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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: EJN Videoconference on COVID-19 measures
- Summary of discussions

Delegations will find attached a summary of the discussions that took place during the EJN videoconference on 7 May 2020.

EJN Videoconference on COVID-19 measures

07 May 2020

I. Introduction

On May 7th 2020, under the Croatian Presidency of the Council of the EU, the European Judicial Network (EJN) held the 1st EJN Videoconference meeting with discussions on how the COVID-19 pandemic has impacted the procedures for international judicial cooperation.

The EJN National Correspondents/Contact Points from the following Member States participated: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Malta, The Netherlands, Poland, Portugal¹, Romania, Slovakia, Slovenia, Spain and Sweden, together with the EJN Secretariat and a representative from Eurojust. They exchanged information on the challenges that the practitioners in their EU Member State are facing with regard to the practical application of the different cooperation procedures. They also shared the provisional measures adopted in their countries in the times of the pandemic that have been adopted to advance with the investigations. The National Correspondents from Portugal and Luxembourg contributed to the meeting in written. The representative of Eurojust emphasised the great cooperation taking place with EJN which allowed the elaboration of the **EJN-Eurojust compilation** on the impact on COVID-19 on Judicial Cooperation in criminal matters. The EJN participants identified difficulties, best practices and possible solutions as well as how could the EJN support practitioners further in this difficult time.

¹ Portugal submitted its intervention in written to the EJN Secretariat and was not represented in the meeting.

II. Overview of the discussions

1. General remarks

The presentations by the EJM Contact Points confirmed that the problem of carrying out investigative actions (e.g. for hearing of witnesses and searches of premises) continue to be related to practical issues such as restrictions on physical contacts, rules of “social distancing” and closed borders between the Member States. In some Member States there continue to be large regional differences when it comes to judicial cooperation during the last months, depending on how affected a particular region is by the COVID-19 outbreak.

Another issue is that judges and prosecutors continue to work remotely from home in most Member States - *with some exceptions*. As a result, the judges and prosecutors on duty only deal with urgent cases.

However, within the last week, in around half of the Member States the governments have adopted the timeline to loosen the restrictive COVID-19 measures; in the other half such decisions will be taken in the near future. As of mid-May, or in some Member States, as of early June, several COVID-19 measures will be eased and standard work arrangements are planned to be resumed. In the light of this, increased number of flight connections are expected as most Member States start opening up the borders. This will make the surrender possible.

Because the situation is changing rapidly as of the last weeks, the EJM National Correspondents emphasized the need to be in close communication with each other; the important role of the EJM has become, in this specific period, more evident than before.

2. European Arrest Warrant

Issuing and executing of European Arrest Warrants (EAW):

The majority of the EJM National Correspondents confirmed that the EAWs continue to be issued as before the outbreak of COVID-19. However, in several Member States, the issuing of EAWs are limited to urgent/ serious cases and thus prioritisation is applied. The same applies to the execution of EAWs as it was said to continue in a regular manner in the majority of the EJM Contact Points. Yet when possible, arrest of persons may be postponed, in case there is no risk of flight.

Surrenders

Surrender procedures in all Member States have been the most affected procedure by the COVID-19 measures. Surrenders are largely impeded or very limited due to the travel restrictions and lack of means of transport.

The EJM National Correspondents noted that if there are flight connections available or transfer is possible by land and if the issuing MS does not restrict persons with citizenship of Member States other than its own from entering its territory, the surrender will be proceeded as usual. In all other cases, surrenders have been postponed.

Whenever surrender of a person is not possible, the majority of the Member States postpone it based on either Art. 23(3) or alternatively with Art. 23(4) of the EAW FD, depending on the particular circumstances. Member States in this case either agree “*on a new surrender date*” (Art. 23(3)) or that surrender will “*take place as soon as these grounds have ceased to exist*” (Art.23(4)).

The EJM Contact Points also discussed cases where the impossibility of surrender translated to the need to release the person in line with the time limits on detention and principle of proportionality. If feasible and necessary, the persons concerned continue to be held in detention (depending on the nature of a crime).

Some Member States admitted that in a few exceptional cases the person concerned had to be released. It should be noted, that in some Member States this, however, it has been the case more often than in the others.

