



**Report on the operation of the European Judicial Network**

**24 December 2008 – 24 December 2010**

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## EXECUTIVE SUMMARY

This Report on the operation of the European Judicial Network has been elaborated in accordance with Article 13 of the Council Decision 976/JHA of 16 December 2008 on the European Judicial Network.

In more than 12 years of existence, the European Judicial Network (EJN) has proved to be an efficient tool for facilitating and improving judicial co-operation in criminal matters within the area of freedom, security and justice of the European Union.

The activities of the EJN Contact Points as “active intermediaries” have helped the judicial authorities from the Member States and candidate countries to solve problems occurred in criminal cases with foreign elements that required international co-operation. However, these activities had not really been quantified at EU level until now, because the EJN Contact Points have carried out their EJN tasks in addition to their normal functions as judges, prosecutors or officials of the Ministries of Justice.

For the first time, with the entry into force of Council Decision 976/JHA of 16 December 2008 on the European Judicial Network, the EJN must report on its activities and management to the European Parliament, the Council and the Commission every two years. This is a separate exercise from the regular annual report on the implementation of the Work Programme presented to the Network by the EJN Secretariat. To that end, the EJN Secretariat has worked closely with the Network itself in preparing this comprehensive bi-annual report.

This report is meant to offer a comprehensive image of the impressive work done by the EJN and its Contact Points during the past few years and contribute to a favourable assessment of the European Judicial Network.

We are convinced that what the EJN has accomplished via a flexible and horizontal structure and keeping costs low is the strongest argument for further strengthening the EJN, developing the network design and supporting its expansion beyond the borders of the European judicial criminal area.

This Report is structured in three parts, intended to provide a full picture of what EJN means for the EU judicial cooperation in criminal matters and of the EJN ‘s activities.

**Part I – “We have come a long way. Overview of the main achievements of the EJN from 1998 to present”** highlights the most important achievements of the Network since its establishment in 1998.

The EJNI that has been operating for over 12 years has been involved in fostering judicial co-operation between the judicial authorities from the EU Member States and has given an active contribution to the development of a genuine area of freedom, security and justice.

The work of the EJNI Contact Points as active intermediaries is of crucial importance in the practical implementation of the mutual recognition tools, based on the principle of direct contact between the judicial authorities. Their assistance has increased every year.

From 1998 to 2010, the EJNI gained a special place in the field of international judicial co-operation in criminal matters, and its success became a model for other judicial operational networks. Thus, the EJNI in civil and commercial matters was founded in 2001 in the EU and specific networks dealing with criminal matters have also been created (such as the Network of Contact Points in respect of persons responsible for genocide and crimes against humanity, the Joint Investigation Team Network, the Anti-Corruption Network).

As a pioneer in the networking of judges and prosecutors dealing with judicial co-operation cases, the EJNI has “exported” its values and operational principles to other regions of the globe.

**Part II- “Assessment on the activities of the EJNI activities from December 2008 to present”** contains four chapters, meant to provide a comprehensive perspective on the EJNI work in the 2 years covered by this Report.

**Chapter I concerns the activities of the EJNI Contact Points in their Member States**, which represents the core business of the Network.

The summaries of the Contact Points activities show that the EJNI Contact Points have been very active in their role. In addition to their daily work as judges, prosecutors or officials of the ministries of justice in their home countries, the EJNI Contact Points performed a valuable work in facilitating judicial co-operation in criminal matters, in a decentralised and flexible way. They offered help and advice to their colleagues, judges and prosecutors, in an impressive number of cross-border cases. Their active involvement proves once again the added value of the EJNI as a practical and efficient mechanism to improve judicial co-operation.

Moreover, as experts in the field of international co-operation, the EJNI Contact Points are regularly asked for advice. They are involved, at the request of their national authorities, to provide legislative work; they also execute expert missions for the European Union, the Council of Europe and the United Nations and actively participate in numerous international conferences and seminars. The EJNI Contact Points also have an important role in the

dissemination of information to the local authorities and in the training of judges and prosecutors. In most Member States they organised training seminars on judicial co-operation in criminal matters, where appropriate in co-operation with the national schools for judges and prosecutors and the national schools for clerks. Thus, their work is highly valuable in the field of international judicial co-operation.

For these reasons the importance of the network cannot be overestimated. The overall figures illustrate that the network has been an irreplaceable tool for judges, prosecutors and officials of the central authorities to help solve numerous cases in the past two years. The practical values of the network are its efficiency and informality – a case is often solved by a single contact between EJM Contact Points without the need to involve the central authorities of neither country. The added value of the EJM cannot be denied and makes it a leading actor in the field of international judicial co-operation in criminal matters.

The figures presented in this Report reflect the impressive work done by the EJM Contact Points in addition to their functions as judges, prosecutors or officials of the Ministries of Justice. Every year, more than 10000 cases of judicial cooperation in criminal matters have involved the assistance of the EJM Contact Points.

**Chapter II details the implementation of the EJM Work Programmes 2009 and 2010, under the Czech, Swedish, Spanish and Belgian Presidencies.** The conclusion is that all the major objectives assumed in the respective Work Programmes were achieved through effective activities.

**Chapter III is a self assessment of the Network's management.**

In 2008 the JHA Council, with the revision of the legal basis for the EJM and Eurojust, reaffirmed the willingness of the Member States to have Eurojust and the EJM work together towards the same general goal, albeit with different means and different functional organisations. To that end, the Council recognised the added value of the EJM as a network based on the principles of informality, decentralisation, horizontality and flexibility, with Contact Points "in the field"; on the other hand, Eurojust deals mainly with serious transnational cases and co-ordination matters.

With a budget of EUR 398 000 in 2009 and EUR 485 000 in 2010, the EJM Secretariat managed to execute all the activities and to implement all the objectives foreseen in the EJM Work Programmes 2009 and 2010.

The EJM Secretariat managed to provide the EJM with proper administration and management while keeping costs low: in 2009 the Secretariat was composed of just 4 staff members (1 AD position, 2 TA positions, with grades AST 1 and AST 3, and 1 CA position

with grade FG IV) and a Seconded National Expert (SNE); in 2010, in addition to the SNE, the staff members became 6 (2 CA positions were added with the grade FG III).

The EJNI Secretariat elaborated the strategic documents for the Network and organised, in co-operation with the EJNI Presidencies, the EJNI meetings. At the same time, the Secretariat had an active involvement in the representation of the Network and the training provided to national judicial authorities, in co-operation with partners such as ERA and national schools for the judiciary.

During the past two years, the EJNI Secretariat was also a promoter of co-ordination between judicial networks for international co-operation in criminal matters and succeeded to make the EJNI a key player in its field of activity.

**Chapter IV outlines the main external actions of the Network** during the past 2 years. The EJNI has played a crucial role in the way towards a worldwide platform of judicial operational networks in the field of international cooperation in criminal matters. Moreover, it concluded a Memorandum of Understanding with IberRed and has paid a particular attention to the co-operation with EJNI, ERA and the Council of Europe, to provide the Contact Points and the local judicial authorities with quality training on judicial cooperation in criminal matters.

**Part III – “Criminal policy matters and proposals to improve judicial co-operation in criminal matters”** was drafted in accordance with the provisions of Article 13 paragraph 2 of the EJNI Decision.

**Chapter I identifies the main criminal policy problems within the European Union, as reflected in the EJNI activities.**

In a European Union where there is free movement (which also criminal offenders benefit from), there are still bureaucratic and legal barriers for judicial authorities in their fight against serious crime.

With the adoption and implementation of legal instruments based on the principles of mutual recognition and mutual trust, much progress has been made towards a genuine European judicial criminal area. However, the problems occurred in practice show that we still have a long way to go before a European judicial culture, based on mutual trust, is achieved.

The EJNI Contact Points mentioned in several plenary meetings the lack of trust as an obstacle to effective co-operation between judicial authorities. Due to the active involvement of the EJNI Contact Points most of these obstacles were overcome.

From the conclusions of the EJNI meetings held in the past two years, we can state that a general problem is the insufficient implementation of the adopted EU legal instruments. While the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States were unanimously recognised as a “success story”, other EU mutual recognition legal instruments were not yet transposed in all the Member States’ legislations or are not correctly implemented in practice. In other cases, such as the European Evidence Warrant, most of the EJNI Contact Points reckoned (*see*: Part II, Chapter II, Paragraph 1.1. “The 33rd Plenary Meeting of the EJNI”) that the scope of the legal instruments do not meet the practitioners’ expectations. In this respect, the EJNI Contact Points sometimes noticed a different approach between the practitioners and the representatives of their Member States in the working parties and other fora where legal instruments are negotiated.

The poor quality of the translation of judicial co-operation requests and supporting documents was also identified as a common problem for judicial co-operation.

## **Chapter II contains proposals for improving judicial co-operation in criminal matters.**

The European Union and its Member States need to further work to build a European judicial culture based on mutual trust.

The EJNI considers that the strengthening of the judicial networks is one of the solutions to improve judicial co-operation in criminal matters. Providing the EJNI and other operational networks for co-operation in criminal matters with all the necessary resources will represent a low-cost way of facilitating judicial co-operation in criminal matters, while keeping a direct contact between the judicial authorities as a rule. To that end, a comprehensive, multi-language and up-to-date EJNI website, whose implementation started in 2010, will help practitioners to deal with daily cases of judicial co-operation.

The training of judicial authorities on judicial co-operation in criminal matters is a “must” in a European judicial criminal area. The judges, prosecutors and other practitioners shall be also trained in legal terminology in different languages, to facilitate communication. Thus, the EJNI suggests a closer co-operation between the key players in the field of judicial co-operation with a view to promote and actively participate in training activities at national level, including through the creation of best practice guidelines in this field.

The full implementation of all existing legal instruments based on mutual recognition shall be the main priority, before going on to further legislative developments. Meanwhile, impact

studies and opportunity analysis shall be used more before initiating new legislative proposals.

The practitioners' experience, including that of the EJNI Contact Points, shall be taken into account systematically and synergies between those who apply the legislation and those who draft and negotiate it shall be a key element, ensuring the success of new legal instruments. It does not make sense to adopt a legal instrument if it is not used in practice, as was the case with the European Evidence Warrant and even with freezing orders (for the EEW, see the debates in the plenary meetings of the EJNI in Stockholm – November 2009 - and Madrid – June 2010 - and, for the freezing orders, see the conclusions of the workshops organised during the plenary meeting in Paris in November 2008). The EJNI strongly advises a deeper consultation with the practitioners in judicial co-operation in criminal matters when initiating and negotiating new EU legal instruments. To that end, the high expertise of the EJNI Contact Points could bring the necessary added value to the EU legislative process in the field of judicial co-operation in criminal matters.

An important element to improve the EU judicial co-operation in criminal matters is also a prior harmonisation of national substantive and procedural criminal laws, before taking new legislative steps with mutual recognition legal instruments. This must of course be done while respecting the national constitutional and legal systems and traditions.

On the other hand, new mutual recognition legal instruments must be drafted in such a manner to be flexible: the forms attached to each mutual recognition instrument are very useful but in the future these forms should allow for more flexibility, as is the case with the "classic" requests for mutual assistance.

The further strengthening of Eurojust and the possible creation of a European Public Prosecution Office should take into account the national values and fundamental principles of law and the need to preserve the EJNI as an independent, flexible, horizontal and decentralised mechanism to facilitate judicial co-operation. Eurojust and / or the EPPO shall have clear defined powers, mainly for prosecutions in multilateral cases, without prejudice to direct judicial co-operation between Member States with the support of the EJNI, which shall be strengthened. To this end, new approaches on the role and place of the EJNI Secretariat and the financing of the EJNI to preserve and strengthen the EJNI identity and functional independence should be explored.

As observed in several mutual evaluations reports, the EJNI Contact Points have also raised the issue of proportionality as a matter of interest for future legislative developments.

The EJNI also encourages the Member States to create their own internet and intranet webpages dedicated to judicial co-operation in criminal matters, containing practical information and tools, on the basis of best practices already implemented in some Member States.



Regional co-operation between judicial authorities, on the model of police co-operation, shall be further encouraged.

The exchange of experience between the judicial authorities of the Member States, within exchange programmes supported by the EJTN or study visits organised in the EJN framework, shall become a permanent practice.

The Member States should support the organisation of the EJN meetings at national level, to discuss problems occurred in the judicial co-operation in criminal matters process.



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## **LIST OF ABBREVIATIONS**

EJN – European Judicial Network

MLA – Mutual legal assistance

EAW – European Arrest Warrant

EEW – European Evidence Warrant

EU – European Union



## PREFACE

*In 2001, under the Belgian Presidency, the European Judicial Network (EJN) presented its first activity report. I had the privilege to participate in its drafting.*

*Ten years later, in my capacity as Secretary to the EJN, I have the honour to present the first bi-annual report, in accordance with article 13 of the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.*

*In preparing this report, the Secretariat of the EJN fulfils one of its crucial functions, together with the administration of the EJN: to ensure the continuity of the EJN.*

*Today, the EJN has its Secretariat at Eurojust in The Hague; however, the EJN lives in each of the 27 Member States, home to the human network that integrates the EJN: your contact points!*

*Built by practitioners, for practitioners and hoping to solve the practical problems of criminal judicial cooperation within the European Union, the EJN has grown and became more homogeneous.*

*Its story, as an EU structure is one of self-invention.*

*The rest of this success story, you already know.*

*Looking at the past, we are building the future!*

*Twelve years after its creation, I am pleased to note that the EJN works better than ever. From its start as 85 contact points in 15 countries, the EJN currently has approximately 400 Contact Points in all 27 Member States. Its territory has doubled.*

*However, the EJN has maintained its identity over the years despite the vicissitudes of judicial cooperation and of the European Union.*

*Within the EJN, tools have been created to facilitate operational work: the European Judicial Atlas, the Fiches Belges, the collection of texts and instruments concerning judicial cooperation, the compendium of models for mutual legal assistance requests, the tools to facilitate the use of videoconferencing and the application of the EAW and instruments for mutual recognition. The website of the EJN is its main achievement.*

*EJN was first foreseen in article 31 of the Treaty of EU – as amended by the Treaty of Nice.*

*Despite these strides, "the key to success", the human factor, has not changed. The philosophy of the EJN is the personalisation of institutional relations. The best legal texts in the world will not change this reality. The personal element within this structure is crucial.*

*There is no limitation in its scope. There is no competitive spirit. We do not defend national interests. The driving principle of operation is collegiality.*

*The EJN's administrative structure is minimalist but not necessarily less effective.*

*The EJN has reached a stage of maturity that allows it to assert itself and to take a unique place within the European Union. The EJN also creates synergies in Europe.*

*It has done so together with its counterpart in civil and commercial matters, the European Judicial Network in civil and commercial matters, created in 2001, as well as with its privileged partner Eurojust, set up in 2002.*

*I welcome the fact that the EJN has set an example for other networks in other parts of the world, following the EJN model, with its principles of direct, informal and personal contacts.*

*Crime does not stop at the doors of the European Union. We all have experienced the same. Therefore, the EJN is not just an end in itself but also a means to that end.*

*This is the future of the EJN:*

*Strengthening its natural connection to its privileged partner, Eurojust, and continuing to facilitate judicial cooperation within Europe, focused on the local judicial authorities;*

*Being pro-active in fighting crime that threatens the citizens of the European Union: experience has shown that the Network has acted as a catalyst for initiatives; any action or initiative taken by a single EJN Contact Point ends up having repercussions of a surprising nature, for the simple reason that it took place in its own environment, and with its own courts;*

*Ensuring consolidation of a genuine European judicial culture through cooperation with other existing networks within the European Union, such as the EJTJ and the Network of the Supreme Judicial Councils, among others; and*

*Building bridges to other judicial parts of the world facing the same scourge of global criminality and bringing to the European area more experience, more knowledge and more ways to fight crime in Europe.*

*This is the new world phenomenon: global judicial cooperation through judicial networks.*


*Let's keep on working together to build the future!*

*Finally,*

*this report is a collective achievement, coordinated and drafted by the EJM Secretariat. All the EJM Contact Points have participated. Thus, I would like to take this opportunity to thank all those who have contributed to the drafting of this document, and also to express my gratitude to all those who support and encourage the activities of the European Judicial Network.*

**FÁTIMA ADÉLIA PIRES MARTINS**

***Prosecutor***

A handwritten signature in dark ink, reading 'Fátima Adélia Pires Martins', with a stylized flourish at the end.

***Head of the EJM Secretariat,***

***Former EJM Contact Point***

## **PART I**

### **WE HAVE COME A LONG WAY. OVERVIEW OF THE MAIN ACHIEVEMENTS OF THE EJN FROM 1998 TO PRESENT**

The European Judicial Network (EJN) is a pioneer in interlinking judicial authorities to facilitate judicial co-operation. It was created by the Joint Action 98/428/JHA of 29 June 1998<sup>1</sup>, taking into account the conclusions of the seminars on the European Judicial Network and organised crime, held in Brussels from 8 to 10 May 1996 and on 19 and 20 June 1997, which were arranged by the Belgian Ministry of Justice within the framework of a programme partly financed by the European Union, and making also use of the proceedings of the European Parliament and the European Commission.

The need for such a network became obvious after the Tampere European Council (15 and 16 October 1999), where the mutual trust, mutual recognition and direct contact between the judicial authorities of the European Union (EU) Member States were affirmed as the corner stones of judicial co-operation within the EU. Thereafter, the EJN became a model for the creation of other networks based on the same principles – horizontality, informality, decentralisation –, not only in the European Union (the EJN in civil and commercial matters, the anti-genocide network, the JITs network), but also beyond the EU.

The efficiency of the EJN was once more confirmed when its legal basis was reinforced with the adoption and entry into force of Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network<sup>2</sup> (hereinafter referred to as the “EJN Decision”). The EJN Decision, as well as Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>3</sup> (hereinafter referred to as the “Eurojust Decision”), pointed out a need for the coexistence of the EJN and Eurojust and of privileged relations between them.

The EJN’s mission is to facilitate the judicial co-operation in criminal matters within the European Union, through a decentralised and horizontal network of Contact Points, experts in judicial co-operation in criminal matters appointed by each Member State among judges and prosecutors and representatives of the central authorities.

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<sup>1</sup> OJ L 191, 07.07.1998, p. 4-7.

<sup>2</sup> OJ L 348, 24.12.2008, p. 130-134.

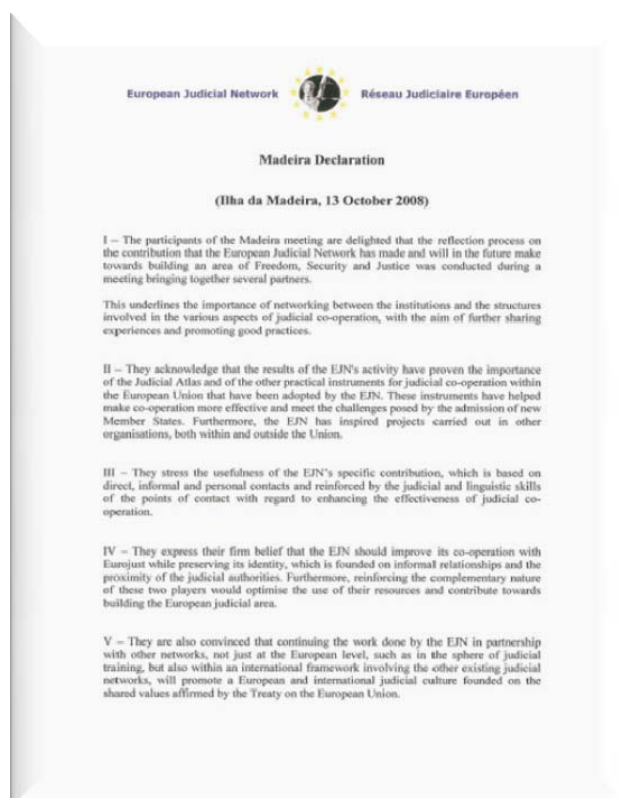
<sup>3</sup> OJ L 138, 4.6.2009, p. 14-32.

The EJM that has been operating for over 12 years has been involved in fostering judicial co-operation between the judicial authorities from the EU Member States and has given an active contribution to the development of a genuine area of freedom, security and justice.

The work of the EJM Contact Points as active intermediaries is of crucial importance in the practical implementation of the mutual recognition tools, based on the principle of direct contact between the judicial authorities. Their assistance has increased every year.

From 1998 to 2010, the EJM gained a special place in the field of international judicial co-operation in criminal matters, and its success became a model for other judicial operational networks. Thus, the EJM in civil and commercial matters was founded in 2001 in the EU and specific networks dealing with criminal matters have also been created (such as the Network of Contact Points in respect of persons responsible for genocide and crimes against humanity, the Joint Investigation Team Network, the Anti-Corruption Network).

