

2ND MEETING EJN CONTACT POINTS: EU AND WESTERN BALKAN REGION

ONLINE MEETING

MEETING REPORT

OPENING REMARKS

In view of strengthening the cooperation between the EU Member States and the Western Balkans (WB), on 8 Dec 2020 the **2nd annual meeting between the EJN Contact Points (CPs) in the EU and in the WB region** took place. CPs from the Western Balkan region and from 18 EU Member States participated in this online meeting.

The EJN CPs participating were the following: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Latvia, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden in the EU. From the WB there were representatives from all invited regions: Albania, Bosnia and Herzegovina, Kosovo^{*1}, Montenegro, North Macedonia and Serbia. In addition, representatives from the EJN Partners were invited to the meeting – from South Eastern European Prosecutors Advisory Group (SEEPAG) and from IPA/2019 project “Countering Serious Crime in the Western Balkans”, financed by the European Commission (CSCWB).

The **German and incoming Portuguese Presidency of the Council of the EU together with the Secretary to the EJN remarked the need** to connect practitioners from the EU with WB region. At the same time being present helps the countries from WB region to understand how the EJN works – including issues related to EJN awareness and reporting of the cases (*see Annexed presentations*).

Prior to the meeting, the EJN Secretariat collected written contributions from the participants about any issues relevant for the discussions. The issues submitted in written to the EJN Secretariat are also reflected in the report.

¹ *This designation is without prejudice to the positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

UPDATES FROM THE EJN PARTNERS

Representatives of the CSCWB made an overview about the project activities in the WB region, the achievements of the previous projects and the planning of the current project implemented from March 2020 until March 2023 (see Annex). The new project launched in 2020 is expected to build on the results so far and to further strengthen the cooperation among WB and police and judicial institutions. **One of the novelties highlighted by the project team of the CSCWB project was the financial support to the WB EJN CPs in order to participate in the EJN plenary meetings.**

Representatives of SEEPAG presented the SEEPAG activities and projects and explained the mandate of SELEC, a law enforcement association under which SEEPAG has been created (see Annex). The analytical products of SELEC were listed, which aim at facilitating the daily work of the practitioners. More than 30,000 exchanges of information and requests of assistance/per year is received and an average of 100 joint investigations is supported by SELEC annually.

CHALLENGES AND SOLUTIONS: JUDICIAL COOPERATION BETWEEN THE EU AND WESTERN BALKAN REGION

EXTRADITION AND TRANSFER OF PROCEEDINGS

Discussions focused, first of all, on extradition, including challenges of extradition of nationals as well as practical issues in relation to double citizenship.

The legal basis for extradition:

- The European Convention (CoE) 1957 on Extradition (Article 6) and its 4 protocols. The Convention 1957 has been ratified by all 47 CoE States. Its purpose is to agree on uniform rules for extradition cooperation.
- Art 16 UN Convention against Transnational Organized Crime (2000, Palermo Convention).
Art 44 UN Convention against Corruption (2003, Merida Convention).
- Art 2-11 CoE Budapest Convention.
- Bilateral agreements. WB countries tend to have bilateral agreements on extradition between each other and with neighbouring EU Member States mostly.
- Reciprocity principle.

There continue to be practical **challenges with regard to extradition of nationals** among the states. Generally, most of the EU Member States and WB countries do not extradite their nationals. Therefore, extradition of nationals may be possible based only on bilateral agreements between the countries concerned. Some EU Member States neighbouring the WB region have agreements in place with every WB country; yet other EU Member State have none. If there is no bilateral agreement in place between the countries involved and if the national legislation does not per se allow for extradition of nationals, extradition is not possible.

The CPs discussed in the meeting about the problems arising from the fact that the **defendants from WB have double citizenship of an EU Member State and of a non-EU Member State**. Once again, the CPs from the EU Member States admitted the effect of the **ruling in Aleksei Petruhhin** (Court of Justice, judgment of 6 September 2016, case C-182/15 [GC]) in the cases where the EU citizen who is subject to extradition has exercised his right to free movement by moving from his home country to another Member State. The judgment obliges the EU Member States to cooperate with the Member State of the suspect before extraditing an EU citizen to the non-EU country that requested the extradition.