In a case where a person concerned has to be released, Member States many times adopt other measures in line with Art. 12 of the EAW FD. It may be decided that a person remains under supervision or a probation order. Close communication between the issuing and executing Member States was underlined as being particularly important and the EJM has been regularly made use as a channel of communication in this respect.

Transit of a person

Many Contact Points re-affirmed that transit of a person through the territories of some Member States is not possible due to existing travel restrictions. This may apply also for neighbouring countries. For example, some Member States only allow its own citizens to enter their territory, in which case surrender of a person of another nationality becomes impossible. Yet it was noted that transfers between neighbouring Member States do take place more often, the reason being that these transfers take place mostly by land or in some cases, over sea. Consequently the actual surrender still may take place in spite of the lack of air transport.

3. European Investigation Order and Mutual Legal Assistance

There continue to be different approaches among the Member States when it comes to issuing and execution of European Investigation Orders (EIOs) as well as to requests for Mutual Legal Assistance (MLA). In some Member States both issuing and execution continues as before the outbreak of COVID-19, in other Member States the application of these instruments has decreased. It was said by some EJM National Correspondents that the decrease is explained by the fact that courts are closed down completely or the working conditions for prosecutors and judges have been affected. As a result, delays do occur. Nevertheless, the EJM National Correspondents reassured that urgent cases are always dealt with and are not suspended nor postponed; it depends on the urgency of the measure as well as on the seriousness of the case to what extent a particular request is dealt with or whether the execution may be postponed.

The actual limitations when it comes to EIO concerns measures that require physical contact, for example search of premises. To the extent possible physical contact is avoided, but alternative measures are yet carried out. For example, hearing by videoconference or other audio-visual transmission and hearing by telephone conference is increasingly used where possible. In some Member States, the EIO has therefore been used more often as alternative measure to surrender and for hearing a person via videoconference instead of a physical hearing.

With regard to the means of transmission of an order/request, email is the prevailing method. The EJM Atlas was highlighted to be a source to find the relevant contact details.

4. Cooperation with non-EU countries

In extradition procedures with non-EU countries, similar problems have been encountered as in the surrender procedures within the EU. Extradition is being postponed in many Member States; there have been a few exceptional cases when the person in detention had to be released.

Another issue highlighted by some of the EJM National Correspondents when it comes to cooperation with non-EU countries, is that measures cannot be carried out due to the fact that original documents are needed rather than communication over email. As a result, cooperation in particular cases have been postponed.

5. Other issues

Some EJM National Correspondents touched briefly upon issues related to **freezing and confiscation orders (FD 2003/577/JHA and FD 2006/783/JHA)** and **transfer of sentenced persons (FD 2008/909/JHA)**.

In some Member States, there is a prioritisation of the issuing of certificates for mutual recognition of freezing and confiscation orders; only in urgent cases certificates are issued.

Transfer of sentenced persons has been generally suspended by the majority of the Member States. When possible, mostly with neighbouring countries and on ground (by car) a few transfers took place.

III. Best Practices in the area of international judicial cooperation

During the meeting, the National Correspondents shared their experience in ensuring the continuity of the investigations and judicial cooperation in the time of the pandemic. Although travel bans and other restrictions have significantly impacted the ability to carry out different procedural measures, the authorities came up with examples on how to proceed with the work in current circumstances, adjusting to the limited possibilities of action.

Among the best practices on the dissemination of information regarding the measures implemented by Member States and their practical application, the National Correspondents indicated the following:

- continue seeking assistance and expertise from the EJN Contact Points, as active intermediaries for the facilitation of judicial cooperation, since countries are regularly adapting their procedures to the restrictions faced during the pandemic;
- the establishment of a team of experts to advise national practitioners on the judicial cooperation measures related to the particular Member State;
- to obtain information and locate competent authorities through the EJN Contact Points and/or the EJN Atlas to enable the continuation of the legal procedures and direct contacts between the authorities;
- the elaboration and regular update of the compilation with input from the EJN, Eurojust and through the Council Secretariat, on all measures of international judicial cooperation affected by the restrictions related to COVID-19, limited to law enforcement/judicial authorities only;
- to elaborate and update on a regular basis the EJN **COVID-19 summary table of measures**, particularly regarding surrender procedure, transfer of prisoners and the EIO;
- to continue making the compilations available on the EJN website and the national intranets.