As a pioneer in the networking of judges and prosecutors dealing with judicial co-operation cases, the EJM has “exported” its values and operational principles to other regions of the globe: SEEPAG - Southeast European Prosecutors Advisory Group – was created in 2003; Ibered- Red Iberoamericana de Cooperación Jurídica Internacional was founded in 2004; Rede de Cooperação Jurídica e Judiciária Internacional dos Países de Língua Portuguesa was created in 2005; and finally CNCP - Commonwealth Network of Contact Persons – was started in 2007.



On the occasion of the 10<sup>th</sup> anniversary of the EJNI, celebrated in Madeira on 13 October 2008, the need for a closer co-operation between judicial operational networks was for the first time emphasised at a political level, by the final declaration of the meeting endorsed by the Ministers of Justice of Austria, Belgium, France and Portugal. Thus, Point V of the “Madeira Declaration” stipulates: *“They are also convinced that continuing the work done by the EJNI in partnership with other networks, not just at the European level (...) but also within an international framework involving the other existing judicial networks, will promote a European and international judicial culture founded on the shared values affirmed by the Treaty on the European Union.”*

Its achievements during the last 12 years make the EJNI the ideal promoter of a closer inter-connection between the judicial operational networks in the fight against crime. The active participation of the Secretary to the EJNI in the Twelfth United Nations (UN) Congress on Crime Prevention and Criminal Justice, held in Salvador de Bahia, Brazil, from 12 to 19 April 2010, was acknowledged in the Conclusions of the Congress, where the importance of strengthening regional judicial networks for international co-operation in criminal matters was mentioned. One month later, the general conclusions of the UN Congress were expressed in **Resolution 19/7 – “Strengthening of regional networks for international cooperation in criminal matters”**, adopted by the UN Commission on Crime Prevention and Criminal Justice, at its 19<sup>th</sup> session, 17-21 May 2010, which:

- “1. Urges Member States participating in networks for legal cooperation to strengthen international cooperation in criminal matters and the coordination among such networks;*
- 2. Recommends that interaction between regional networks should preserve the fundamental principles, traditions and distinctive features of each regional network and should take into account differences in legal systems and legal cultures;*
- 3. Encourages Member States to facilitate the establishment of similar regional networks, to the extent possible, through, inter alia, training and the exchange of best practices in criminal matters, with the assistance of the United Nations Office on Drugs and Crime as necessary;*
- 4. Recommends that the Conference of the Parties to the United Nations Convention against Transnational Organized Crime consider inviting existing regional networks to participate in its fifth session, with the aim of improving cooperation between regional networks, the United Nations Office on Drugs and Crime and the States parties to the United Nations Convention against Transnational Organized Crime and the Protocols thereto.”*

The EJNI considered as its duty to be actively involved in the activities to achieve a better co-ordination between the judicial operational networks. To that end, apart from the contribution to the Conclusions of the 12<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice, in 2010 the EJNI Secretariat took the initiative to organise in The Hague two meetings of such networks, where items of common interest were discussed and the guidelines of a future networks’ co-operation platform were agreed upon.

The support of the Contact Points is supplemented by the EJN electronic tools, which are effective practical means facilitating the application of mutual legal assistance and mutual recognition tools: the European Judicial Atlas on mutual legal assistance (Atlas), the Compendium for mutual legal assistance (MLA), the *Fiches belges*, as well as the EAW Atlas, the EAW Wizard and the forms are well known IT instruments by the practitioners in judicial co-operation in criminal matters, not only in the EU.

In 2010 a revamping of the EJN website was initiated, whose main purpose was to make the EJN website the primary portal to practical information and tools on judicial co-operation in criminal matters within the European Union. The revamping done by the EJN Secretariat with the support of the website's external contractor was meant to give it a new structure, more user-friendly but also more responsive to new challenges and requests from practitioners about legislative evolution. Thus, fully in line with the Council Conclusions adopted in October 2010, on the follow-up to the mutual recognition instruments<sup>4</sup>, the EJN website will contain a comprehensive database for all the mutual recognition (as well as for the MLA) tools, with all needed practical information: the text of each legal instrument, the notifications/statements/declarations made by the Member States about each legal instrument, the state of play of implementation, national legislation, forms, case law, handbooks, reports, and any other practical information.

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<sup>4</sup> Council conclusions on the follow-up of the implementation of instruments implementing the principle of mutual recognition of judicial decisions in criminal matters, 3034th Justice and Home Affairs Council meeting; Luxembourg, 7 and 8 October 2010; 13405/1/10 REV 1 COPEN 184 EJN 35 EUROJUST 86.

## **PART II**

### **ASSESSMENT ON THE EJN ACTIVITIES FROM DECEMBER 2008 TO PRESENT**

#### **OVERVIEW**

With the entry into force of the EJM Decision on 24 December 2008, the second generation of the EJM began.

While preserving its way of functioning, based on informality, which has proved to be effective, the new legal basis offered the EJM new instruments for achieving its goals. Indeed, the new Council Decision converted the practical experience acquired in the previous ten years into legislation. Thus, it transformed the group of “national correspondents for the EJM website”, created in 2000, into the “tool correspondents” and the members of the “EJM Informal Working Group” became the EJM national correspondents.

The main challenges for the EJM after December 2008 have been:

- to preserve its decentralised, operational and informal way of functioning while complying with the new structure foreseen in the Council Decision, including the role of the EJM national correspondents;
- to strengthen the network and to make it a key player in the European area of criminal justice and in general in international judicial co-operation in criminal matters;
- to establish privileged partnerships and close co-operation with relevant organisations and networks.

Other challenges have appeared with the “Eurojust Decision”, due to the role foreseen for the EJM national correspondents and Contact Points in the Eurojust National Co-ordination System (ENCS).

The strengthening of the privileged relations between the EJM and Eurojust, including the participation of the EJM Contact Points in the ENCS, is one of the EJM’s priorities. However, the EJM will need to stay independent.

In order to fully implement the Council Decision on the EJM, experienced EJM Contact Points have voluntarily offered in the plenary meeting held during the French Presidency (second



half of 2008), that is even before the entry into force of the Decision, to take part in the so called “EJN Task Force”, an *ad-hoc* group that, in close co-operation with the EJN Secretariat, intends to identify the most appropriate solutions to the challenges faced by the EJN.

2009 was a transition year for the EJN, as it had to execute the Work Programme for that year and in the meantime start the implementation of the new Council Decision on the EJN. Despite these circumstances, the EJN Work Programme was fully executed, and the new type of EJN meetings, established by the new Decision, already took place: the national correspondents meeting and the tool correspondents meeting.

In parallel with the usual execution of the Work Programme for that year, the EJN Secretariat and the Czech Presidency prepared two guidelines, non-binding documents whose purpose is to provide guidance on the implementation of the Council Decision on the EJN.

The first guidelines, on the structure and functioning of the EJN, detail the several types of EJN meetings and defines the national correspondents meeting as a veritable steering committee of the EJN and also outlines the role and functioning of the EJN Secretariat. The second guidelines concern the EJN regional meetings, creating for the first time the basis for organising such meetings of EJN Contact Points at regional level. The two guidelines were adopted at the 32<sup>nd</sup> EJN plenary meeting held in Prague in June 2009.

During the second half of 2009, under the Swedish Presidency, the work on the implementation of the EJN Decision continued. An “EJN Manual” was approved at the 33<sup>rd</sup> plenary meeting detailing the actions foreseen and the responsible persons for accomplishing specific EJN objectives.

The EJN Task Force also held a meeting during the Swedish Presidency.

The guidelines are “live” documents; the guidelines on the functioning of the EJN were updated in 2010 during the Spanish Presidency.

During the entire period from 2008 to 2010, the EJN’s website and information system represented a priority for the EJN Secretariat.

In 2009 the EJN secure telecommunication network became operational and the first EJN Contact Points became users of this secure connection.

As far as the website is concerned, during the regular meeting held in Brussels in early 2009, the future of the website was discussed. Since then, both in 2009 and 2010 several meetings on the website took place and an action plan for redesigning and reconfiguring it was put in place. The redesigned website, with a new structure and contents complying with the Council Conclusions on the follow-up to the mutual recognition instruments, shall be online in April 2011.

## **CHAPTER I**

### **ASSESSMENT OF THE ACTIVITIES OF THE EJN CONTACT POINTS IN THE MEMBER STATES**

#### **1. INTRODUCTION**

##### **1.1. ACTIVITY REPORTS**

In order to reach a better understanding of the strengths and weaknesses of the network, the EJN Secretariat asked the national correspondents to provide annual detailed reports on the activities of the Contact Points. Based on a methodology agreed on in 2007, during the German Presidency, the EJN Secretariat collects summary reports from the EJN national correspondents and Contact Points on their activities in the Member States. The reports are submitted to the EJN Secretariat annually, by 5 February following the calendar year that is being reviewed.

Based on the information submitted by the national correspondents or Contact Points of the Member States in the activity reports for 2009 and 2010, the EJN Secretariat was able to make summaries about the activities carried out in different Member States over this two-year period.

The reports covered three areas: type of intervention, scope of activity and supplementary information on the type of requesting authority.

The first part of the report (type of intervention) included statistics regarding both “classic” MLA requests and mutual recognition instruments. The “classic” MLA covers the co-operation based on conventions, protocols, agreements, where a (requested) judicial authority (court/prosecutor’s office) from a Member State provides assistance (*entraide*) to a (requesting) judicial authority from another Member State. Thus, the terms “national” and “foreign” authority in the activity reports and in this bi-annual report, stand respectively for “requesting” and “requested” judicial authority. In case of mutual recognition instruments, which are much more about pro-active co-operation between two Member States, the terms “national” and “foreign” authority stand for “issuing” and “executing” judicial authority, as provided for in the legal acts.

In the structure of the activity reports, different types of interventions are listed, related to both MLA and mutual recognition instruments. Member States were asked to fill out the table with the statistics for their own country – how many requests were made during the

reporting period and whether the request was made by “national authorities” or “foreign authorities”. Statistics were asked for the following types of interventions:

- Providing information on foreign law;
- Providing assistance during the preparation of an MLA request;
- Providing assistance during the execution of an MLA request;
- Providing assistance in cases of delay in the execution of an MLA request;
- Providing assistance during the preparation of an EAW;
- Providing assistance during the execution of an EAW;
- Providing assistance during the preparation of a freezing order;
- Providing assistance during the execution of a freezing order;
- Providing assistance with other procedures.

In addition to the types of interventions listed, the Member States had the opportunity to specify the assistance given in other procedures and list if they wished that any other activities were performed.

In the second part of the report (scope of activity), the Member States were asked for what activity the request had been made. In accordance with the methodology agreed on in 2007, during the German Presidency, the EJN Secretariat divided the scope of activity into two parts:

- Serious form of crimes (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.);
- Other types of crimes.

In the third part of the report (type of the requesting authority), additional information was asked regarding the judicial authority that had requested assistance. Types of authorities were listed as follows:

- Eurojust National Members;
- Other national authorities;
- Foreign authorities;
- Other EJN Contact Points.

The replies from the Member States were collated and an integrated form of summary of the EJNI Contact Points activities was produced (graphs). This approach provides more added value since it allows for an overview of the functioning of the EJNI by type of intervention and not only by Member State, and thus, for better overall conclusions on the activities and functioning of the network.

The summaries reflected in the graphs show the activity within each Member State. This helps to provide a comparison between the activities in the different Member States. In most cases the statistics related to requests of assistance in years 2009 and 2010 were differentiated.

### 1.2. GATHERING THE DATA AND METHODOLOGY

Summaries on the type, scope and other relevant information of the activities performed, as well as activities within the Member States, are presented in the graphs.

It must be borne in mind that the information may be highly relative. Summing up the statistics was difficult for several reasons, both for the Member States gathering the data and for the EJNI Secretariat.

Firstly, as defined in the EJNI Decision, the EJNI Contact Points are “active intermediaries”, chosen by the Member States among the judges, prosecutors and officials of the Ministries of Justice, with relevant experience in the field of international judicial co-operation. They are exercising their role of Contact Points in addition to their jobs within the courts, prosecutor’s offices or central authorities. Their work as Contact Points in their own Member States consists in providing the judicial authorities from other Member States or from their own country with information regarding the specific procedures of judicial co-operation, including practical information on the competent authorities who deal with a given judicial co-operation request and accurate legal information. Another very important task of the EJNI Contact Points is to disseminate among the judicial authorities in their Member States their knowledge about new legal instruments on judicial co-operation, and to contribute to the training of judges and prosecutors on these matters. Therefore, it is not always easy to quantify precisely the work done by the appointed Contact Points, since it should be separated their work carried out as prosecutors, judges or officials of a ministry of justice. This may result in different systems of calculating the data between Member States.

Secondly, very often the nature of the assistance means that it is difficult to measure the assistance provided, as some activities can only be measured according to the methodology in use within each Member State. The Contact Points’ assistance is accomplished in several ways, including phone conversations and e-mails, which are particularly difficult to keep tracks of. Thus, because of the wide variety of requests and the fact that they have or might

have been measured differently, the figures provided by the Member States are relatively rough. This is also most probably one of the reasons why the number of Contact Points per Member State and the number of requests per Member State may only loosely be correlated – i.e. a relatively high number of Contact Points in a Member State does not necessarily imply a high number of requests in the graphs and vice versa. On the other hand, in some Member States a relatively low overall number of Contact Points may seem to have made a relatively high number of requests. As a result, very often the numbers provided are rather based on the EJNI Contact Points' estimates.

Finally, in addition to the different ways of collecting the data, the Contact Points or the national correspondents summed up the data in different ways. Some Member States submitted a report that covered a full period of two years, between 2008 and 2010, without making a distinction between the reporting years. Therefore, to be able to compare the figures for the year 2009 and 2010 separately, the EJNI Secretariat considered the. Furthermore, some Member States did not send any figures at all. In such cases, figures were used by the EJNI Secretariat only when it was possible to extract them from the information sent over via e-mail. Other exceptions in measuring the data are described under each graph.<sup>5</sup>

## 2. SUMMARY OF THE EJNI CONTACT POINT ACTIVITIES

### 2.1. EJNI IN FIGURES FROM 2009 TO 2010

Overall, over this period of time the statistics regarding interventions/ requests were as follows:

**Providing information on foreign law:** at least **2395 requests**, including 1457 requests from national authorities and 938 requests from foreign authorities;

**Providing assistance during the preparation, execution and in cases of delay of an MLA:** at least **7571 requests**, including 4654 requests from national authorities and 2917 requests from foreign authorities;

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<sup>5</sup> a) FR submitted an activity report, which covered both 2009 and 2010, average was used; b) BE submitted an activity report, which covered both 2009 and 2010, average was used; c) IE submitted an activity report, which covered all requests for 2009 and all requests for 2010, explaining in addition the differences of the Irish system, average was used where possible; d) CY submitted report for 2010, activities in 2009 were based on estimations; e) ES submitted report for 2009, activities in 2010 were based on estimations; e) EL submitted report for 2010, activities in 2009 were based on estimations; f) IT submitted additionally written activity reports, statistics were included when possible; g) LV submitted additionally written activity reports, statistics were included when possible.

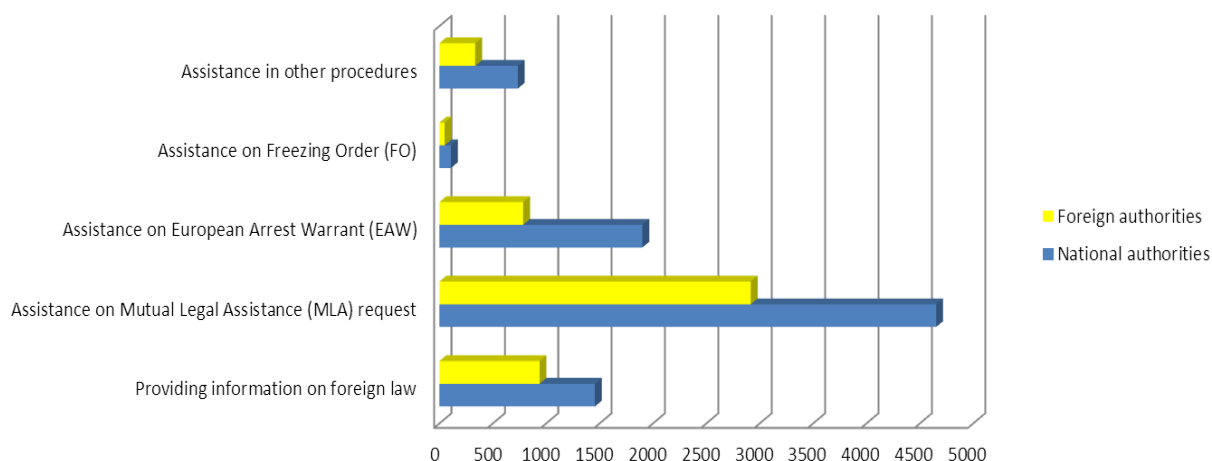
**Providing assistance during the preparation and execution of an EAW:** at least **2686 requests**, including 1902 requests from national authorities and 784 requests from foreign authorities;

**Providing assistance during the preparation and execution of a freezing order:** **156 requests**, including 108 requests from national authorities and 48 requests from foreign authorities

**Providing assistance in other procedures:** **1071 requests**, including 735 requests from national authorities and 336 requests from foreign authorities.

As a result, over this two-year period, the EJNI Contact Points submitted and received at least 13 879 requests within the European Judicial Network. The EJNI has been recognised as a key co-operation actor for practitioners in the area of judicial co-operation in criminal matters. With a low budget of EUR 398 000 in 2009 and EUR 485 000 in 2010, allocated for the activities of the Network (this amount also includes the EJNI website's management), the EJNI Secretariat succeeded in providing the EJNI with proper administration and management.

**Activites of the EJNI 2009-2010**



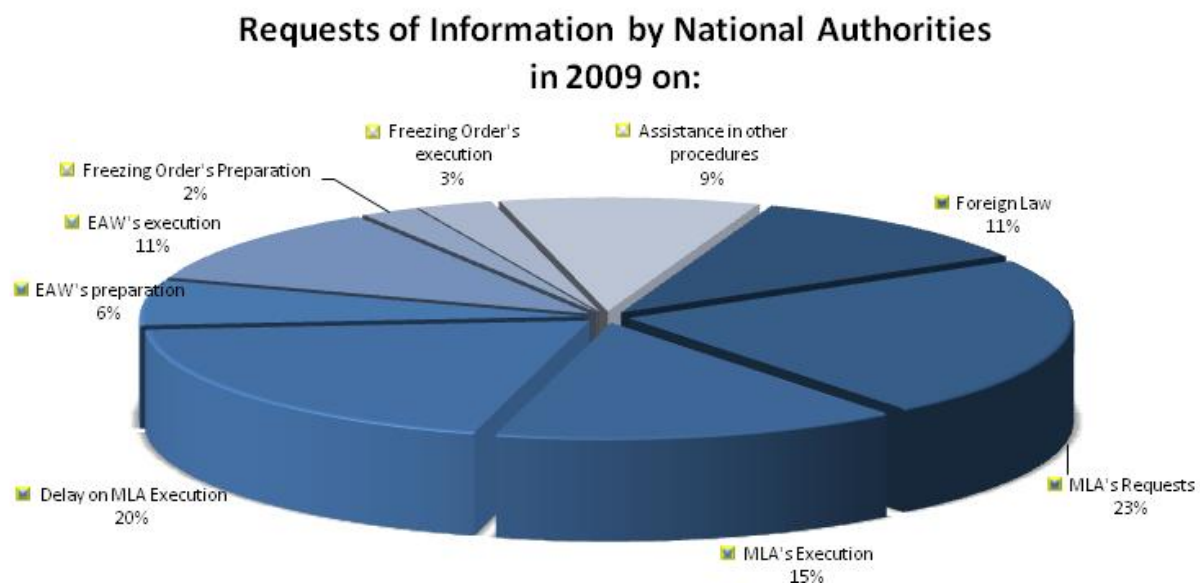
## 2.2. TYPE OF INTERVENTION

### OVERVIEW OF THE REQUESTS FOR INFORMATION BY NATIONAL/FOREIGN AUTHORITIES

The following graphs reflect an integrated number of requests made by national and foreign authorities in all Member States.

In general, the answers given by the Contact Points show that the nature of the requests either from abroad or from their national authorities is quite similar. Only when the nature of an intervention itself means that it is mainly requested by either a national or a foreign authority, might the figures differ considerably. For instance, the number of requests to provide information on foreign law is similar for both national and foreign authorities, whereas the request to provide assistance during the preparation or execution of a freezing order is in most cases made by the national authorities, i.e. the judicial authorities in the “issuing state”<sup>6</sup> (see: graphs 1 and 2).