In line with the Petruhhin judgment, as most countries in the EU do not extradite own nationals, the Member State of nationality of the suspect has to be informed about the request for extradition from a third state. In practice, the CPs said that, above all, this has resulted in longer detention times. Those few EU Member States, which have concluded with WB countries bilateral agreements, which allow for extradition of citizens (usually covering a list of offences), do not have this particular problem; and in this case the Petruhhin judgement will not be applicable and there is no delay in extradition.

The CPs, both from the EU and from the WB, also stressed that double citizenship of the suspect many times only becomes evident at later stage as the Interpol Red Notice often times indicates only one citizenship.

Another issue in relation to **non-extradition of nationals** is that **in these cases transfer of proceedings must be relied upon** in order to proceed with the investigation. With regard to the **legal framework of transfer of proceedings between EU and WB countries**, the following applies:

- The European Convention 1972 on Transfer of Proceedings, which sets out the framework for transfer of proceedings and addresses jurisdictional issues of potential conflicts of cross-border double jeopardy. However, this convention has only been ratified by thirteen 13 EU Member States – whereas all WB countries have ratified it.
- An alternative legal basis for cooperation for the EU Members States that has not ratified the 1972 Convention is Article 21 in the European Convention 1959 on Mutual Assistance in Criminal Matters.
- In some occasions bilateral agreement is relied upon.
- Finally, several EJM CPs also mentioned the principle of reciprocity as a basis to be used for cooperation in a situation in which there is no bilateral treaty.

The CPs described several good examples of transfer of proceedings between the EU Member States and a WB, including based on reciprocity. They brought examples of good cooperation between the EU and the WB, which reflected that many times transfer of proceedings from an EU Member State to a WB as well as from WB region to an EU Member State has led to a conviction, after transferring the evidence and facilitating the hearings.

The discussions also revealed that countries may have considerable differences when it comes to **initiating transfer of proceedings**. Some countries do not enforce the Interpol Red Notice if the notice is issued against their national because the national legislation does not allow for arresting the person knowing that the extradition will not be possible (due to the nationality issue). Yet some Member States always enforce the Red Notice and the person is arrested but then released by the Court; the underlying approach here being that this is a question to be decided by judicial authority and not by the police. Furthermore, some countries need a formal request for transfer of proceedings for the initiation, whereas for some countries, in accordance with their national legislation, the Red Notice is sufficient.

The CPs admitted that many times initiating domestic proceedings does not lead to the immediate arrest of the person, simply because the information in the Red Notice does not provide sufficient information for that. The CPs underlined that in order to transfer effectively the prosecution to another state, **the countries need to share and transfer information and evidence**. Thus, this was another problem in relation to transfer of the proceedings that was mentioned during the discussions – the difficulties in effectively obtaining the evidence.

MLA

Some MLA issues were also discussed. It was concluded that the most frequently used measure in MLA proceedings is hearing of a suspect or a witnesses. Again good examples were given by a CP from a EU Member States of successful cases with a WB country as a requested country. The CPs in the EU said that the communication between the CPs themselves is very good, the main problems are elsewhere. Certain challenges in communication between EU-WB relates to the identification of the competent authority.

Some best practices were highlighted:

- A clear distinction should be made between authority who issues the letter of request and judge/prosecutor carrying out the investigation; the contacting authority should be also made clear.
- Short explanations should be given about the crimes.
- Also there could be better alignment between description of the facts and the request.
- Legal dispositions should be attached to the request.
- EJM CPs could be contacted at any stage for their assistance.

JUDICIAL COOPERATION IN LIGHT OF COVID-19 MEASURES

The CPs also discussed **how the COVID-19 pandemic has affected the procedures for international judicial cooperation**.

Some CPs said that incoming and outgoing requests for mutual legal assistance have been affected. Differences were noted with respect to the quantity and frequency of mutual legal assistance requests.

Some CPs said that in their countries the numbers have increased considerably; others had noticed the decrease in the number of requests.

