network (EJN).
- The aim was to combine the EJN plenary meeting with a conference on the implementation of judicial cooperation instruments in order to provide feedback and mutual enrichment.
- Yesterday's and today's discussions have shown the added-value of such a meeting: the European judicial area remains a mere concept if practitioners fail to take it on board and make it a reality in the everyday performance of their roles. We are therefore jointly responsible for ensuring that the Union's standards meet the expectations of those who are called upon to use them.
- The same applies to the credibility of the Union's work and I am delighted that the European Commission is participating in our work which is in line with an initiative it has already taken by launching a study on the future of mutual recognition. Criminal justice is a sector in which citizens have considerable expectations from Europe and the progress the Union makes must meet the expectations and needs expressed at grassroots level.
- These discussions are, however, only in the early stages. I would like to praise the Czech Republic's and Sweden's commitment to the work in this conference, which demonstrates their interest in the subject.

- We all have in mind the particularly communicative enthusiasm of Ms Beatrice Ask, the Swedish Minister of Justice, who reminded us of the work of the future group on justice and the ministers' personal commitment to providing the European area of justice, liberty and security with new input. She stressed the importance of evaluating the instruments, acknowledging the men and women that implement them and the need to place citizens at the heart of building the European judicial area. Finally, she asked us, the practitioners and EJM contacts, to inspire political decision makers, which was seen as a fine tribute to the conference's work.
- The interest shown by future presidencies is the sign that these talks, which we wanted to initiate, will be continued by others. It is also proof that the practitioners must have their say when the legislative programme is drawn up, following on from The Hague programme.
- The opening session of this conference enabled us to assess the progress made since the European Judicial Network was created almost ten years ago by hearing the points of view of several people who have seen how it has changed.
- Serge Brammertz reminded us of the particularly innovative nature of the EJM when it was first set up: a "network of practitioners for practitioners" that finally gave a "human face" to cooperation. He also pointed out that the project had inspired the creation of other networks in other geographical areas or zones of influence. He highlighted the importance of creating synergies between the networks above and beyond the European Union alone to create what he called "legal bridges" to other parts of the world. These discussions echo those currently taking place in the Council on the forthcoming challenges the European judicial area will face in building relations with third States.

- Hans Nilsson, Head of Division at the General Secretariat of the Council, took an expert's view, but also a slightly amused, backseat view, of the European judicial area's achievements: while acknowledging the progress that had been made he nevertheless emphasised the extent to which the European Union's work was moved forward by political commitments that were often made in emergencies following dramatic events such as 11 September 2001, and how difficult it was to turn such commitments into concrete action – for example the difficulties to ensure effective implementation of the convention of 29 May 2000 eight years after it was signed.
- **Our first workshop** on the subject of access to information, confirmed the pivotal importance of the issue in the European Judicial Area which has virtually eliminated the intermediary role of the central authorities.
- In this sector Joanna Ferreira, Prosecutor at the Portuguese General Court, and Jeannot Nies, Prosecutor at the Court of Grand-Duché of Luxemburg, confirmed that there was no lack of initiatives, some of them very innovative, particularly regarding the implementation of the European arrest warrant:
 - at European level: with the EJN site and resources it comprises (European atlas), manual on the European arrest warrant,
 - at national level: discussion lists drawn up by contact points, newsletters on new aspects of legal cooperation, guidelines, specialist training.
- But the participants noted that these resources are only currently used by a limited number of judicial authorities and, fortunately, do not replace the use of certain special networks such as departments responsible for providing mutual assistance within the ministries of justice or other colleagues who are particularly dedicated to international cooperation.
- Links between national and international sites could also be used to optimise and pool information. The same applies particularly to information on the progress status regarding the implementation of instruments, the consolidated version of applicable legislation and practical details of its implementation. The Council of Europe's site is particularly user-friendly and practical in this respect.