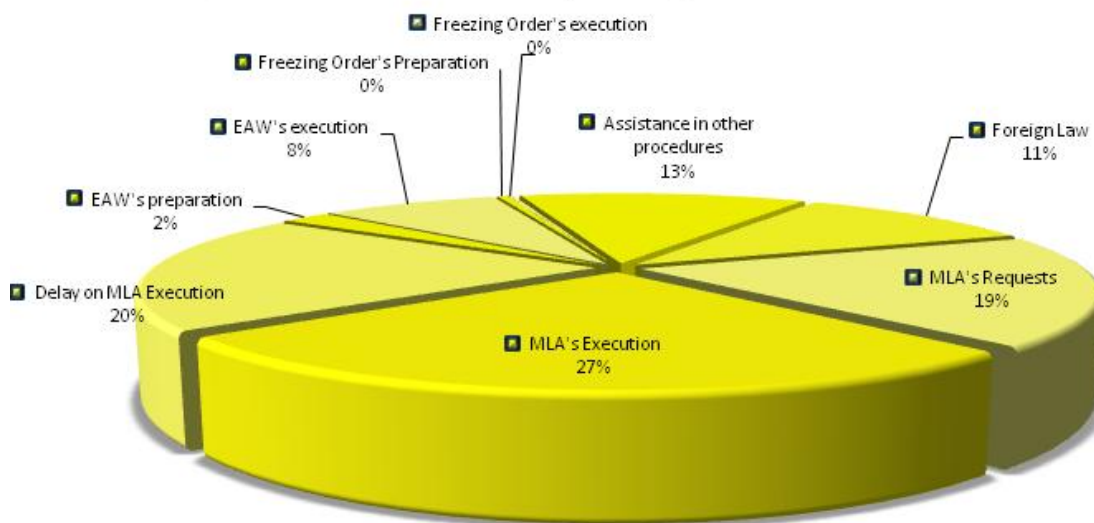
The graphs show that assistance during the preparation and execution of MLA requests accounts for the largest part of the activities in judicial co-operation, regardless of whether national authorities or foreign ones requested the information. That is, more than two thirds of the interventions by national authorities and more than half of the interventions by foreign authorities are related to MLA, including preparing and executing the requests, and also related to those dealing with the delay of the requests. Other types of interventions are less common.



<sup>6</sup> Article 2a of The Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence; O J L 196, 02/08/2003, p. 45 – 55.



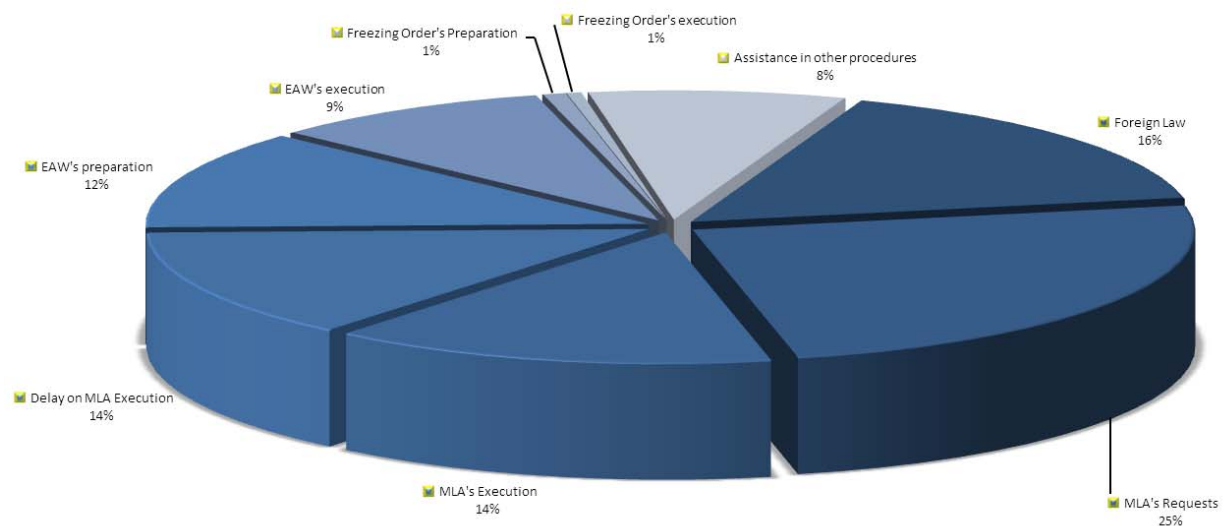
### Requests of Information by Foreign Authorities in 2009 on:



Graphs 1. and 2.: Requests for information by national and foreign authorities in 2009.

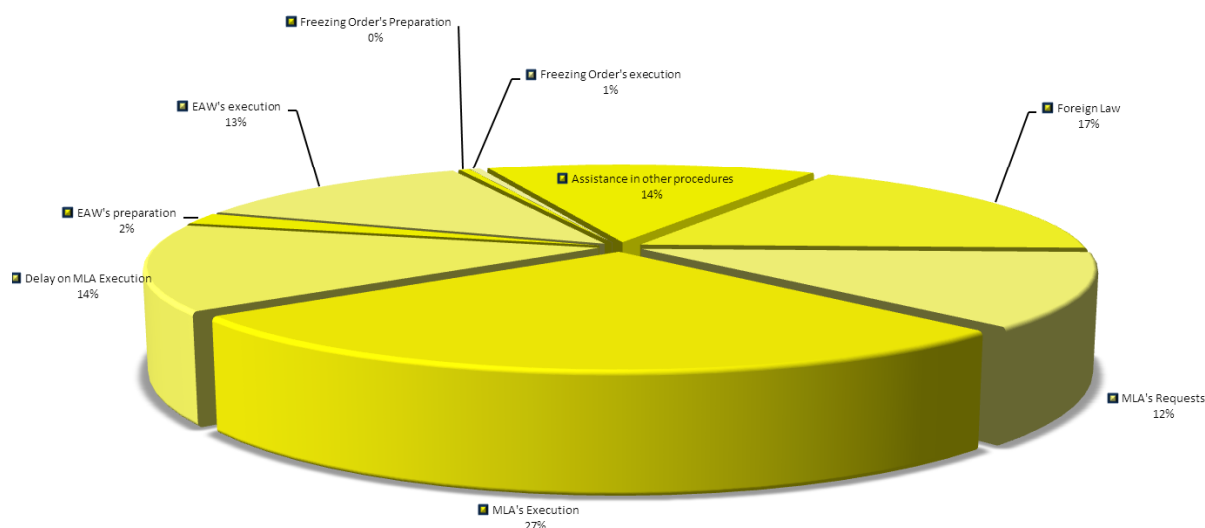
In 2010, the graphs appear quite similar:

### Requests of Information by National Authorities in 2010 on:





### Requests of Information by Foreign Authorities in 2010 on:



Graphs 3. and 4.: Requests for information by national and foreign authorities in 2010.

### REQUESTS FOR ASSISTANCE FROM THE MEMBER STATES

In the following subparagraph, detailed graphs are presented, reflecting the types of interventions by the Member States according to the data provided by the Contact Points in their activity reports.

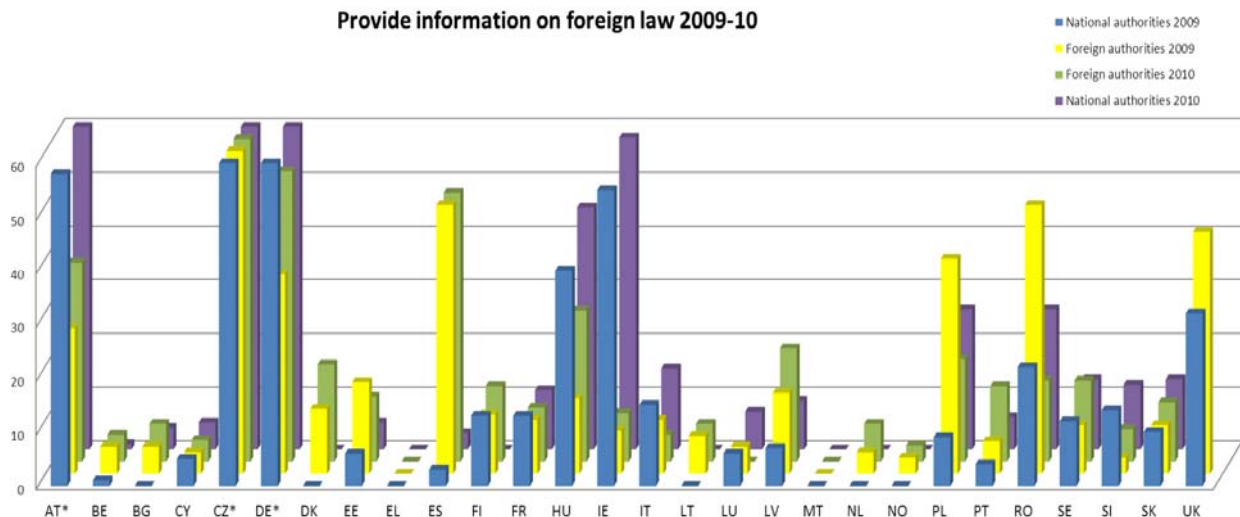
#### PROVIDING INFORMATION ON FOREIGN LAW

The provision of information on foreign law covers a wide variety of requests related to judicial co-operation in criminal matters, requested via different means, i.e. by phone, e-mail, regular mail or in person. It is extremely difficult to track such requests, not only because of the nature of the request but also, as stated under the previous subparagraph, because it is practically impossible to separate the activities of the EJN Contact Points from their routine case-work.

Since providing information on foreign law includes a wide variety of issues, it can be assumed that the figures provided in this respect are the least precise (compared to other points) and are often an estimate made by the Contact Points.

The figures submitted by the Contact Points vary considerably. Some Contact Points said that there were fewer requests by other Contact Points, and more for information about the

legal framework of various institutions than for concrete activities<sup>7</sup>. In addition, the cases were related to information requested on legal systems and on the way a rogatory commission should have been made up in order to be successful<sup>8</sup>. Also, there were requests regarding the application of local law<sup>9</sup>.



Graph 5.: Requests for information by national and foreign authorities in 2009 and 2010.\* a), b), c), d), e), f), g)

\* The table contains 60 requests max. In 2009 CZ actually had 237 and DE had 81 requests from national authorities. In the case of CZ, in 2009 228 cases and in 2010 318 cases handled by the Supreme Public Prosecutor's Office (SPPO) is a total number of cases when the 4 EJM Contact Points of the SPPO provided information about foreign law and practice both for national and foreign authorities and provided assistance during the preparation of MLA request - it is not possible to give more details based on the SPPO statistics<sup>10</sup>. In 2010 AT actually had 78 and DE had 130 requests from national authorities.

Both in 2009 and 2010, requests to provide information on foreign law were made by both national and foreign authorities. There seems to be no common pattern or similarity between the Member States. Furthermore, according to graphs 5 and 6, those Member States that in year 2009 claim to have had many more requests from foreign authorities than from national authorities do not necessarily claim the same in the following year, 2010.

<sup>7</sup> IT 2010

<sup>8</sup> IT 2010

<sup>9</sup> LV 2010

<sup>10</sup> CZ 2009, CZ 2010

## ASSISTANCE DURING THE PREPARATION, EXECUTION AND DELAYS OF EXECUTION OF AN MLA REQUEST

The “classic” MLA-related requests involve mainly the following EU legal instruments: Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union<sup>11</sup>; Protocol of 16 October 2001 to the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union<sup>12</sup>; and Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders<sup>13</sup> and related legal documents.

On the EJN website the tools related to the “classic” MLA are the MLA Atlas, the list of Contact Points, the *Fiches belges* and the Compendium.

MLA-related requests account for the largest part of the requests. Among all MLA-related requests, in the activity reports a difference was made between requests for assistance during the preparation, assistance during the execution and assistance in cases of delay of execution. However, not all Member States made such a distinction in the submitted activity reports – in some instances all MLA-related requests were counted as one.

Graphs have been drafted regarding assistance during:

- Preparation,
- Execution,
- Delay of MLA requests.

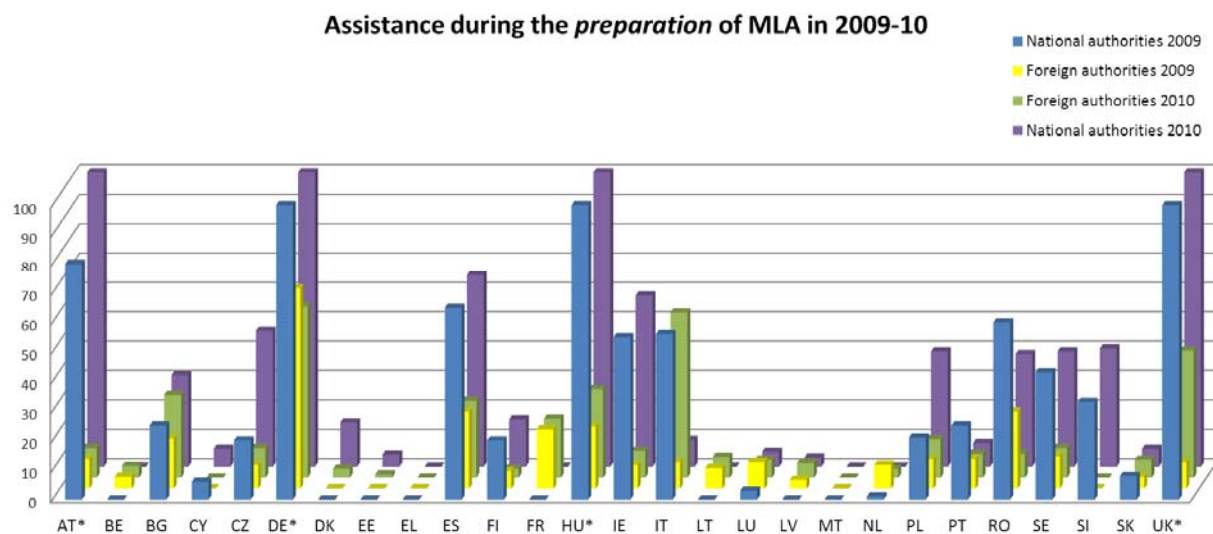
The figures on the requests for assistance in preparation of MLA in 2009 and 2010 were as follows:

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<sup>11</sup> OJ C 197, 12.07.2000, p. 1.

<sup>12</sup> OJ L 326, 21.11.2001, p. 1.

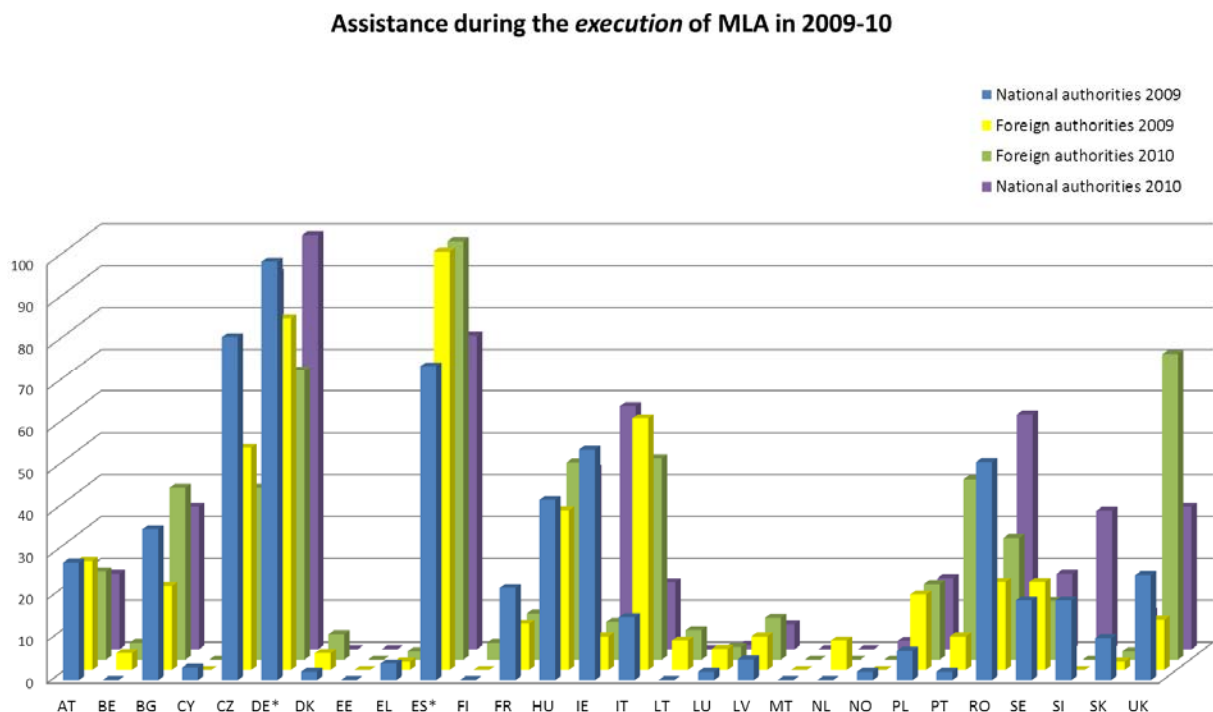
<sup>13</sup> OJ L 239, 22.09.2000, p. 19-62.



Graph 6.: Requests for assistance during preparation of MLA in 2009 and 2010.\* a), b), c), d), e), f), g)

\* The table contains 100 requests max. In 2009 DE had actually 136, HU 214, UK 216 requests from national authorities. In 2010 AT had actually 110, DE 125, HU 244, UK 185 requests from national authorities.

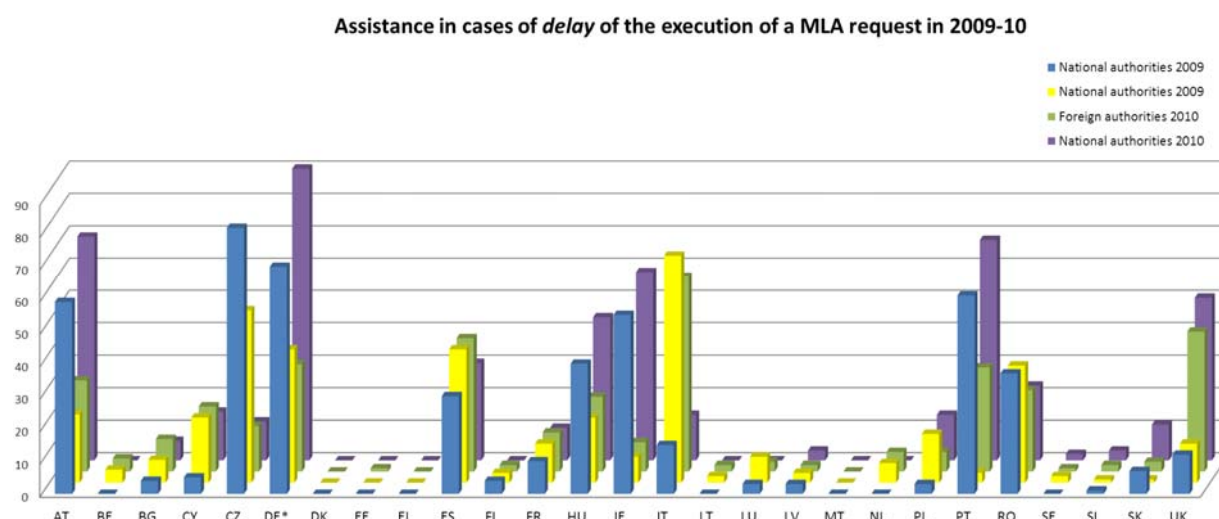
The figures on the requests for assistance in execution of MLA in 2009 and 2010 were as follows:



Graph 7.: Requests for assistance during execution of MLA in 2009 and 2010.\* a), b), c), d), e), f), g)

\* The table contains 100 requests max. In 2009 CZ actually had 159 from national and 105 requests from foreign authorities and DE had 111 requests from national authorities. ES had in average 182 requests from national authorities and 282 requests from foreign authorities.

The figures on the requests for assistance in cases of delays of the execution of MLA in 2009 and 2010 were as follows:



Graph 8.: Requests for assistance in cases of delays of the execution of MLA in 2009 and 2010.\* a), b), c), d), e), f), g)

\* The table contains 90 requests max. In 2009 CZ actually had 163 requests from national authorities and 105 from foreign ones and DE had 151 requests from national authorities. In 2010 DE actually had 192 requests from national authorities. In the case of CZ, these figures also include assistance provided by the EJM Contact Points provided assistance in cases of delays or preparation of MLA request.

## ASSISTANCE DURING THE PREPARATION AND EXECUTION OF AN EAW

The Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States were the first concrete measures based on the principle of mutual recognition of judicial decisions<sup>14</sup>. At present the European Arrest Warrant (EAW) is the only mutual recognition legal instrument that is fully implemented in all the 27 Member States.