The extradition procedures have been postponed in many Member States and there have also been a few exceptional cases when the person in detention had to be released. Quite a few CPs mentioned that in their countries, due to borders being closed and/or limited entries in the country earlier in the year, there has been a lower number of arrests and thereby a lower number of extraditions. Practical problems were also caused by the problem if a country did not allow during the COVID-19 crises even a transit of anyone other than own nationals.

One issue highlighted by the CPs was that measures were not carried out in the requested countries in the WB because original documents are necessary to proceed, rather than communication over email. As a result, cooperation in particular cases was postponed.

On the other hand, despite the fact that the international judicial cooperation has somewhat slowed down because of lockdown in many countries and reduced number of staff, **the current situation has helped in increasing direct contacts between the competent authorities.** The prosecutors in the WB region do not rely only on sending requests via the central authorities during the pandemic but they are using more and more electronic means for sending requests.

The CPs emphasized that legal assistance facilitated by the EJM has showed during the COVID 19 crisis **how important it is to establish contacts with colleagues who are willing to provide support.** Several examples of successful cases were given in this respect.

Finally, some CPs said that in their countries, there were no technical possibilities to work from home. Overall, both CPs in the EU and in the WB assured the flexibility and openness for the cooperation during these times and confirmed their continuous commitment to the international judicial cooperation, regardless the difficulties. Participants were invited to consult **the COVID-19 area on the EJM website to find out information about how the crisis is being handled in different countries.**

EJM BUSINESS

EXPERIENCE AS EJM CP

The CPs shared views on their experience and role as CP; assisting with speeding up the investigations and obtaining different kind of information.

The EJM CPs in the WB reported that EJM has proved helpful in facilitating direct contacts. The EJM CPs help to overcome the language barrier and provide support with regard to liaising with colleagues from

other countries. The CPs coordinate different actions; explain the need for different documents to execute the request and assist in the preparation of requests for judicial cooperation.

For the WB region, meeting with the EJN CPs from the EU and feeling included is highly important.

RAISING AWARENESS OF THE EJN IN THE WB REGION

The EJN CPs in the EU stressed the importance of the EJN over the years in facilitation of judicial cooperation. They inform their colleagues in the national authorities on regular basis about the possibilities EJN provides for. An example was brought how awareness about the EJN can be raised in other countries, including in the WB countries, namely by attending relevant international training seminars and explaining the functioning and the added value of the EJN.

Another aspect the EJN CPs in the EU shared, was their experience with the EJN regional meetings. Regional meetings should be promoted to help focus on problems which have a particular regional character. The EJN Regional meetings may be organised by the MSs, regardless of their geographic proximity or distance; it is intended for the MSs to include any countries they have issues to discuss with. Therefore, the countries involved in the meetings do not necessarily have to be neighbouring states and also non-EU countries may be invited to take part in them. These smaller meetings provide a very good opportunity to make contacts and get to know each other.

The EJN CPs from the EU also stressed that direct contacts with the practitioners in the WB region are very much needed as it makes the current cooperation more effective. EJN CPs in the EU and WB were therefore encouraged to organize joint regional meetings. This is possible with the financial assistance from the EJN budget to an EU Member State through a grant for the EJN regional meetings.

WB CPs also said that since their nomination as EJN CPs, the judicial cooperation has improved significantly. However, there is room for improvement to make EJN more known so that the practitioners across Europe are aware of the options and tools offered to them by the EJN.

EJN REPORTING TOOL

The EJN Secretariat made a presentation about the EJN Reporting tool and gathering information about the EJN cases.

The reporting tool is used to gather information for the biennial Report on activities and management of the EJN for the implementation of Article 13 of the EJN Decision. WB EJN CPs were given credentials for the reporting one year ago, after the 1st EJN meeting between the EU and the WB. The Secretariat thanked the WB EJN CPs who have already started to use the tool and to report the cases. Graphics were also shown, which characterised the cases reported by the region.

The EJN CPs from the WB that have used it could not report any problems when filling in the information in the tool; it was said to be easy to use and not time consuming. It was admitted though



that more time is needed to get more familiar with the tool and to make a habit to start using it on a regular basis.

The Secretariat draw the attention to the new revised Reporting Tool Manual and Quick Start Guide, which could be of use to everyone who has questions on the tool.