- On this subject the discussions confirm the success of the support means for implementing the instruments: methodological guides, model requests, glossaries of legal equivalents.
- Similarly, information on national legal systems, which the EJM has developed through the “fiches belges”, still often appears insufficient.
- This coincides with the urgent need that has been expressed for regular training (initial education and life-long learning) – linguistic training and training on judicial cooperation instruments in criminal matters with the support of the university. Original, interesting suggestions were made on these points: platforms for exchange, “Erasmus for judges”, common training curricula, creation of a common training school.
- The need to ensure the linguistic knowledge and experience of the EJM contacts was also raised. Mr Nies said that the skills of EJM contacts were not sufficiently appreciated internally and that acknowledging this qualification could help encourage commitment from members of the judiciary with experience in the sector. Creating specialised centres, units or judiciary would also make the most of skills and training courses.
- New ideas based on pooling resources were discussed: for example setting up a centralised translation department or even automatic translation systems.
- The discussions also confirmed the relevance of certain work that has been initiated, such as setting up a secure IT network for conveying requests for mutual assistance which is included in the Council’s draft Decision the Justice and Home Affairs Council approved on 24-25 July 2008. This proposal is also in line with current discussions on the priorities of the “e-justice” programme. They also revealed the need for information from the judicial authorities on monitoring the implementation of requests for cooperation.
- Finally, they highlighted the advantages of a larger number of practitioners being involved in creating and negotiating European instruments.

The above proposal is in line with the discussions that took place in workshop 2.

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- This workshop, which was dedicated to implementing the instruments, revealed the lack of qualitative assessment tools: Florin Razvan RADU, Director of International and Foreign Affairs and Head of judicial cooperation within the Romanian Ministry of Justice, said that even though peer review may be useful, as of yet it had only applied to a single instrument, that of the European arrest warrant. Furthermore, recommendations are not always put into practice and it is uncertain whether practitioners are always made aware of them. At national level, the data collection systems are insufficient: unless a specific system is set up, such as for European arrest warrants in certain Member States, the generalisation of direct transmission between national authorities prohibits any central evaluation of the practical implementation of the instruments in question.
- Implementation difficulties can only be assessed as a result of the opinion, which is valuable but purely empirical, of the EJM contact points.
- On this point, although in contradiction with certain preconceptions, the main difficulties do not always seem to relate to the legal difficulties that are the most debated in the negotiation stage. The implementation of the mutual recognition principle does not appear difficult in itself for practitioners: for example, excluding double criminality checks, which gives rise to heated debates in the Council, does not appear to be a major source of difficulty. Practitioners therefore need to become more involved in preparing and creating instruments, as seen in workshop 1.

- The difficulties are above all of a practical nature:
 - lack of experience for certain complex implementation tools, for example joint investigation teams for whom the advantage of pooled know-how and support by Eurojust was emphasised;
 - multiple, complex instruments;
 - tendency of the judicial authorities to see cooperation from a national perspective;
 - difficulty in establishing mutual trust;
 - lack of proportionality of requests;
 - difficulties in translation, expressing needs, legal terminology, in line with certain ideas discussed in workshop 1.

- Opinions differ over the coexistence of standard mutual assistance instruments and those for mutual recognition: Mr Radu told us that coexistence could be seen as a source of complexity, whereas the participants of Lise Tamm's¹ workshop saw it in terms of increased flexibility.

- Coexistence often results in practitioners preferring to use instruments they are most familiar with. This observation makes us question the usefulness of adopting new instruments in sectors of judicial cooperation that are already based on practices of established cooperation, such as that of mutual legal assistance in criminal matters. For example, the added value in instruments such as the framework decision on freezing assets or evidence, or that on European evidence warrant appear limited when it is quicker and easier to issue international letters rogatory to achieve the same results. A new application also has to be issued to obtain the transfer of frozen assets or evidence, which is seen as an added complication. Once again, the efficiency of existing systems should be assessed before new initiatives are launched.

1 Senior Public Prosecutor – International prosecution office in Stockholm (Sweden).

- Any assessment of the implementation of instruments therefore appears pretty mixed: even though practitioners agree in recognising the practical advantages of certain instruments, for example the European arrest warrant or the convention of 29 May 2000 and its protocol, others are seen as being of limited interest or even as adding unnecessary complexity. I deduce common sense principle that should be applied to negotiations: a new instrument is only of interest to practitioners if it simplifies matters or gives added value in the field. The example quoted of the framework decision on mutual recognition of pecuniary sanctions is enlightening in this respect: practitioners fear it will be unsuitable for mass disputes.
- The practitioners also deplored the delayed implementation of instruments and the complexity of their use due to the fact that they have been allowed to pile up. In order to strengthen their consistency, the idea of consolidating them within a “European judicial Cooperation Code” was put forward. But this suggestion was received with caution: probably on the basis of established law and on condition it applies to types of judicial decisions that are sufficiently consistent. In the search for evidence, codification on the basis of established law would probably overcome the juxtaposition of instruments.