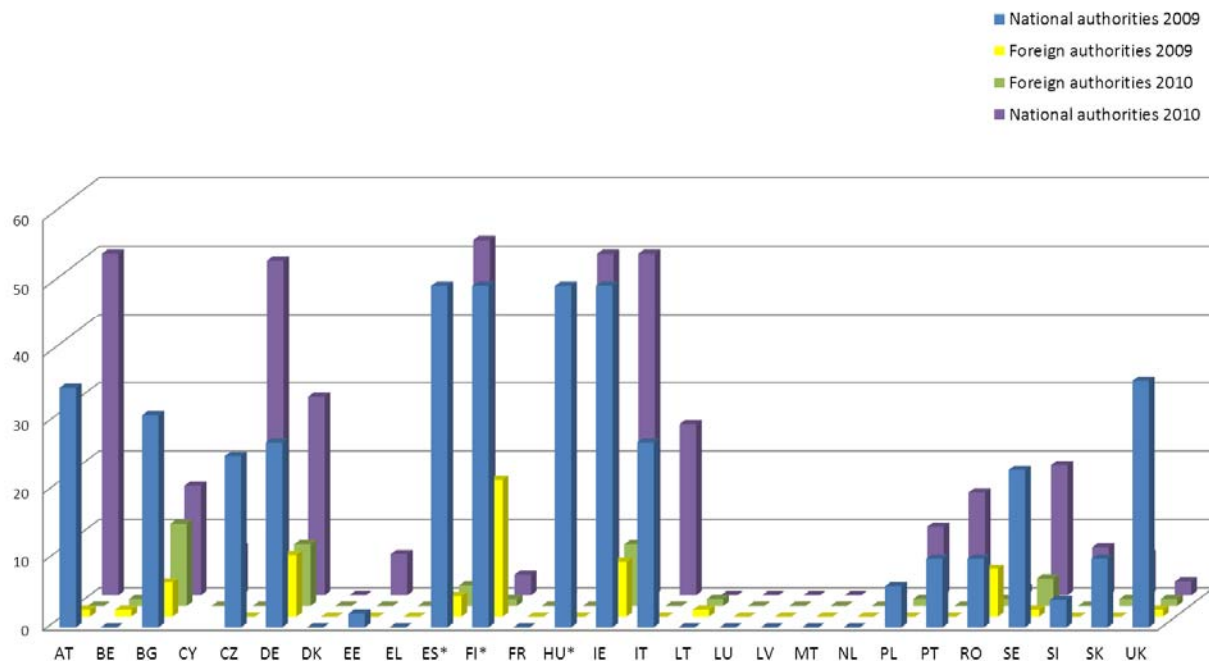
Graphs have been drawn up regarding assistance during:

- Preparation,
- Execution of the EAW requests.

<sup>14</sup> OJ L 190, 18.7.2002, p.1.

The graphs below show that in the assistance during the preparation but also during the execution of an EAW, the request is made in most cases by the national authorities, within the remit of the Council Framework Decision 2002/584/JHA (*“the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State”*)<sup>15</sup>. Thus, as expected and as reflected in graph 5, in most cases the assistance is requested by the national authorities, in particular during the **preparation** of an EAW. Most Member States did not indicate in their activity reports any request for assistance in preparation of an EAW from a foreign authority or there were only very few requests from a foreign authority. Such answers were not surprising since it is the nature of the request itself that predicts whether the requesting authority is a national or a foreign one.

**Assistance during the preparation of an EAW in 2009-10**



Graph 9.: Assistance during the preparation of a European Arrest Warrant in 2009 and 2010.\* a), b), c), d), e), f), g)

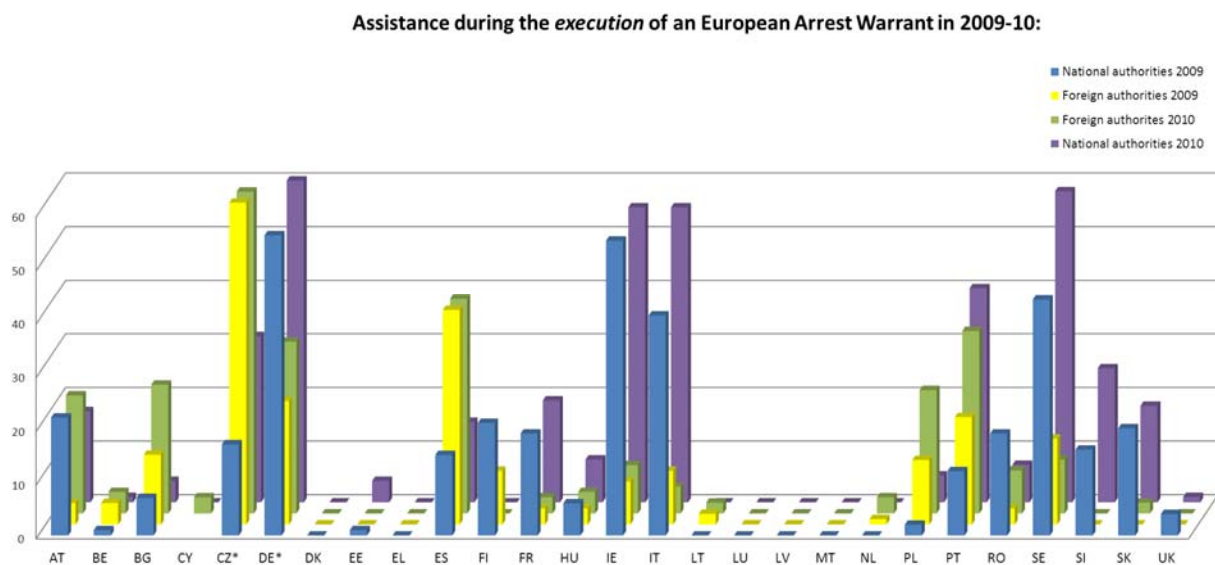
\* The table contains 60 requests max. In 2009 FI actually had 62, HU 160 requests from national authorities. In 2010 HU had 176 requests from national authorities.

The division between the requests from national and foreign authorities are somewhat different during the **execution** of an EAW, since, as reflected in graph 9., there are several Member States that indicated a number of requests from a foreign authority, which, within

<sup>15</sup> Article 6 (1) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

the meaning of the Framework Decision is “the executing judicial authority”, the “judicial authority of the executing Member State, which is competent to execute the European arrest warrant by virtue of the law of that State”<sup>16</sup>. Hence, some Member States showed the number of the requests from foreign authorities was higher than that from national authorities, as regards assistance during the execution of an EAW.

The figures on the requests for assistance in the execution of an EAW in 2009 and 2010 are as follows:



Graph 10.: Assistance during execution of a European Arrest Warrant in 2009 and 2010.\* a), b), c), d), e), f), g)

\* The table contains 60 requests max. In 2009 CZ actually had 144 requests and in 2010 139 requests from foreign authorities. In 2010 DE actually had 68 requests from national authorities.

In 2010 the figures are similar with respect to the division of the requests between national and foreign authorities. That is to say that in most cases during the **preparation** of an EAW the assistance was requested by the national authorities; however, during the **execution** of the EAW, several Member States also indicated the number of requests from the foreign authorities was higher.

The fact that during the preparation of the EAW most requests are made by the national authorities is thus predictable.

<sup>16</sup> Article 6 (2).



### ASSISTANCE DURING THE PREPARATION AND EXECUTION OF A FREEZING ORDER

Regulation of the freezing orders is provided for the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence.<sup>17</sup>

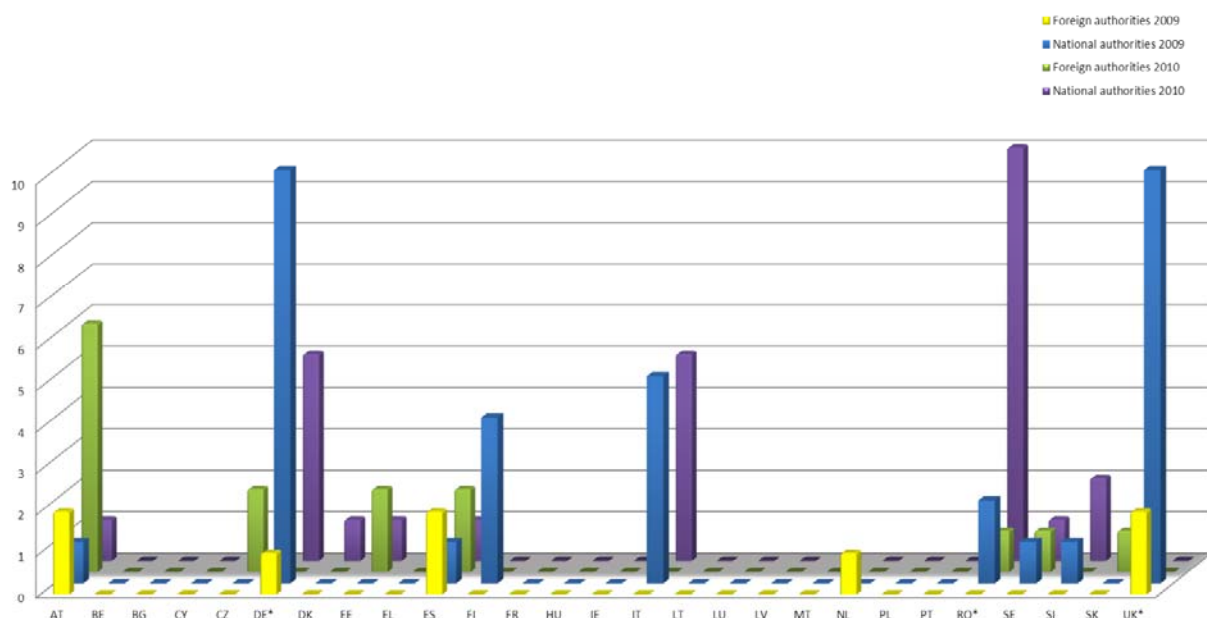
The request to provide assistance during the preparation or execution of a freezing order is in most cases made by the national authorities. That is, the judicial authorities in the “issuing state” within the meaning of the Council Framework Decision 2003/577/JHA of 22 July 2003 (Member State “*in which a judicial authority /.../ has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings*”).<sup>18</sup>

Graphs have been drawn up regarding assistance during:

- Preparation,
- Execution of freezing orders.

The figures on the requests for assistance of the preparation of freezing orders in 2009 and 2010 are the following:

**Assistance during the *preparation* of the freezing order in 2009-10**



<sup>17</sup> O J L 196, 02.08.2003, p. 45 – 55.

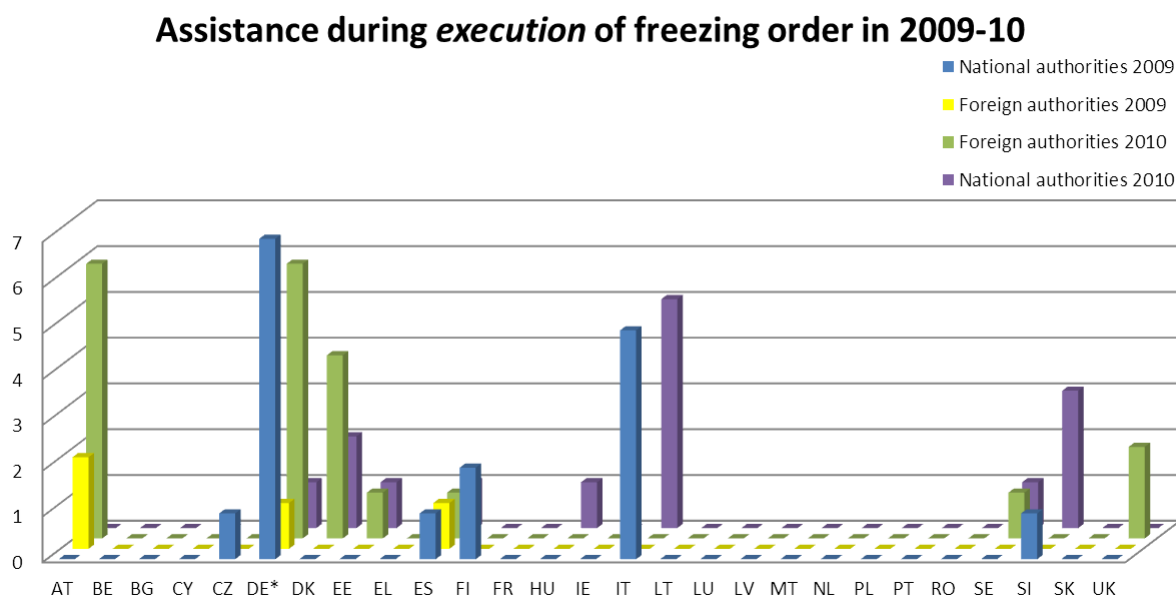
<sup>18</sup> Article 2a of The Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence.



Graph 11.: Assistance during the preparation of freezing orders in 2009 and 2010. \*,a),b),c).

The table contains 10 requests max. In 2009 DE actually had 12, and the UK had 16 requests from national authorities. In 2010 RO actually had 11 requests from national authorities.

The figures of the requests for assistance of in the execution of freezing orders in 2009 and 2010 are as follows:

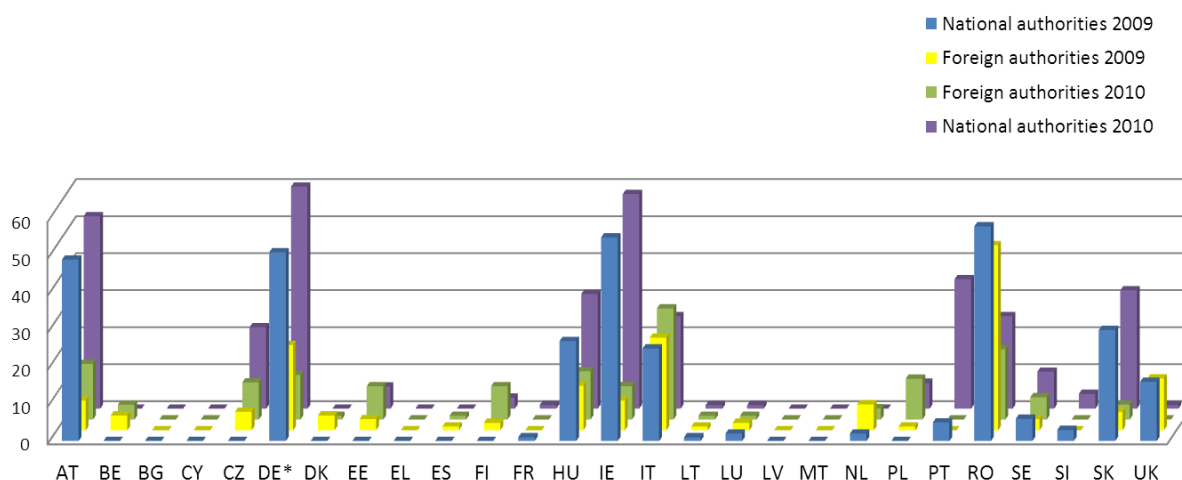


Graph 12. Assistance during the execution of freezing orders in 2009 and 2010 a), b), c), d), e), f), g)

#### ASSISTANCE IN OTHER PROCEDURES

Assistance in other procedures includes all kinds of different requests other than those related to providing information on foreign law, MLA, EAW or freezing orders. Such assistance may be related to obtaining documents, expert witnesses, distribution of information, preparing video conferences where applicable, establishing contacts between competent authorities, etc., but also related to assistance regarding other mutual recognition instruments, except for EAWs and freezing orders. Since no clear definitions was provided for filling out this part of the activity forms, the data may vary considerably from Member State to Member State.

## Assistance in other procedures in 2009-10



Graph 13.: Assistance in other procedures in 2009 and 2010 a), b), c), d), e), f), g)

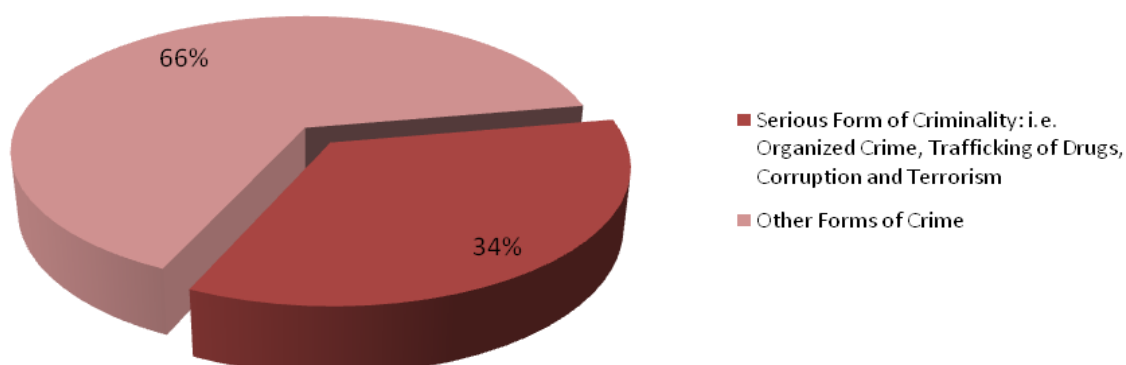
### 2.3. SCOPE OF ACTIVITY

In this part of the report Member States were asked for what activity the request for assistance had been made. In accordance with the methodology agreed upon in 2007 the EJNI Secretariat divided the scope of activities into two parts:

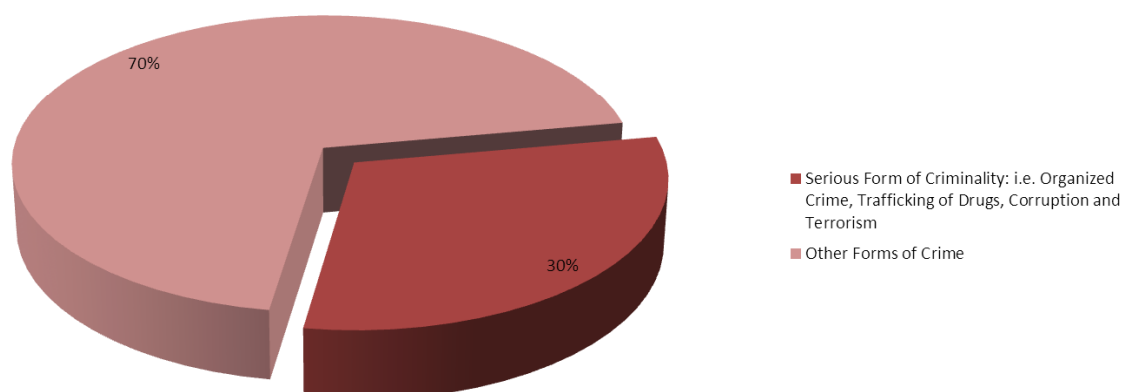
- Serious forms of crime (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.);
- Other types of crime.