In operational perspective, the National Correspondents marked the following aspects as important to ensure the workflow of the international judicial cooperation:

- the use of the electronic means of communication – including through the EJM Contact Points - for the transmission of orders/requests;
- the dissemination/confirmation of the official channels for communication (email addresses) to all practitioners thus allowing the executing State to establish authenticity of the sender to prevent phishing/identity fraud;
- the use of SIRENE as a channel for communication to agree on the new surrender date in case it is postponed according to Article 23 (3) or 23 (4) of the EAW FD;
- adopting special guidelines or legal amendments for the practitioners to adapt the procedural measures to the situation of pandemic and lockdown;
- advise practitioners to provide additional information if the person to be surrendered/transferred is particularly dangerous or there is a risk for a person to abscond;
- provide the possibility to apply alternative measures (supervision, release on bail) instead of detention, especially when a person to be surrendered is a national/resident of the executing state;
- advise practitioners to explain the grounds of urgency and contact details for further communication, to avoid delays of the execution of urgent EIO/MLA;
- prioritise cases related to criminal activities emerging through the COVID-19 pandemic (fraud, hacking, etc);
- the possibility to execute the surrender/transfer of persons by ground transports, when air travel is limited or not possible (limited to neighbouring countries with common borderland);
- establish, in the national legal systems, flexibility and measures tailored to deal with urgent procedures;
- establish the possible sanitary conditions to allow the reopening of the courts, e.g. allow for proper distance, masks and disinfectants;
- the use of adequate sanitary measures (masks, disinfectants) during the execution of the EIO when it is necessary (for example, conducting searches, interviews, etc);
- the use of tele/videoconferences to the maximum extent possible allowed in the legislation.

IV. Conclusions

- **The role of the EJN in facilitating cooperation and providing information on the COVID-19 measures:** The EJN Contact Points continue to act as active intermediaries for facilitating judicial cooperation and cross-border cases. They support the national judicial authorities in providing them legal and practical information necessary to enable effective cooperation. In the times of the COVID-19 pandemic, the EJN remains a centre of expertise and knowledge and the EJN Contact Points are frequently contacted to provide their colleagues with the most up-to-date information on the impact of the pandemic on the measures of judicial cooperation;
- **EJN assistance on establishing direct contacts:** During the COVID-19 pandemic, the EJN continues to have a central role in facilitating the establishment of direct contacts between the national judicial authorities which greatly enhances the cooperation between them;
- **EJN Secure Telecommunication:** The EJN confirmed the need to reinforce the functioning of the EJN secure telecommunication network tool and welcome the steps undertaken for its improvement.
- **EJN support on EAW cases:** The EJN Contact Points greatly support the national authorities, particularly in EAW cases, by establishing direct contacts between the authorities in the Member States and by providing the most up-to-date information on possible postponement of surrenders due to restrictions in the transportation, and on actual surrender procedures where possible (between neighbouring countries);

- **Information on international judicial cooperation in times of COVID-19:** The EJN National Correspondents underlined the importance of having **two compilations**, a public one for easy access of the information and a restricted one for the more detailed information. The public document, the EJN **COVID-19 summary table of measures**, gives a concise overview of the COVID-19 measures related to EAW procedures, surrender, transfer of prisoners and EIO/MLA in emergency cases, while the **EJN-Eurojust compilation** on the impact on COVID-19 on Judicial Cooperation in criminal matters, is a restricted document with detailed information from the EJN, Eurojust and through the Council Secretariat on various instruments for judicial cooperation. The EJN Contact Points underlined the need to keep the compilations updated, also to reflect how the measures are eased across the EU, thereby assisting the practitioners to take informed decisions when issuing and executing new orders/requests for judicial cooperation;

- **EJN tools and COVID-19 Section on the EJN website:** the EJN website and tools are a particularly appreciated support for the national authorities in the process of drafting their requests for judicial cooperation. It is very useful to have a dedicated COVID-19 section on the EJN website as it gives easy access to structured information on the measures in the different Member States and regarding non-EU countries. This COVID-19 section should be regularly updated with the most recent information.