As expected the scope of activities reveals that both in 2009 and 2010 one third of the requests are related to serious forms of crime:

### Scope of Activity: Type of Crime (2009)



### Scope of Activity: Type of Crime (2010)



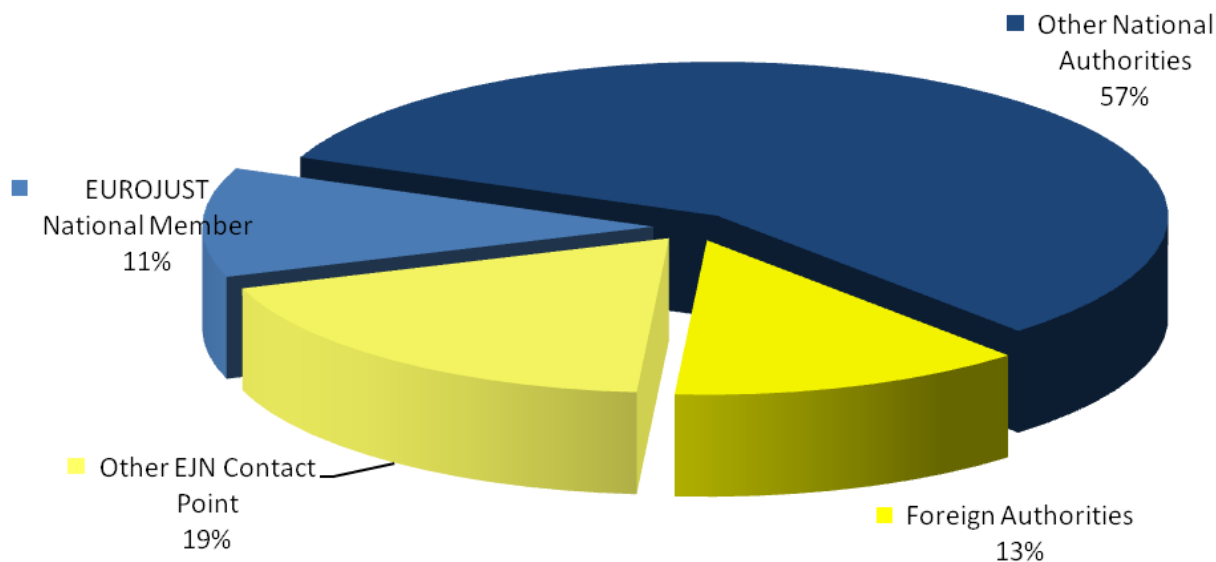
#### 2.4. SUPPLEMENTARY INFORMATION ON THE TYPE OF REQUESTING AUTHORITY

In this part of the report, additional information was asked regarding the judicial authority that had requested assistance. Types of authorities were listed as follows:

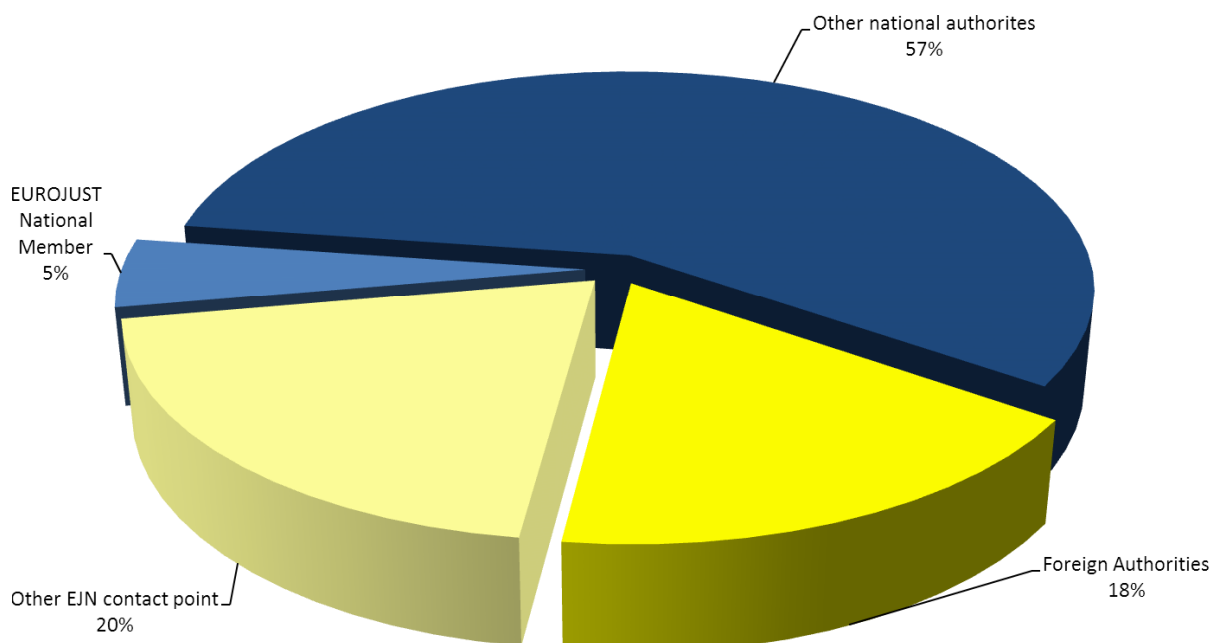
- Eurojust National Member;
- Other national authorities;
- Foreign authorities;
- Other EJM Contact Points.

The following graph shows the type of requesting authority for 2009 and 2010. Again, the figures are similar:

**Type of Requesting Authority (2009)**



**Type of Requesting Authority (2010)**



### 3. CONCLUSION

The summaries show that the EJNI Contact Points have been very active in such role. In addition to their daily work as judges, prosecutors or officials of the ministries of justice in their home countries, the EJNI Contact Points performed a valuable work in facilitating judicial co-operation in criminal matters, in a decentralised and flexible way. They offered help and advice to their colleagues, judges and prosecutors, in an impressive number of cross-border cases. Their active involvement proves once again the added value of the EJNI as a practical and efficient mechanism to improve judicial co-operation.

Moreover, as experts in the field of international co-operation, the EJNI Contact Points are regularly asked for advice. They are involved, at the request of their national authorities, to provide legislative work; they also execute expert missions for the European Union, the Council of Europe and the United Nations and actively participate in numerous international conferences and seminars. The EJNI Contact Points also have an important role in the dissemination of information to the local authorities and in the training of judges and prosecutors. In most Member States they organised training seminars on judicial co-operation in criminal matters, where appropriate in co-operation with the national schools for judges and prosecutors and the national schools for clerks. Thus, their work is highly valuable in the field of international judicial co-operation.

For these reasons the importance of the network cannot be overestimated. The overall figures illustrate that the network has been an irreplaceable tool for judges, prosecutors and officials of the central authorities to help solve numerous cases in the past two years. The practical values of the network are its efficiency and informality – a case is often solved by a single contact between EJNI Contact Points without the need to involve the central authorities of neither country. The added value of the EJNI cannot be denied and makes it a leading actor in the field of international judicial co-operation in criminal matters.

## **CHAPTER II**

### **IMPLEMENTATION OF THE EJN WORK PROGRAMMES 2009 AND 2010 UNDER THE CZECH, SWEDISH, SPANISH AND BELGIAN PRESIDENCIES**

#### **A. IMPLEMENTATION OF THE WORK PROGRAMME 2009**

2009 was an extraordinary year for the EJN community, thanks to the implementation of Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (the “EJN Decision”) and the entering into force of the Lisbon Treaty on 1 December 2009<sup>19</sup>.

Consequently, time was ripe to assess the EJN structure and discuss its future via productive and constructive meetings. Within the EJN Secretariat, the new legal framework translated into new challenges and demands; a big joint effort by the Presidencies, national correspondents (NCs), tool correspondents (TCs) and Contact Points led to the creation of living documents and the development of structures sustaining the EJN spirit: dynamic, flexible, horizontal and ever-growing.

The following subparagraphs provide more detailed information on the execution of the objectives of the 2009 Work Programme.

#### **OBJECTIVE 1: ORGANISATION OF THE EJN MEETINGS**

##### **1.1. ORGANISATION OF THE PLENARY MEETINGS**

The 30<sup>th</sup> regular meeting of the EJN took place in Brussels on 23 February 2009. The focus of this meeting was the EJN’s future in light of the new Council Decision and its implementation. To launch the discussion, the Czech Presidency prepared three steering documents that included the input of the EJN Secretariat and Contact Points: the draft guidelines on the EJN structure<sup>20</sup>; the future of the EJN Website<sup>21</sup>; the draft guidelines for the organisation of the EJN regional meetings<sup>22</sup>.

The first point on the agenda was the need for written internal rules: the Secretariat and Contact Points stressed that the written internal rules should not interfere with the informal character of the EJN; the transformation of the Informal Working Group into national

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<sup>19</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community; OJ C 306, 17.12.2007.

<sup>20</sup> EJN/2009/1.

<sup>21</sup> 6046/09 COPEN 23 EJN 11.

<sup>22</sup> EJN/2009/2.

correspondents meetings and their regularity was also discussed. In this regard, the Secretariat presented the non-paper on “the Vision of the EJM Secretariat on the Structure of the EJM and its respective formations according to the new EJM Decision”. One of its main conclusions was the creation of a Task Force that would work in conjunction with the implementation of the “EJM Decision” and the “Eurojust Decision”, as the latter also includes regulation for the EJM.

Subsequently, the Presidency introduced draft guidelines for the regional meetings. The Contact Points examined the guidelines and supported the need for such document in order to establish useful criteria on the allocation of the funds; yet they remarked that this should encourage holding these meetings while creating no further burden to the Member States. Afterwards, the future of the EJM website was discussed: it should become a more user-friendly tool, incorporate the menus’ translation into all the official languages of the EU and include the main legal information on all mutual recognition instruments and all types of judicial co-operation, to increase its functionality and facilitate the access to all practitioners. In this regard, the Secretariat presented a commentary document on the future of the EJM website.



### THE 32<sup>ND</sup> PLENARY MEETING OF THE EJM

The 32<sup>nd</sup> plenary meeting of the EJM took place under the Czech Presidency in Prague on 24 - 26 June 2009<sup>23</sup>. The Presidency organised workshops focused on the practical application of the legal instruments on cross-border surveillance, controlled deliveries and interception of

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<sup>23</sup> EJM/2009/9: Minutes of the 32nd plenary meeting of the European Judicial Network, Prague, 24-26 June 2009.

telecommunications where the Contact Points exchanged their experiences and fruitful conclusions were reached.

The implementation of the “EJN Decision” also took a central place in the discussions. The “Eurojust Decision” and its implications for the EJN were included in the agenda.

Additionally, the EJN secure telecommunication network project and its potential were discussed together with the execution of the Work Programme and the budget for 2009. The status of the website and other projects was also presented by the EJN Secretariat.

The most important outcome of this meeting was the adoption of the guidelines on the structure of the European Judicial Network<sup>24</sup> and the guidelines on the regional meetings<sup>25</sup>.



### THE 33<sup>RD</sup> PLENARY MEETING OF THE EJN

The 33<sup>rd</sup> plenary meeting of the EJN was held in Solna/Stockholm on 22 – 24 November 2009<sup>26</sup> under the Swedish Presidency.

This meeting focused on sharing best practices on the organisation of the Contact Points’ activities in the EU Member States and on the practical cases of judicial co-operation in criminal matters. Another important item on the agenda was the evaluation of the available

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<sup>24</sup> EJN/2009/1: The EJN Structure Guidelines adopted in the 32nd Plenary of the EJN, 25-26 June 2009.

<sup>25</sup> EJN/2009/2: EJN regional meetings Guidelines adopted in the 32nd Plenary of the EJN, 25-26 June 2009.

<sup>26</sup> EJN/2009/8: Minutes of the 33rd plenary meeting of the European Judicial Network, Solna, 23-24 November 2009.



channels via which the EJNI Secretariat may provide information to the Contact Points about the EJNI's activities and the practical aspects of the Network's administration. This is because the need to update the EJNI information regarding the new legal framework and to continue sharing the experiences of the Contact Points through alternative methods was recognised.

Furthermore, the future structure of the Trio Presidencies was also examined in light of the forthcoming (at the time) entry into force of the Lisbon Treaty.

Under "EJNI Business", the Secretariat presented the state of play of the secure telecommunication network and of the website projects. The Secretariat presented the execution of the 2009 Work Programme, the update to the 2010 Work Programme and the 2011 forecast Work Programme. In addition, information on the language training and the draft Memorandum of Understanding with IberRed was provided.

On the basis of a proposal by the Swedish Presidency, the so called "EJNI Manual" was adopted, a valuable document meant to describe an action plan for the implementation of the EJNI Decision and other EJNI objectives.

On the occasion of this plenary meeting, a new meeting of the EJNI Task Force also took place.



## 1.2. ORGANISATION OF THE 8<sup>TH</sup> TOOL CORRESPONDENTS MEETING & EXTRAORDINARY NATIONAL CORRESPONDENTS MEETING

The meeting of the tool correspondents and the extraordinary meeting of the Informal Working Group (IWG, renamed "national correspondents meeting") of the EJNI took place in The Hague on 20 – 21 April 2009.

The guidelines on the structure of the EJNI, regional meetings and the future of the EJNI website were presented once more for evaluation by the national correspondents (NCs) before approval in the plenary meeting. Amendments to the regional meetings guidelines were suggested by the NCs.

Furthermore, the functions of the Task Force, created in the previous IWG meeting, were addressed: even though the MSs have final responsibility for implementing the Decision, this group should lead the discussion and report to the NCs.

During the course of the meeting it was also stressed that in order to provide the Contact Points with regular information on the EJNI Secretariat's activities, more human resources were needed. The lack of human resources makes impossible to add further workload to the Secretariat. In addition to this, more legal staff is needed to carry out the tasks mentioned in the EJNI Decision, as the EJNI is an operational network of judicial authorities and its Secretariat needs to permanently assist it.

Subsequently, an exchange of ideas on the translation of the site took place together with a discussion on the general problems that were generated when the EJNI site was hacked at the beginning of the year, and their future impact.

### 1.3. ORGANISATION OF THE 1<sup>ST</sup> NATIONAL CORRESPONDENTS MEETING (NCM)

The 1<sup>st</sup> formal national correspondents meeting (NCM) took place in The Hague on 16 October 2009.

The Work Programmes and budget update for the year 2010 and budget forecast for the year 2011 were presented by the Secretariat, as well as the execution of the 2009 Work Programme. During the meeting it was agreed that additional budget will be allocated to the regional meetings by reducing the budget for objectives 4 and 5 of the Work Programme. The Secretariat described the status of the procurement procedure for the maintenance and development of the EJNI website.

The offer of language training at the School for magistrates of the General Council for the Judiciary in Spain was agreed upon by the NCs. Furthermore, the Secretary to the EJNI, Ms Fatima Adélia Pires Martins, updated her colleagues about the status of the Memorandum of Understanding to be concluded with IberRed and reminded the NCs about the need to provide the summary of the EJNI Contact Points activities for additional reports and statistics.

In addition, the scoreboard plan presented by the Secretariat on the implementation of the EJNI Decision was supported by the Presidency. Afterwards, a *tour de table* was held, where the NCs gave an update on the status of the EJNI Decision in their own countries.

#### 1.4. PROVIDING SUPPORT FOR THE ORGANISATION OF REGIONAL MEETINGS

In 2009 no regional meetings took place. Despite the fact that guidelines for the regional meetings were adopted under the Czech Presidency, setting up the administrative and budgetary procedures for the organisation of the EJM regional meetings, no applications were received from the Member States. Consequently, the budget allocated to the organisation of such meetings for 2009 was transferred to 2010 for the organisation of the 31<sup>st</sup> regular meeting of the EJM.

#### OBJECTIVE 2: TO ENSURE THE PROPER FUNCTIONING OF THE EJM WEBSITE

##### 2.1. MAINTENANCE OF THE WEBSITE

At the beginning of 2009, the EJM website was out of order for 3 months due to a security incident.

The EJM Secretariat together with the Information Management (IM) Unit of Eurojust and the website's contractor investigated the matter and decided that a significant amount of time was needed to increase the security of the site. During the downtime, a temporary EJM website was built up by the Secretariat to help visitors with basic requests information on the EJM.

Apart from the maintenance concerning the website's security, in 2009 the contractor handled many requests for improvements of the site and its tools. These varied from small changes to solving major bugs that prevented the system from working properly.

#### OBJECTIVE 3: IMPROVEMENT OF THE EJM INFORMATION SYSTEM

##### 3.1. DEVELOPMENT OF AN ONLINE TOOL VIDEOCONFERENCING REQUESTS

The Compendium Wizard used to generate rogatory letters was changed in such a way that information needed for requests for videoconferencing can easily be added to the system. This information includes: IP Address, contact person, time frame for conference and other details needed for the completion of requests. As a result, the Compendium Wizard includes a new tab specifically for the videoconferencing.

##### 3.2. DEVELOPMENT OF A TOOL PROVIDING INFORMATION ON TECHNICALITIES OF VIDEOCONFERENCING IN THE ATLAS

The Atlas search engine can be refined to return only authorities that match a given set of properties. One of these properties is "videoconferencing equipment"; by selecting this

option it is possible to quickly find all authorities in a country or region that are able to receive requests for videoconferencing.

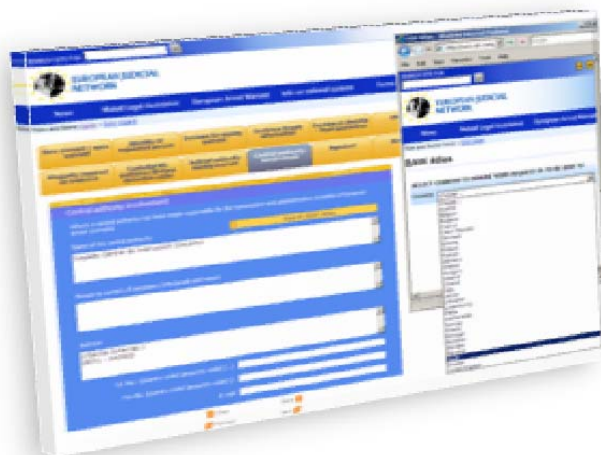
However, due to many technical problems with the Atlas, this option, although available, has not been implemented yet. It will take a joint effort from the EJNI tools correspondents (TCs) and the EJNI Secretariat to work on this.

### 3.3. DEVELOPMENT OF AN ONLINE TOOL REGARDING COMPLEMENTARY INFORMATION REQUESTS

Although it was concluded that the name of this tool may be misleading, it could not be changed for administrative reasons. The tool for complementary information requests will replace the current documents database of the EJNI site. The new tool will make it easier for the administrators to upload new documents and for the end users to retrieve information. The structure of the new database will be more transparent and the search engine more user-friendly.

### 3.4. GENERAL ENHANCEMENT OF THE EJNI WEBSITE

The EJNI website includes much valuable information; albeit the out-dated look and structure of the site do not always help find such information.



The EJNI Secretariat is dedicated to enhance the site where possible, always keeping the end user in mind. Therefore, several projects were undertaken to enhance the website. These are as follows:

- Improvement of the HTML coding to increase website's visibility via search engines;
- Creation of mock-ups for a new lay-out: ideas of what could be the new look and feel of the EJNI site; and
- Establishment of an import/export function for the several form wizards: this tool will help with the management of the translations of MLA requests from the language of the user into the language of the requested authority.

OBJECTIVE 4: TO INCREASE AWARENESS OF THE EJNI AMONG PRACTITIONERS &

OBJECTIVE 5: TO FOSTER A MORE EFFECTIVE COLLABORATION WITH OTHER PARTNERS

The Secretariat participated in several meetings, seminars and conferences with third partners to provide the EJNI with sound administration and support to increase the awareness of the EJNI among practitioners, so that a more effective collaboration with other partners could be achieved.

#### PRESIDENCIES' PREPARATORY MEETINGS:

Prior to the plenary meetings, the Secretariat met with the Presidencies to talk about the work programmes, the planning of the presidency and practicalities relating to the meetings.

#### MEETINGS WITH EUROJUST

The Secretariat of the EJNI fulfils a dual function: it executes not only the tasks given to it by the Network itself, but also the tasks of a separate and autonomous unit within Eurojust, in accordance with Article 25(a) of the Eurojust Decision". Therefore, several meetings where the representation of the Secretariat is needed take place on a regular basis:

- First meeting of the Trio Presidency with the Administrative Director of Eurojust to discuss the role of the EJNI Secretariat within Eurojust and on the parallel processes of implementation of the Eurojust and EJNI Decisions;
- Bilateral meetings with the Administrative Director of Eurojust have taken place with the Secretary to the EJNI, Ms Fátima Adélia Pires Martins, to discuss the annual planning of the EJNI with regard to budget and human resources;
- Meetings with the Head of Units and Services are held in order to discuss the strategic changes and announce decisions taken within each sector;
- The Secretariat contributed to the activities of the Eurojust Team on the EJNI and

Liaison Magistrates, providing administrative support to the team;

- The Secretariat also attended the Informal Working Group meetings to prepare for the implementation of the new Council Decision on Eurojust in the Member States and the Eurojust strategic seminar on reinforcing the battle against organised crime - "Building new bridges between Eurojust and the Member States" - organised together with the Swedish Presidency in Stockholm with the particular goal to discuss the setting up and functioning of the Eurojust National Co-ordination System (ENCS).
- During the course of the year, close co-operation between the Information Management Unit of Eurojust and the EJNI took place.
- Meetings with the Budget and Finance Unit concerning the daily work related to the execution of the budget and future planning;
- Meetings with the Human Resources Unit with regard to the need of the Secretariat for human resources and future planning;
- Meetings with the Legal Service Unit with regard to the implementation of the ENCS in the MSs and particularly with the Procurement department to carry out the procedures for contracting the service provider for both the maintenance and development of the website and the language training.

### PARTNERSHIP MEETINGS WITH THE EUROPEAN CRIMINAL LAW ACADEMIC NETWORK (ECLAN)

The EJNI Secretariat worked in close co-operation with ECLAN on the EU-COPEN Standard Training Programme in Judicial Co-operation in Criminal Matters within the EU. The programme resulted in the creation of a training tool for facilitating the training of magistrates in the field of EU judicial co-operation in criminal matters. It is a training tool supposed to help any authority dealing with judicial training to develop specific training sessions on this subject.

As a result of this fruitful co-operation, the EJNI Secretariat made the ECLAN newsletter available on its website for visitors to read the latest information on EU case law and legislative instruments.

### MEETINGS IN THE COUNCIL OF EUROPE

The EJNI Secretariat was represented at a meeting organised in Brussels about the Council of



Europe project on “effective practical tools to facilitate judicial co-operation in criminal matters”, meant to improve judicial co-operation in the criminal field between the Member States of the Council of Europe, on the basis of a more efficient implementation of the Council of Europe’s conventions on international co-operation in criminal matters. In particular, with regard to the co-operation with the EJNI, it was agreed that the EJNI’s Compendium Wizard was a good model for the forms that the project would develop in relation to CoE instruments, and the information sheets could be modelled on the “*Fiches belges*”. In addition, the participants agreed that the extension of the European Judicial Atlas to non-EU countries who are parties to the second additional protocol of the European Convention on Mutual Assistance in Criminal Matters would be in line with the project’s objectives. The outcome was that further discussions would be needed with the EJNI to define the extent to which information on the database and website should be shared and to resolve any copyright issues. As a first step for the strengthening of the co-operation between the Council of Europe and the European Judicial Network, in 2009 the EJNI Secretariat was for the first time represented in a plenary meeting of the Council of Europe Committee of Experts on the Operation of the European Conventions on Co-operation in Criminal Matters (PC-OC).

### MEETING WITH THE EUROPEAN JUDICIAL TRAINING NETWORK (EJTN)

In February 2009 a first meeting between the Secretary to the EJNI and the Secretary General EJTN took place in The Hague. The purpose of the meeting was to identify ways of co-operation that would improve the training of judges and prosecutors on the new legal instruments on judicial co-operation within the European Union.



### MEETINGS WITH IBERRED

Meetings were carried held with IberRed to pave the way for better judicial co-operation not only within the EU but also beyond it. To this end, the Secretary to the EJNI, Ms Fátima Adélia Pires Martins, attended the IberRed plenary meeting, where the agreement to conclude an MoU with IberRed was reiterated. This objective was achieved in June 2010.

### MEETING WITH SEEPAG

To further the co-operation with the SEEPAG Network, Ms Fátima Adélia Pires Martins was invited to the meeting that took place in Sarajevo to foster network links between the EJNI and SEEPAG.

### MEETINGS WITH THE EJNI WEBSITE CONTRACTOR

Representatives of the EJNI Secretariat and the IM Unit of Eurojust met several times in 2009 with the EJNI Website contractor, on the progress made in the enhancement and redesigning of the website, and to follow up on the development of the projects planned for that year.

### MEETINGS WITH MEMBER STATES' JUDICIAL NETWORKS AND JUDICIAL AUTHORITIES

The Seconded National Expert to EJNI, Florin-Răzvan Radu, represented the EJNI Secretariat in the national meeting of the Romanian Judicial Network on judicial co-operation in criminal matters and the meeting of the Romanian Contact Points for EJNI. Practical matters related to the implementation of the mutual recognition instruments and of the Council Decision on EJNI have been discussed.

### CONCLUSION

2009 was a very demanding year for the EJNI and its Secretariat. Since its beginnings, the EJNI faced structural changes that required deep analysis and thoughtful action as these would affect the way the Network operates for the years to come.

The EJNI started off as an EU Council Working Party, with its own identity that it had been recognised, then gained its autonomy from the General Secretariat of the Council. Although, as per the EJNI Decision, the EJNI is no longer a Council Working Party, it maintains a strong intergovernmental character, entrusting the process of decision-making to the EU Member States. With the EJNI Decision new challenges arose, as it requires more instruments and



structures. That is why the **EJN Guidelines** and the **Regional meetings Guidelines** were created, and the **EJN Manual** was approved. These living documents will continue to be developed and consolidated through this transition period.

Furthermore, with the entry into force of the Lisbon Treaty, the first and core change that was experienced immediately was the implementation of the working methodology of the Trio Presidencies of the EJN. Naturally, this led to new challenges, yet it was a very positive sign as it implied policy and strategy continuity.

For the EJN Secretariat these changes were translated into an extraordinary need to fulfil the Work Programme plus the additional demands mentioned above. The human resources issue in the Secretariat, the cut to the budget and the problems raised by the hacking of the website only increased the workload.

The purpose of the EJN Secretariat has been to continue safeguarding the EJN features, keeping the Network informal, horizontal and flexible, through all these big changes. At the same time, the EJN's complementary relationship with Eurojust was strengthened and the Network was recognised as a reference point in the fight against organised and any form of serious crime. In the future, the EJN Secretariat will continue taking steps towards creating sound channels of co-operation with third countries and other partners, to broaden the spectrum of judicial co-operation in criminal matters at a global level.

## **B. IMPLEMENTATION OF THE WORK PROGRAMME 2010**

On the basis of the EJN Decision, the 2010 Work Programme identified objectives including one or more activities. The Work Programme also included a budget forecast, allocating resources for each objective and activity.

### **OBJECTIVE 1 – ORGANISATION OF EJN MEETINGS**

The main role of the EJN Secretariat is to ensure continuity to the Network by providing financial as well as professional support. Ensuring the continuity of the work of the EJN is primarily achieved by organising meetings. The EJN meetings are very important for the life of the EJN, being the *fora* where strategic and administrative decisions are taken and the Contact Points meet to discuss practical issues specific to their activities and tasks. This objective has been achieved in 2010 through five activities, as follows:

### ACTIVITY 1.1 AND 1.2 – PROVIDING SUPPORT FOR THE ORGANISATION OF PRESIDENCY MEETINGS

#### THE 31<sup>ST</sup> EJN REGULAR MEETING

The 31<sup>st</sup> regular meeting of the EJN took place in The Hague on 23 February 2010, under the Spanish Presidency of the Council of the European Union.

During the meeting the topic to be discussed during the Spanish Presidency was launched: “The gathering and use of evidence obtained through mutual legal assistance in criminal matters”. For this purpose, the Presidency and the EJN Secretariat had created a *forum* linked to the EJN website. The *forum* was meant to replace the questionnaires distributed before the plenary meetings. The *forum* is a dynamic, active, living tool that allows feedback on the topics. The participants to a *forum* speak on their own behalf.

The EJN Secretariat gave an overview of the language training procedure for EJN Contact Points and presented the state of play of the negotiations for the Memorandum of Understanding (MoU) between the EJN and IberRed.

Another item on the agenda was to raise the attention of the Contact Points to the need for recording activities for each Member State and for the Secretariat to add these figures and illustrate the EJN’s activities.

The EJN Secretariat introduced a draft document on the working methodology for the exercise of the Trio Presidencies of the EJN in close co-operation with the EJN Secretariat. The proposed document was not intended to set up rules, but only to provide guidance. The starting point of the document was the new legal basis – the EJN Decision, the Lisbon Treaty and the Decision of 1 December 2009 on the Trio Presidencies of the Council’s configurations<sup>27</sup>. Despite the fact that the EJN is no longer a working party of the Council, of its presidencies will still rotate as in the past, and from 2010 the Trio Presidencies format has been applied.

The scope of the document was to highlight certain legal and practical elements on the exercise of the Trio Presidencies of the EJN, in accordance with the new legal framework after the entry into force of the Lisbon Treaty.

According to the methodology, ensuring the continuity of the EJN activities was one of the core tasks of the EJN Secretariat that, in accordance with the EJN Decision, is responsible for

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<sup>27</sup> Decision of 1 December 2009 on the exercise of the Presidency of the Council (2009/881/EU), published in the Official Journal of the European Union (OJEU 2.12.2009 L 315/50).

the Network's administration. The Trio Presidencies mechanism represents an added value in ensuring the coherence of the EJNI's activities - according to its annual Work Programmes - with the Work Programmes of the rotating Presidencies of the JHA Council configuration.

The first formal Trio Presidency after the entry into force of the Lisbon Treaty was made up of Spain, Belgium and Hungary. In their meeting of 4 February 2010, which took place in The Hague, , they identified, on the basis of the proposals made by the EJNI Secretariat, common principles and best practices for the exercise of the Trio Presidencies of the European Judicial Network in close co-ordination with the EJNI Secretariat.

In their 31<sup>st</sup> regular meeting, the Contact Points decided that this methodology would be integrated in the Guidelines on the structure on the EJNI.

#### THE 34<sup>TH</sup> PLENARY MEETING OF THE EJNI

The 34<sup>th</sup> plenary meeting of the European Judicial Network (EJNI) was held in Madrid, under the Spanish Presidency of the EU Council, from 21 to 22 June 2010<sup>28</sup>. It was for the first time when an EJNI plenary meeting was organised in co-operation with the European Commission, due to the fact that this plenary meeting also included a Commission' seminar on the gathering and admissibility of evidence in the European Union.

This plenary meeting was marked by the signing of the Memorandum of Understanding between the EJNI and IberRed.

The morning session included a general presentation on the Spanish system of international legal co-operation and domestic judicial networks.

The plenary meeting continued with the part dedicated to the "EJNI business". The collaboration between the members of the Trio Presidencies at the time (Spain, Belgium and Hungary) and between the EJNI Trio Presidencies and the EJNI Secretariat was highlighted.

The EJNI business segment of the meeting continued with presentations by the EJNI Secretariat's representatives on specific activities and projects, in particular in the light of the EJNI Secretariat's Work Programme. The main elements of the revised Guidelines on the structure of the EJNI had been presented during the 31<sup>st</sup> regional meeting and the revised guidelines were thus approved by the EJNI Contact Points in the EJNI plenary.<sup>29</sup>

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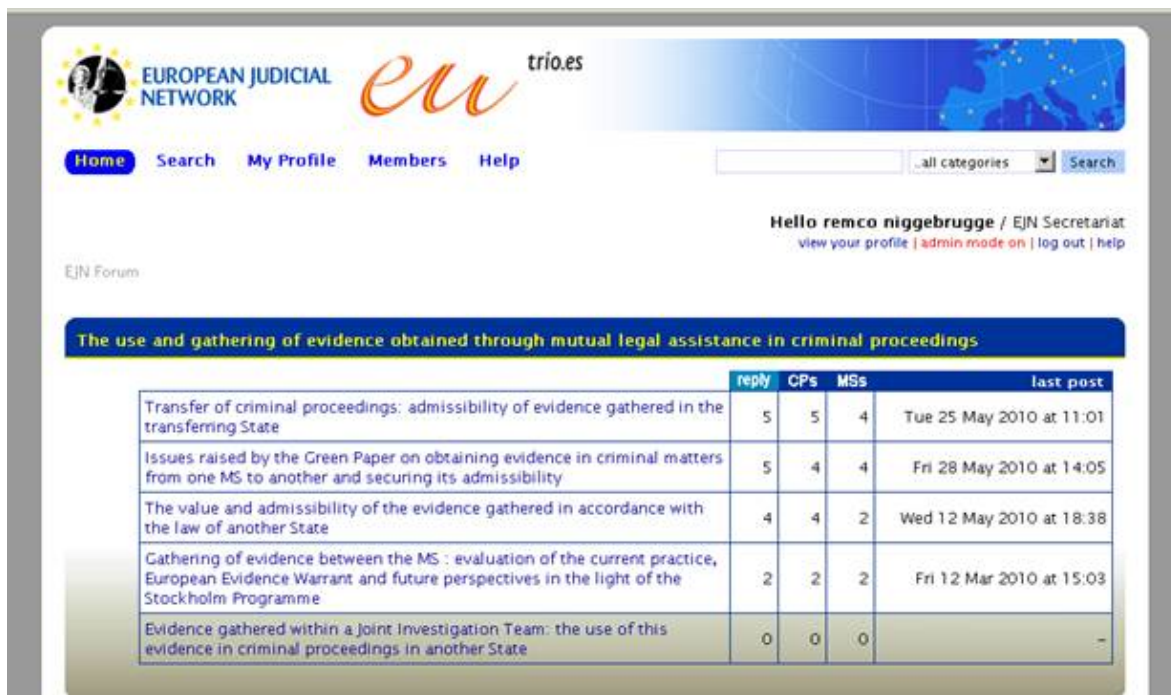
<sup>28</sup> EJNI/2010/05: Minutes of the 34th plenary meeting of the European Judicial Network, Madrid, 21-22 June 2010.

<sup>29</sup> EJNI/2009/01\_REV: Revised Guidelines on the Structure of the European Judicial Network (EJNI) on the basis of the inclusion of the Trio role within the EJNI and according to the revisions of the implementing rules of Eurojust and its new budgetary cycle.

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The afternoon session was devoted to workshops on evidence, based also on the replies of the Contact Points to the questions raised in the EJM e-Forum created in beginning 2010 by the EJM Secretariat, on the initiative of the Spanish Presidency. The Forum is a platform of where EJM Contact Points and other invited participants can engage in discussions on topics related to the work of the EJM and during the Spanish Presidency it replaced the “old fashion” questionnaires which are sent to the Contact Points.



The screenshot shows the EJM Forum website interface. At the top, there is a header with the EJM logo, the text "EUROPEAN JUDICIAL NETWORK", and the URL "trio.es". Below the header, there are navigation links: "Home", "Search", "My Profile", "Members", and "Help". A search bar is also present. The user is logged in as "Hello remco niggebrugge / EJM Secretariat" with links to "view your profile", "admin mode on", "log out", and "help". The main content area is titled "The use and gathering of evidence obtained through mutual legal assistance in criminal proceedings". Below this title is a table with columns: "reply", "CPs", "MSs", and "last post".

	reply	CPs	MSs	last post
Transfer of criminal proceedings: admissibility of evidence gathered in the transferring State	5	5	4	Tue 25 May 2010 at 11:01
Issues raised by the Green Paper on obtaining evidence in criminal matters from one MS to another and securing its admissibility	5	4	4	Fri 28 May 2010 at 14:05
The value and admissibility of the evidence gathered in accordance with the law of another State	4	4	2	Wed 12 May 2010 at 18:38
Gathering of evidence between the MS : evaluation of the current practice, European Evidence Warrant and future perspectives in the light of the Stockholm Programme	2	2	2	Fri 12 Mar 2010 at 15:03
Evidence gathered within a Joint Investigation Team: the use of this evidence in criminal proceedings in another State	0	0	0	-

### THE 35<sup>TH</sup> PLENARY MEETING OF THE EJM

The 35<sup>th</sup> plenary meeting of the EJM was held in Kortrijk, Belgium, under the Belgian Presidency of the EU Council, on 29 and 30 November 2010<sup>30</sup>. This plenary meeting was devoted to judicial co-operation in the border regions of the European Union with the purpose to gain insight on the various forms of judicial co-operation and police co-operation for judicial purposes between the Member States in the border regions of the EU.

The morning session included presentations on the Belgian judicial system and different forms of international co-operation in the border regions.

<sup>30</sup> EJM/2010/09: Minutes of the 35th plenary meeting of the European Judicial Network, Kortrijk, BE, 29-30 November 2010.

The plenary meeting continued with the part dedicated to the “EJN business”.

Ms Fátima Martins introduced the new contractor for the EJN website – Billbomatica - to the Contact Points. The EJN business segment of the meeting continued with presentations by the EJN Secretariat’s representatives on specific activities and projects in the light of the EJN Secretariat’s Work Programme. The Work Programme for 2011 was also introduced.

The afternoon session was devoted to workshops on international co-operation in the border regions.



#### ACTIVITY 1.3 – ORGANISATION OF THE NATIONAL CORRESPONDENTS MEETINGS

The 2<sup>nd</sup> and 3<sup>rd</sup> meetings of the EJN national correspondents were planned to take place in 2010. The 2<sup>nd</sup> national correspondents meeting (NCM) of the EJN was scheduled for 21 April 2010. Due to the volcanic ash cloud and the following flight disruptions, which affected most of Europe at the time, the EJN Secretariat, together with the Spanish Presidency of the Council of the EU and the Belgian and Hungarian members of EJN Trio Presidencies, took the decision to cancel the scheduled NCM and have exceptionally a written procedure via e-mail deal with the issues on the agenda of the NCM, in order to prepare the 34<sup>th</sup> EJN plenary meeting<sup>31</sup>. The documents were sent to the NCs by e-mail and they were adopted in the written procedure.

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<sup>31</sup> EJN/2010/03: Report on the written procedure with the EJN national correspondents prior to the 34th EJN plenary meeting.

### THE 2<sup>ND</sup> NATIONAL CORRESPONDENTS MEETING (NCM)

The 2<sup>nd</sup> national correspondents meeting of the EJM took place on 12 October 2010 in The Hague, Netherlands, under the Belgian Presidency.

The Belgian Presidency informed the participants that the Council conclusions on the follow-up of the implementation of instruments executing the principle of mutual recognition of judicial decisions in criminal matters were adopted. Three objectives would be achieved with the Council conclusions: to offer access to the legal background and implementation's status of these instruments; to provide support for discussion; and to provide updated information for judicial authorities on the implementation, application and languages of these instruments. Therefore the EJM website would become the point of reference for judicial authorities.

The EJM Secretariat presented the action plan with Bilbomatica, the new contractor for the website. Moreover, the participants were briefed on the first meeting between the EJM Trio Presidency and the Presidency Team of Eurojust.

An update on the execution of the 2010 EJM Work Programme was briefly presented. The 2011 Work Programme was approved. Finally, an overview was given about the preparations of the Belgian Presidency for the 35<sup>th</sup> plenary meeting of the EJM.

### ACTIVITY 1.4 – ORGANISATION OF THE TOOL CORRESPONDENTS MEETINGS

In accordance with the provisions of Article 6 (2) of the EJM Decision, the EJM tool correspondents shall meet on an *ad hoc* basis at least once a year.

### THE 9<sup>TH</sup> TOOLS CORRESPONDENTS MEETING (TCM)

The 9<sup>th</sup> tool correspondents meeting was held in The Hague on 16 March 2010<sup>32</sup>.

Ms Fátima Martins (Secretary to the EJM) made a presentation on the criteria for appointing the tools correspondents (TC). She explained how important this topic had become with the entry into force of the EJM Decision. In order to make the best out of the EJM Decision and of the experience so far, it was important to find a person for each Member State with the right profile to be a TC. Three aspects of finding and appointing a suitable person were dealt with: 1) legal framework 2) actual tasks of a TC, and 3) profile of a suitable person to be appointed as TC. By analysing these aspects Ms Martins explained to the Member States (MSs) whether a person with IT background or legal background would be more suitable.

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<sup>32</sup> EJM/2010/02: Minutes of 9th tool correspondents meeting, The Hague, 16 March 2010.



In conclusion, a TC should not have solely a legal or IT background but should be in close contact with officials/authorities of the MS with knowledge in such fields. Ms Martins advised the MSs to appoint a person who would stay in this position for no less than 5 years; this would be important mainly because of the Atlas Editor, which is the most complicated tool and takes time as well as constant training to be fully utilised.

The EJNI Secretariat made also presentations on the project for revamping and redesigning the EJNI website, to transform it in the main portal

#### ACTIVITY 1.5 – PROVIDING SUPPORT FOR THE ORGANISATION OF REGIONAL MEETINGS

According to the Guidelines on regional meetings, the functioning of the EJNI may be improved through organising the regional meetings of the EJNI Contact Points in various Member States<sup>33</sup>. The EJNI Secretariat provides support to the organisation of regional meetings.

According to the guidelines, the regional meetings of the EJNI Contact Points shall be organised on the basis of an application for financial support submitted to the EJNI Secretariat by the EJNI Contact Point of the Member States organising the regional meeting; the EJNI budget will bear up to a maximum of 75% of the organisational costs, with a ceiling of 5000 € per meeting.

Three applications for the organisation of the regional meetings were received by the deadline in 2010, two of the meetings were held in 2010.

#### REGIONAL MEETING IN INNSBRUCK, AUSTRIA

The regional meeting of the EJNI, organised by the Contact Points of Austria, took place on 6 - 8 October 2010 in Innsbruck. The general topic of the meeting was “Transborder investigative measures and the role of the EJNI”.

According to the report on the regional meeting, submitted to the EJNI Secretariat by the contractor (the Austrian Federal Ministry of Justice), during the three-day meeting presentations were held on the legal framework for transborder investigative measures according to Austrian and international laws; on the development of the legal instruments for obtaining evidence abroad in the framework of the EU legislation; on the efforts made towards the conclusion of an anti-fraud convention with the EU and the association to the Schengen Acquis; on cross-border investigations; on the main challenges in transborder co-operation from the point of view of the police authorities; and on the prerogatives for getting bank information in Austria. The participants of the meeting also had the opportunity to visit

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<sup>33</sup> EJNI/2009/2: EJNI regional meetings guidelines adopted in the 32nd Plenary of the EJNI, 25-26 June 2009.

the locally competent public prosecution service in Bolzano/Bozen, Italy, which is a predominant partner of the Innsbruck judicial authorities.

In conclusion, the meeting was of high value for the Austrian Contact Points, since it offered a possibility to strengthen direct contacts with other Contact Points, and to exchange legal and practical information on the different systems in the Member States. In addition, the visit to Italy allowed direct communication of possible problems in the cross-border co-operation and direct personal contacts were established.

### REGIONAL MEETING IN KROMĚŘÍŽ, CZECH REPUBLIC

The regional meeting of the EJM Contact Points of Austria, Czech Republic, Germany and Slovakia took place on 17 – 19 October 2010 at the premises of the Judicial Academy in Kroměříž. According to the report on the regional meeting, submitted to the EJM Secretariat by the contractor (the Judicial Academy), three main topics were discussed:

1. Mutual legal assistance based on the Art. 1 Para 3 of the European Convention on Mutual Assistance in Criminal Matters 1959 as amended by the Second Additional Protocol and on Art. 3 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (“EU Convention 2000”);
2. Recognition and execution of the financial penalties on the basis of the Framework Decision 2005/214/JHA;
3. Seizure of property in criminal proceedings (seizure and handing over of material evidence; seizure of items for the purpose of restitution to the rightful owner in another State; seizure of proceeds of crime and outcomes of the annual general meeting of the CARIN network).

On the first day of the meeting Contact Points from four different countries presented their national regulations regarding the above mentioned areas of international co-operation and assistance in criminal matters. On the second day of the meeting a workshop was held on national perspectives, problems and obstacles in MLA cases based on Art. 1 (3) of the European Convention on Mutual Assistance in Criminal Matters 1959 and Art. 3 of the EU Convention 2000 in connection with the recognition and execution of financial penalties.

In conclusion, according to the organisers, the regional meeting of the EJM Contact Points achieved its main purpose. All four countries presented their national legislation on the three scheduled areas and communicated the problems they would encounter in mutual international co-operation and assistance in criminal matters, which led to interesting discussions and debates, and to a better understanding of the different approaches.



## OBJECTIVE 2 – TO ENSURE THE PROPER FUNCTIONING OF THE EJN WEBSITE

### ACTIVITY 2.1 – MAINTENANCE OF EJN WEBSITE

According to Articles 7 - 9 of the EJM Decision, the maintenance of the website is a core task for the EJM Secretariat. A contractor is in charge of the technical and functional maintenance of the website. In 2010, the website was maintained by the EJM Secretariat, in co-operation with Eurojust's IM Unit, with the support of the former and the new contractors. No particular problems were noticed regarding the maintenance of the EJM website in 2010.

## OBJECTIVE 3 – IMPROVEMENT AND FURTHER DEVELOPMENT OF THE EJM INFORMATION PLATFORM

2010 was the cornerstone year for redesigning and revamping the EJM website. The entry into force of the framework contract with the new contractor and the adoption of the Council Conclusions of the follow-up to the mutual recognition instruments have given a positive impulse to the implementation of this EJM Secretariat's project: to have a totally revamped website, containing a comprehensive library on judicial co-operation in criminal matters, as well as e-tools that are adequate for all types of judicial co-operation, including the new mutual recognition legal instruments.



Thus, on 9 December 2010 the EJM Secretariat managed to present to COPEN the first prototypes of the new EJM website. The EJM Secretariat plans to put online a revamped EJM

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website in the first half of 2011. The website will have a user-friendly structure and a comprehensive content. The new EJM website will also include a part related to the EJM and its activities, while the most important segments of the website will be those containing the practical tools for the application of the legal instruments on judicial co-operation in criminal matters.

The practical tools section of the new EJM website will contain all the information that practitioners may need: full text of the legal instruments (both “classic” mutual legal assistance and all mutual recognition legal instruments), tables on the status of implementation, notifications submitted by the Member States to the General Secretariat of the Council, statements, national legislations transposing the mutual recognition instruments, forms, reports, practical information, handbooks, etc. All this information shall be available in all EU official languages.



### OBJECTIVE 4 – FUNCTIONING OF THE EJM CONTACT POINTS

#### ACTIVITY 4.1 – SUPPORTING THE INITIATIVES OF MEMBER STATES TO PROVIDE THE EJM CONTACT POINTS WITH LANGUAGE TRAINING

According to Article 2 (5) of the EJM Decision each Member State shall ensure that the Contact Points have adequate knowledge of European Union languages other than their national language. The EJM Secretariat intends to adopt measures to support the efforts of the Member States in meeting the requirement of article 2 (5) of the EJM decision.

In 2010, the EJNI Secretariat, through the General Council for the Judiciary of Spain, organised language training courses for EJNI Contact Points in the area of judicial co-operation and judicial systems in English, French and Spanish at an intermediate/advanced level. The courses were meant to familiarise the EJNI Contact Points with language and technical expressions in the area of judicial co-operation and the different judicial systems of the European Union. The purpose of these courses was to facilitate the process of European integration via contributing to the creation of a European judicial area. To this end, the objectives of the courses were: to improve the knowledge of legal language (spoken and written) with a particular focus on the terminology specific to international judicial co-operation; to improve the knowledge of the main judicial systems in the EU; to facilitate the comparative study of the main traditional EU institutions; and to potentiate the acquisition of new written and oral communication skills.

The specialised language courses in international judicial co-operation were made available to the Contact Points in English and French (initially Spanish was planned, too, but the number of applicants was too low, therefore no Spanish language training took place in 2010). Applicants to the training were required to have at least a basic knowledge of the language/s of preference. Once a candidates' shortlist was drawn up, their language skills were tested over the telephone by the teachers of the institute giving the training. The language training was both theoretical and practical: exercises presented the students with moot cases and common situations in the area of international judicial co-operation in the different judicial systems.

The language courses turned out to be a great success among the EJNI Contact Points. They took place during one working week, from 18 to 22 October 2010, at the premises of the General Council for the Judiciary of Spain.

#### OBJECTIVE 5 – TO INCREASE AWARENESS OF THE EJNI AMONG PRACTITIONERS IN MEMBER STATES AND CANDIDATE & ACCESSION COUNTRIES

##### ACTIVITIES 5.1.GENERAL

###### THE BROCHURE

The EJNI brochure created in 2005 was updated and translated in the 23 EU languages in 2010. The changes were necessary particularly in light of the new legal basis. The brochure was sent to all the EJNI Contact Points for proofreading in their own languages. Feedback from the Contact Points was received up until the end of 2010 and by the end of the year the brochures were ready to be printed.



### Az EJN Titkársága

A Titkárság az irányító szervünk. Biztosítja az EJN működését és a folyamatosságot. Fő feladataink ezen belül:

- A kapcsolattartók segítése feladataik ellátásában.
- Az EJN honlapjának, operatív eszközeinek kialakítása, fenntartása és fejlesztése.
- Az EJN tevékenységével és az igazságügyi együttműködéssel kapcsolatos információk terjesztése a kapcsolattartók és az érdeklődők körében.
- Az EU-n belüli és kívüli igazságügyi együttműködés területén a képviselői biztositása, valamint más igazságügyi hálózatokkal történő kapcsolatteremtés.



**EURÓPAI  
IGAZSÁGÜGYI  
HÁLÓZAT  
(EJN)**

### Mi az EJN?

Mi vagyunk az első igazán operatív, gyakorlatias, strukturált igazságügyi együttműködési mechanizmus az Európai Unióban.

A szervezetet 1998-ban a 98/428/IB számú együttes fellépés hozta létre, a szervezett bűnözés elleni decentralizált, rugalmas és horizontális küzdelem céljából.

2008-ban az EJN jogszabályi háttérét tovább erősítette a Tanács 2008/976/IB számú határozata. Jelenleg Unió szerte, illetve a tagjelölt és harmadik államokban összesen több mint 400 kapcsolattartónk van.

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## OBJECTIVE 6 – TO FOSTER A MORE EFFECTIVE COLLABORATION BETWEEN THE EJN AND OTHER PARTNERS IN THE FIELD OF JUDICIAL CO-OPERATION

### ACTIVITIES 5.2 AND 6.1 – MISSIONS

These activities give an overview of the representation costs encountered by the EJN for conferences, meetings and seminars held by other actors of judicial co-operation. The Secretariat participated in several meetings, seminars and conferences with third partners to increase the awareness of the EJN among practitioners and achieve a more effective collaboration with other partners.

### MEETINGS WITH THE COUNCIL OF THE EUROPEAN UNION

In 2010 several meetings were held with the Council of the European Union, in relation to the Council Conclusions adopted in October 2010, about the Council Conclusions on the follow-up of the implementation of instruments implementing the principle of mutual recognition of judicial decisions in criminal matters

In addition, a meeting on the European e-Justice portal and the website of the European Judicial Network in criminal matters took place in Brussels.

#### TRAINING ON JUDICIAL CO-OPERATION

Co-operation with the Academy of European Law (ERA) also continued. Mses Fátima Martins, Maria Almeida Gomes and Ianina Lipara were invited to the seminars organised by ERA to present the EJN and its tools, during the ERA summer course on criminal justice.

In 2010 the partnership with the European Criminal Law Academic Network (ECLAN) continued. Mr Florin-Răzvan Radu, Seconded National Expert to the EJN, gave a lecture at the ECLAN summer school. Similar training courses were delivered by Mr Radu in Ljubljana, at the invitation of the Slovenian Judicial Training Centre, during the Conference on EU criminal justice instruments in practice (24 May 2010); in Bucharest, during a training seminar organised by the National Institute of Magistracy of Romania (27-28 May 2010); in the Hague, at the 9<sup>th</sup> annual conference of ICLN (7 December 2010); in Amsterdam, at the conference on EU criminal law (9-10 December 2010).

The Secretary to the EJN, Ms Fátima Martins, also participated as a lecturer in the “Training Seminar for Magistrates, Judiciary Police Inspectors and Official of the Ministry of Justice on International Judicial Co-operation in Criminal Matters” from 13 to 17 December 2010, in Guinea-Bissau.

#### MEETINGS WITH MEMBER STATES’ JUDICIAL NETWORKS AND JUDICIAL AUTHORITIES

Mses Fátima Martins and Maria Almeida Gomes participated in a round of meetings with Portuguese authorities and entities in the framework of judicial cooperation. The first meeting with the Contact Points was a fruitful meeting where practical problems on daily cooperation and practical matters related with the exchange of information between the contact points and local authorities were discussed. In addition, other important points concerning the functioning of the EJN were touched upon, such as the statistics of the Contact Points, and the role of the national correspondent and tool correspondent. Other meetings were held with the representatives of the Ministry of Justice on international cooperation, with the School of Magistrates and with the Magistrates Union. In these meetings, the main message was to strengthen judicial cooperation and to disseminate and make use of the existing tools and instruments available for this purpose. One of the immediate results from these meetings was an invitation to an international conference, entitled “Fighting crime in Europe”, organised by the Magistrates Union. Ms Martins delivered a presentation to the local Portuguese judicial authorities on the EJN website.



### MEETINGS IN THE COUNCIL OF EUROPE

For the second time, the EJNI Secretariat was represented in a plenary meeting (the 58<sup>th</sup>) of the Council of Europe Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC). The EJNI Secretariat was represented by Mr Radu. Later 2010, Mr Radu also delivered a lecture at the seminar on mutual legal assistance organised in the margins of the 59th PC-OC plenary meeting.

### MEETINGS AND CO-OPERATION WITH THE WEBSITE CONTRACTOR

Since the new contract for the EJNI website entered into force, a working meeting was organised in June 2010 in Bilbao, between Mr Oscar Serrano, Eurojust Project Officer and the contractor's team; also, a kick-off meeting with the Secretary to the EJNI and the EJNI Secretariat team was held in The Hague in October 2010. Meanwhile, weekly videoconferences between the EJNI Secretariat team and Bilbomatica became a permanent working method. Through the weekly videoconferences and the possibility for the EJNI Secretariat to monitor the status of the work carried out by the contractor, significant progress was made in the implementation of the EJNI website revamping project.

### MISSIONS RELATED TO THE PARTNERS IN THE FIELD OF JUDICIAL CO-OPERATION

The EJNI has taken on an active role in networking judicial authorities fighting cross-border crime. With the purpose of encouraging relations between the networks, as stated in the Madeira Declaration, the Secretary to the EJNI participated in the United Nations' initiatives on this matter and actively contributed to the 12th UN Congress on Crime Prevention and Criminal Justice held in Salvador de Bahia, Brazil from 12 to 19 April 2010 (*see*: Part II, Chapter IV, External actions).

### ACTIVITIES 5.3 AND 6.2 – ORGANISATION OF MEETINGS WITH OTHER ACTORS OF JUDICIAL CO-OPERATION

Organisation of informal meetings involving the EJNI with other judicial networks and structures in order to promote international judicial co-operation.

#### “THE 1<sup>ST</sup> HAGUE MEETING”

The 1<sup>st</sup> Hague meeting – the meeting of the networks of judicial co-operation, took place on 4 March 2010 in the Hague at the initiative of the EJNI Secretariat. Its purpose was to exchange

views on best practices for enhanced co-operation between networks in the framework of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice held in Salvador de Bahia, Brazil from 12 to 19 April 2010, whose main result was the “Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World”.

The following networks were represented in the meeting: Red Iberoamericana de Cooperación Jurídica Internacional (IberRed), Commonwealth Network of Contact Points, Réseau de Cooperation Maroc (RCM) and Southeast European Prosecutors Advisory Group (SEEPAG).

All the participants to this meeting clearly expressed the need of working together on creating a platform of networks, in line with the general trend towards globalisation. The meeting resulted in the Hague Declaration<sup>34</sup>. The Hague Declaration combines the ideas of both the Madeira and the Salvador Declaration international co-operation and assistance in criminal matters, which led to interesting discussions and debates, and to a better understanding of the different approaches and represents a sign of the willingness of the networks to co-operate.

#### “THE 2<sup>ND</sup> HAGUE MEETING”

The 2<sup>nd</sup> Hague meeting was held on 6 September 2010, just a few weeks before the fifth session of the Conference of the Parties to the United Nations Convention against Transnational Organised Crime and its Protocols held in Vienna from 18 to 22 October 2010.

The participants to the 2<sup>nd</sup> Hague meeting were: Red Iberoamericana de Cooperación Jurídica Internacional (IberRed), Southeast European Prosecutors Advisory Group (SEEPAG), Réseau de Cooperation Maroc (RCM), Plateforme régionale “Justice” des Etats membres de la Commission de l’Océan Indien (COI), Commonwealth Network of Contact Points. The meeting was very successful as the participants confirmed once again the need to work together. Further steps of possible future co-operation were discussed. A global judicial network turned out not to be a feasible solution; instead, a platform for co-operation and co-ordination between the existing regional networks that would provide support to other regions in establishing similar networks was seen as an adequate way of fighting international crime.

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<sup>34</sup> The Hague Declaration, A primordial step towards a Worldwide Platform of Judicial Networks (WWP), The Hague, 4 March 2010.

### OBJECTIVE 7 – TO ENSURE THE PROPER FUNCTIONING OF THE EJM SECRETARIAT

In order to ensure the proper functioning of the EJM Secretariat, some general costs must be borne, including costs of translation of documents, material for EJM meetings, stationery and catering costs, etc. Such expenses did not exceed what provided for by the EJM Secretariat's budget.

In 2010, in addition to the activities implementing the Work Programme, the EJM Secretariat responded to a request from the EU-Philippines Justice Support Programme (EPJUST). EPJUST is an EU programme created to assist the government of the Philippines in improving their human rights situation. Mr Detlev Mehlis, Berlin-based prosecutor and EJM Contact Point, was appointed team leader. Inspired by his networking experiences with the EJM, he asked the EJM Secretariat to assist EPJUST and several Philippine civil society organisations in setting up a network and website, partly based on the EJM. The EJM Webmaster, Remco Niggebrugge, went to Manila and for several weeks worked closely with the EPJUST team on the creation of their website and content management system.





## CHAPTER III

### SELF-ASSESSMENT ON THE NETWORK'S MANAGEMENT

In accordance with article 2 (8) of the EJNI Decision<sup>35</sup>, EJNI has a Secretariat *“responsible for the administration of the Network.”*

Pursuant to Article 25a and paragraphs 19 and 20 of the Preamble of the “Eurojust Decision”, the EJNI Secretariat is a **separate and autonomous unit** within the Eurojust administration, which *“may draw on the administrative resources of Eurojust which are necessary for the performance of the European Judicial Networks tasks, including for covering the costs of the plenary meetings of the Network.”*<sup>36</sup>

Moreover, article 11 of the EJNI Decision stipulates: *“In order for the European Judicial Network to be able to carry out its tasks, the budget of Eurojust shall contain a part related to the activities of the Secretariat of the European Judicial Network.”*

Consequently, in accordance with the legal framework governing the EJNI Secretariat and the non-binding guidelines on the EJNI structure, the EJNI Secretariat is accountable not only before the Administrative Director of Eurojust, but also, and more importantly, before the community of the EJNI Contact Points.

Due to this dual position, the management of the EJNI by the Secretariat gets scrutinised on several occasions every year, by the Network itself and by the Eurojust College and Administrative Director.

In the past two years, the EJNI Secretariat devoted most of its work to the higher interest of the EJNI, that is to perform its tasks under adequate conditions, as an independent network, bearing in mind that both the EJNI and the Eurojust Council Decisions stipulate the need for privileged relations between the EJNI and Eurojust.

In 2008 the JHA Council, with the revision of the legal basis for the EJNI and Eurojust, reaffirmed the willingness of the Member States to have Eurojust and the EJNI work together towards the same general goal, albeit with different means and different functional organisations. To that end, the Council recognised the added value of the EJNI as a network based on the principles of informality, decentralisation, horizontality and flexibility, with

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<sup>35</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network; OJ L 348, 24.12.2008, p. 130–134.

<sup>36</sup> Council Decision 2009/426/JHA of 16 of December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime; OJ L 138, 4.6.2009, p. 14–32.

Contact Points “in the field”; on the other hand, Eurojust deals mainly with serious transnational cases and co-ordination matters.

The EJNI Secretariat managed to provide the EJNI with proper administration and management while keeping costs low: in 2009 the Secretariat was composed of just 4 staff members (1 AD position, 2 TA positions, with grades AST 1 and AST 3, and 1 CA position with grade FG IV) and a Seconded National Expert (SNE); in 2010, in addition to the SNE, the staff members became 6 (2 CA positions were added with the grade FG III).

The EJNI Secretariat elaborated the strategic documents for the Network and organised, in co-operation with the EJNI Presidencies, the EJNI meetings. At the same time, the Secretariat had an active involvement in the representation of the Network and the training provided to national judicial authorities, in co-operation with partners such as ERA and national schools for the judiciary.

During the past two years, the EJNI Secretariat was also a promoter of co-ordination between judicial networks for international co-operation in criminal matters and succeeded to make the EJNI a key player in its field of activity.

With a budget of EUR 398 000 in 2009 and EUR 485 000 in 2010, the EJNI Secretariat managed to execute all the activities and to implement all the objectives foreseen in the EJNI Work Programmes 2009 and 2010.

With regard to regular financial planning, the EJNI Work Programme is prepared on a bi-annual basis. The EJNI Secretariat prepares the Work Programme with budget information and submits it to the EJNI National Correspondents for their information and agreement. The EJNI Secretariat goes to the College in October of every year, as do all other units of the administration, to present and discuss its budget. The EJNI Secretariat is asked several questions by the Eurojust National Members, including concerning the Work Programme, internal EJNI activities, and all EJNI budget lines. If the College does not agree with all the activities and objectives of the EJNI (an independent structure of the EU), the College can, by not approving or by reducing the budget, adversely affect the normal functioning of the EJNI as reflected in the objectives and activities of the EJNI Work Programme. The EJNI Secretariat is informed by the Eurojust administration of the College’s decision on the EJNI budget. The EJNI Secretariat informs participants at the EJNI plenary that takes place in the end of each year of the EJNI Secretariat budget for the following year.

In fact, the EJNI Secretariat should go to the College meetings to discuss the budget, not as a unit of Eurojust, but as an independent entity.

The same philosophy should be extended to all other matters related to the EJNI Secretariat and ultimately affecting the functioning of the EJNI. For instance, the EJNI Secretariat’s consideration of human resources is done with the goal of accomplishing all the tasks of the

EJN Work Programme, and not the tasks of an administrative unit of Eurojust. The EJN Secretariat needs resources, stability and proper promotion of staff to ensure the continuity of the EJN and its community of more than 300 Contact Points and to be able to adequately perform its Work Programme. Eurojust's perspective is different; it sees the EJN Secretariat as a small administrative unit.

Therefore, the number of staff is extremely subjective, depending on one's perspective. What is real, though, is that the EJN Secretariat works as and for a network, a huge network spread through the 27 Member States and not solely for its own existence.

In order to better provide the EJN perspective at budget discussions during Eurojust College plenary meetings, from 2010, the EJN Secretariat is invited to participate together with the EJN Trio Presidency, to present the EJN Secretariat as an independent structure.

In the opinion of the EJN Secretariat, our dual character, of being on the one hand accountable to a network of approximately 400 Contact Points and, on the other hand, of being a unit within the Eurojust administration, presents constant uncertainty as regards the EJN's identity, as, in the end, the EJN's activities depend on financial resources, and those resources are stipulated and monitored by another structure, Eurojust.

Additionally, raising awareness of the long-lasting lack of stability and the insufficiency of human resources in the EJN Secretariat is vital. We have to bear in mind that the EJN's activities are administered, organised and performed by the EJN Secretariat and that without a stable secretariat these activities may fail. The EJN Contact Points need an effective and qualified secretariat to support them in accomplishing the goal of the EJN, to facilitate judicial cooperation. The EJN Secretariat is also the representative body of the EJN and enables the EJN to create awareness of the EJN and judicial cooperation in Member States as well as to establish and strengthen relationships with other partners in judicial cooperation, namely other networks in the European Union and also in third countries.

Despite all the difficulties encountered, the EJN Secretariat has provided sound management of the EJN during the assessed period, December 2008 – December 2010.

## CHAPTER IV

### EXTERNAL ACTIONS

#### 1. TOWARDS A WORLDWIDE PLATFORM OF JUDICIAL OPERATIONAL NETWORKS

During the past two years, EJNI assumed a leading role in networking judicial authorities dealing with the fight against cross-border crime.

Because of its privileged position as a pioneer network having Contact Points involved in other networks (such as IberRed and SEEPAG), EJNI has been a promoter of a closer co-operation between the existing judicial operational networks and the setting up of similar networks in those regions of the globe where there were not yet judicial networks.

On the basis of the Madeira Declaration, the first political document encouraging the interconnection of the judicial networks, the Secretary to the EJNI participated in the United Nations initiatives on this matter and contributed actively to the 12<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice held in Salvador de Bahia, Brazil, from 12 to 19 April 2010. The conclusions of the congress highlighted the importance of strengthening regional judicial networks for international co-operation in criminal matters. One month later, the general conclusions of the UN Congress were incorporated in Resolution 19/7 – “Strengthening of regional networks for international co-operation in criminal matters” (*see*: Part I).

The vision of the EJNI Secretariat as regards close relations between the existing judicial operational networks and the support to the creation of similar networks is that “only if we unite, can we effectively deal with transnational crime.

In this age of globalisation and opening of borders, appropriate flexible means must be found to respond to transnational organised crime. While we are convinced that a global judicial network is not a feasible solution, we consider that a platform for co-operation and co-ordination between the existing regional networks and support for other regions in establishing similar networks, is an adequate way to achieve the general scope of providing an appropriate answer to the internationalisation of crime.

The EJNI Secretariat already supported the interconnection of existing judicial networks, by organising in The Hague two meetings of the networks’ representatives.

With the same aim, that is better interconnection between regional networks, the Secretary to the EJNI, Ms Fátima Adélia Pires Martins, attended the SEEPAG meetings and Ms Ele-Marit

Eomois, Legal Assistant, participated in the meetings organized by the European Commission related to support the Prosecutors' Network in South-East Europe.

## 2. INSTITUTIONALISATION OF THE CO-OPERATION WITH IBERRED

A close co-operation between EJNI and IberRed is natural, since the EJNI, through its Spanish and Portuguese Contact Points, had an important contribution in the setting up of IberRed in 2004. Indeed, the two networks share contact points and therefore an informal co-operation between them has been going on since 2004.

The signature - on 21 June 2010 - of the Memorandum of Understanding between the EJNI and IberRed only formalised the existing co-operation, although it could not be a proper formalisation as the EJNI does not have legal personality and consequently cannot conclude formal agreements of international law. The signature of the MoU offered anyhow the basis for strengthening such co-operation in different ways: sharing contact points, having joint training sessions and *ad-hoc* working groups.

## 3. PARTNERSHIPS WITH THE EUROPEAN JUDICIAL TRAINING NETWORK (EJTN), THE EUROPEAN ACADEMY OF LAW (ERA) AND OTHER IMPORTANT ACTORS DELIVERING HIGH QUALITY TRAINING ON JUDICIAL CO-OPERATION IN CRIMINAL MATTERS

One of the most important tasks of the EJNI Contact Points is to disseminate their knowledge and expertise on judicial co-operation in criminal matters, therefore the Secretary to the EJNI considers one of her mandate's priorities to actively involve the EJNI in the training of national judicial authorities for the practise of judicial co-operation in criminal matters and especially the EU mutual recognition instruments.

The EJNI is a judicial operational network and its Contact Points are persons with a high level of experience in the field of judicial co-operation in criminal matters, but the EJNI does not have the necessary means for organising regular training seminars for practitioners. Since the EJNI Secretariat considered such training seminars crucial to establish work partnerships (which however cannot be the object of binding documents since the EJNI does not have legal personality) with organisations renowned for the high-quality training they deliver.

### 3.1. RELATIONS WITH THE EUROPEAN JUDICIAL TRAINING NETWORK (EJTN)

In February 2009, the Secretary to the EJNI met with the Secretary General of the EJTN to identify areas of common interest and agree on the involvement of the EJNI Contact Points in the EJTN training seminars, as both trainees and speakers.

### 3.2. ROAD MAP FOR THE CO-OPERATION WITH ERA

The Secretary to the EJNI agreed with the Director of the European Academy of Law (ERA) in Trier, Germany, on a road map for a close partnership between the EJNI and ERA, in the interest of the practitioners in judicial co-operation in criminal matters from the EU Member States, candidate countries and third countries. Among the actions foreseen in this road map, are the following: ERA will consult with the EJNI Secretariat as regards the training sessions organised in co-operation with the European Judicial Training Network (EJTN), which could fall under the scope of Article 4 (3) of the “EJNI Decision” (participation of EJNI Contact Points in training sessions to national authorities); ERA and the EJNI Secretariat will work together on the organisation of an annual seminar addressed to the judicial community in different Member States, with the aim of having decentralised training in judicial co-operation throughout the EU; the EJNI Secretariat will assist ERA in the identification and recruitment of expert speakers from among the EJNI Contact Points or the EJNI Secretariat staff for training events on judicial co-operation in criminal matters; ERA will invite the EJNI Contact Points to relevant ERA events on judicial co-operation in criminal matters and at least to those events that concern the European Judicial Network; all the EJNI representatives and Contact Points who participate in ERA events as speakers or delegates will be identified as EJNI Contact Points besides their official professional title in the programme, the list of participants and on the ERA website.

Most of the items agreed upon in the road map with ERA had already been implemented in 2010 and others will continue to be implemented as permanent measures. The EJNI Contact Points and the EJNI Secretariat’s representatives delivered presentations in ERA events in 2009 and 2010.

Beginning in 2011, the EJNI will support the ERA winter school, including with two study visits at the EJNI and Eurojust, in The Hague.

### 3.3. RELATIONS WITH OTHER JUDICIAL TRAINING PROVIDERS

During the past two years, the EJNI has carried out a fruitful co-operation with other structures involved in training on judicial co-operation.

In 2009 and 2010, the EJNI Secretariat supported the European Criminal Law Academic Network (ECLAN) in elaborating a manual for trainers on judicial co-operation in criminal matters, under the EU Project “COPEN”. The Seconded National Expert to the EJNI, Mr Florin-Răzvan Radu, delivered a presentation on the EJNI in the ECLAN summer school of 2010.

In 2010, the EJNI supported the International Criminal Law Network (ICLN) in organising its 9<sup>th</sup> Annual Conference entitled “Making European Criminal Justice Work: Assessments and

Perspectives one year after the Lisbon Treaty”. A presentation on “EU judicial co-operation in criminal matters: achievements and future directions” was also delivered in this annual conference by the EJNI Secretariat’s representative, Mr Florin-Razvan Radu.

The EJNI Secretariat also supported the EUROMED project, delivering presentations to the participants to the training seminars organised in Nicosia (Mr Remco Niggebrugge) and The Hague (Mr Florin-Razvan Radu) for the MEDA countries.

The Secretary to the EJNI, Ms Fátima Martins, gave a lecture during the “Training Seminar for Magistrates, Judiciary Police Inspectors and Official of the Ministry of Justice on International Judicial Co-operation in Criminal Matters” held from 13 to 17 December 2010 in Guinea-Bissau.

#### 4. CO-OPERATION WITH THE COUNCIL OF EUROPE

In 2009, the EJNI Secretariat initiated a close co-operation with the Council of Europe, namely with the Criminal Law Division.

The EJNI and the Council of Europe Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) have a common goal, i.e. the fostering of judicial co-operation in criminal matters, which explains why most of EU Member States have appointed EJNI Contact Points as representatives in the PC-OC and it was agreed that the Secretary to the EJNI would be invited as an observer in the PC-OC plenary meetings and the Secretary to the PC-OC would attend the EJNI plenary meetings, as observer. This agreement was already implemented.

Moreover, the EJNI Secretariat supported the Council of Europe Project on “Effective practical tools for the facilitation of judicial co-operation in criminal matters”.

Also, the Secretary to the EJNI participated in the 2010 meeting of the Consultative Council of European Prosecutors (CCPE).

#### 5. REPRESENTATION OF THE EJNI IN INTERNATIONAL FORA

The Secretary and the SNE to the EJNI represented it at the Third World Summit of Prosecutors General, Attorneys General and Chief Prosecutors, held in Bucharest, Romania, from 23 to 25 March 2009.

As detailed above, the Secretary to the EJNI participated to the works of the 12<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice, Salvador de Bahia, 12-19 April 2010.



## **PART III**

### **CRIMINAL POLICY MATTERS AND PROPOSALS TO IMPROVE JUDICIAL CO-OPERATION IN CRIMINAL MATTERS**

#### **CHAPTER I**

##### **CRIMINAL POLICY PROBLEMS WITHIN THE EUROPEAN UNION AS REFLECTED IN THE EJN ACTIVITIES**

###### **1. GENERAL ASSESSMENT**

The EJM Contact Points are in a privileged position to make a proper assessment about the problems occurring when dealing with cases of European and international judicial co-operation in criminal matters. Thus, the EJM Contact Points who work as judges or prosecutors in the field have direct experience of the problems related to judicial co-operation may gather together with those who work within the central authorities to solve practical problems. All EJM Contact Points – judges, prosecutors, officials of the Ministries of Justice – tackle the issues related to judicial co-operation in criminal matters on the spot, in their respective Member States, and this is an important added value compared to a centralised agency, such as Eurojust, where the National Members are headquartered in The Hague.

Indeed, their help is needed especially when there are problems related to bilateral judicial co-operation in criminal matters between EU Member States. Almost ten years ago, in the first EJM Report (1998-2001<sup>37</sup>), the main problems for the EU judicial co-operation in criminal matters detected by the EJM Contact were for EU judicial cooperation in criminal matters: problems of legal nature (differences between national legislations), gaps in legal instruments, or insufficient linguistic knowledge.

Unfortunately, ten years later, these problems continue to be an obstacle to a swift judicial co-operation in criminal matters between EU Member States. In a European Union where there is free movement (which also criminal offenders benefit from), there are still bureaucratic and legal barriers for judicial authorities in their fight against serious crime.

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<sup>37</sup> 5137/1/02, Brussels, 22 January 2002.



With the adoption and implementation of legal instruments based on the principles of mutual recognition and mutual trust, much progress has been made towards a genuine European judicial criminal area. However, the problems occurred in practice show that we still have a long way to go before a European judicial culture, based on mutual trust, is achieved.

The EJNI Contact Points mentioned in several plenary meetings the lack of trust as an obstacle to effective co-operation between judicial authorities. Due to the active involvement of the EJNI Contact Points most of these obstacles were overcome.

From the conclusions of the EJNI meetings held in the past two years, we can state that a general problem is the insufficient implementation of the adopted EU legal instruments. While the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States were unanimously recognised as a “success story”, other EU mutual recognition legal instruments were not yet transposed in all the Member States’ legislations or are not correctly implemented in practice. For instance, in the case of freezing orders, most of the participants to the workshops organised during the 31<sup>st</sup> EJNI plenary meeting held in Paris in November 2008 identified as a problem the form itself, which would not make the tasks of the judicial authorities more complex, compared to the classical rogatory letter; also, the simultaneous existence of this mutual recognition instrument with the classic MLA was seen as a problem<sup>38</sup>.

In other cases, such as the European Evidence Warrant, most of the EJNI Contact Points reckoned (*see*: Part II, Chapter II, Paragraph 1.1. “The 33rd Plenary Meeting of the EJNI”) that the scope of the legal instruments do not meet the practitioners’ expectations. In this respect, the EJNI Contact Points sometimes noticed a different approach between the practitioners and the representatives of their Member States in the working parties and other fora where legal instruments are negotiated.

The poor quality of the translation of judicial co-operation requests and supporting documents was also identified as a common problem for judicial co-operation.

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<sup>38</sup> See document 5682/09, EJNI 5, COPEN 16 “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”.

### 2. CONCLUSIONS DERIVED FROM THE ANSWERS TO THE QUESTIONNAIRES SENT OUT OR PUBLISHED ON THE EJN ONLINE FORUM

One of the best practices of the EJM since its beginnings has been the distribution of questionnaires on matters of interest to the EJM community, related to on-going issues of judicial co-operation in criminal matters. From 2010, this methodology was supplemented by the possibility given to the Contact Points and to judicial authorities to express their views on judicial co-operation matters in the EJM forum available on the EJM website.

Several questionnaires were issued between December 2008 and December 2010. The answers to these questionnaires show the level of involvement of the EJM Contact Points in the latest developments in the criminal matters European judicial area.

#### 2.1. ANSWERS OF THE CONTACT POINTS TO THE QUESTIONNAIRE SUBMITTED BY THE CZECH PRESIDENCY, REGARDING THE INTERCEPTION OF TELECOMMUNICATION AND CROSS-BORDER SURVEILLANCE.

The questionnaires' questions and relevant answers are listed below<sup>39</sup>.

Question about who can approve interception of telecommunication.

Answers:

- judge: AT, BG, CH, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IT, LV, LT, NO, PL, PT, RO, SK, SE
- examining magistrate: BE, LU, SI
- prosecutor after a written approval of examining magistrate: NI
- Minister for Justice, Equality and Law Reform: IE
- Minister responsible for security services: MT
- Secretary of State (E,W, NIr) and law enforcement level (Sc): UK

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<sup>39</sup> Belgium (BE), Bulgaria (BG), Czech Republic (CZ), Denmark (DK), Germany (DE), Estonia (EE), Ireland (IE), Greece (EL), Spain (ES), France (FR), Italy (IT), Cyprus (CY), Latvia (LV), Lithuania (LT), Luxembourg (LU), Hungary (HU), Malta (MT), Netherlands (NL), Austria (AT), Poland (PL), Portugal (PT), Romania (RO), Slovenia (SI), Slovakia (SK), Finland (FI), Sweden (SE), United Kingdom (UK).

Question about who can approve interception of telecommunication in urgent cases.

Answers:

- prosecutor: BE, DE, IT, LV, LT, NO, PL, SK
- prosecutor must be informed: BG
- interception for 24 hours is permitted with prior approval by a court: DK

In other Member States there was no difference in decision making in urgent cases.

The answers to the questionnaire showed that only BE, DE, LT, SI, SK, and UK had already experience of "online" interception, in accordance with article 18 (1) (a) of the Convention of 29 May 2000.

Question about the conditions for cross-border surveillance;

Answers:

- Minimum penalty 5 years of imprisonment: BG, HU
- Minimum penalty 4 years: NL
- Minimum penalty 1 year: AT, CY, LU,
- Crime must have been committed with intention: CZ
- Listed crimes: SI
- No limit: BE, EE, ES, LV, LT, MT, RO
- Only SIC limits: FI, FR, DE, GR, NO, PL, SK, SE, UK

Other conditions are laid down in bilateral treaties.

Question about who can be under surveillance.

Answers:

- only the suspect(s): EE, FI, EL, MT, PL, PT, CH
- the suspect and persons who are likely to lead to suspect(s): AT, DE, FR, IT, NO, RO, SE, UK
- also persons other than the suspect(s): BE, BG, CY, CZ, ES, FI, LU, NI, SK, SI.

No EU common standard was found for cross-border surveillance. Two questions were raised: one is about the nature of co-operation – “can judicial authorities be excluded?” and the second is “does electronic surveillance constitute an intrusion into sovereignty?”

Question about problems regarding cross-border surveillance.

Answers:

- lack of police capacity: BE, UK
- some Member States give rather strict time limits for cross-border surveillance by technical means: AT
- difficult to find a responsible judicial authority that can approve cross-border surveillance, particularly in urgent cases: CZ
- differing expectations of what surveillance is: UK

Question regarding the conditions for carrying out controlled deliveries under article 12 of the 2000 Convention.

Answers:

- Minimum limit 5 years: LV
- Minimum limit 4 years: NI
- Minimum limit 1 year: SI, RO
- Listed crimes: GR, HU, PL
- Conditions of EAW: AT
- Offence for which arrest may be ordered: IT
- Conditions of international treaties: BG, NO
- Any crime - no limit: BE, DK, CH, CZ, EE, ES, FI, DE, IE, LU, MT, SE, UK
- No information: CY, FR, SK

As to the problems occurred during controlled deliveries, SI mentioned difficulties resulting from the differences in the Member States’ legal systems, AT cited problems with transits through several countries and the UK mentioned that sometimes there was a big

disproportion between the value of such a measure and its costs. Controlled deliveries did not often lead to the prosecution of the main perpetrator; also, any arrests would happen under UK law, and lead to prosecutions in the UK, not overseas.

## 2.2. ANSWERS TO THE QUESTIONS RAISED BY THE SWEDISH PRESIDENCY

The Swedish Presidency dedicated most of the EJM plenary meeting to workshops where the practical problems regarding mutual legal assistance, mutual recognition instruments and the role of the EJM Contact Points were discussed.

In this chapter, reference will be made to the most relevant problems described by the EJM Contact Points while answering the questions raised in the workshops.

The translation problems for mutual legal assistance requests were highlighted once again. Translation in the national language is required in several Member States. The use of the EJM tools (namely the Compendium) may help to reduce translation costs.

Problems were mentioned regarding the execution of specific measures: hearings by telephone, that are not allowed in some Member States; notification and service of documents to defendants.

Difficulties were mentioned also regarding the seizure and handover of property, in particular the seizure of property from a third person and the need for a court decision for handing over seized property.

## 2.3. FORUM DEBATES DURING THE SPANISH PRESIDENCY

The Spanish Presidency preferred to replace the classic questionnaires with topics open for debate on the EJM online forum.

The topics were:

- Transfer of criminal proceedings: admissibility of evidence gathered in the transferring State;
- Issues raised by the Green Paper on one MS obtaining evidence in criminal matters from another and securing its admissibility;
- The value and admissibility of the evidence gathered in accordance with the laws of another State;
- Gathering of evidence between the MS: evaluation of the current practice, European Evidence Warrant and future perspectives in the light of the Stockholm Programme;

- Evidence gathered within a Joint Investigation Team: the use of this evidence in criminal proceedings in another State.

The above topics were also discussed in the plenary, during dedicated workshops.

In general no particular problems were mentioned concerning the admissibility of evidence obtained in accordance with the law of another Member State. The only exception was the United Kingdom. Article 4 of the Convention of 29 May 2000 is not used very often, and Article 26 of the Council of Europe Convention on the transfer of criminal proceedings allows the use of such evidence.

The majority of the participants in the workshop dedicated to this topic were in favour of a single comprehensive instrument on both the gathering and admissibility of evidence. However, some Member States would prefer two separate legal instruments.

During the workshop “Gathering of evidence between the MS: evaluation of the current practice, European Evidence Warrant and future perspectives in the light of the Stockholm Programme” the participants mentioned that, apart from the strict deadline for execution, the use of a form and the abolishment of dual criminality, the European Evidence Warrant was far from the needs of the practitioners and most of them would prefer a comprehensive instrument.

The Joint Investigation Teams (JITs) were found as a very useful form of judicial co-operation, but the importance of strictly respecting the defended rights to avoid any contestation of the procedure was stressed.

#### 2.4. ANSWERS TO THE QUESTIONNAIRE DISTRIBUTED BY THE BELGIAN PRESIDENCY

The main topic chosen by the Belgian Presidency for the 35<sup>th</sup> EJM plenary meeting was co-operation in border regions. A questionnaire was sent out about the experience of the Contact Points in regional judicial co-operation in criminal matters. The questionnaire focused clearly on specific ways of judicial co-operation, and on how the police forces are working together, towards a judicial purpose, in the border areas of Europe. This exercise also included mixed police and judicial projects. It did not include cross-border collaboration in merely official administrative terms.

The initial findings were that, from a judicial point of view, specific forms of co-operation in the border areas are the exception in the EU. Belgium appears to be in the lead, with five projects in which the border prosecution officers being actively involved (Euregio Maas-Rijn at Maastricht with the Netherlands and Germany, Euregio Meuse-Lorraine with France

and Luxembourg, international liaison with the Netherlands (Breda), Euregio Scheldemond with the Netherlands, the Tournai agreement with France).

These forms of co-operation were usually preceded by structural co-operation on a purely police level, such as the three PCC(C)s or C(C)PDs (common police and customs centres) with the Netherlands, Germany, France and Luxembourg.

In terms of structural and organisational models, the Bureau for Euregio (BES) co-operation in Maastricht is the most extensive and is unique in Europe.

The BES is made up of representatives of the public prosecutors' offices of the Netherlands, Belgium and Germany. It has no legal basis, but has got clear aims (co-ordinating a good organisational structure with a provisional Dutch budget only in the Euregio Maas-Rijn, with its typical cross-border crime, and while waiting for Belgium and Germany to become involved).

The judicial authorities of the Netherlands, Germany, Luxembourg and France are actively involved in cross-border projects. The Netherlands have also announced a joint project with Germany in the northern border areas. France pointed out the importance of a judicial form of co-operation between the public prosecutors' offices of Colmar (France), Basel (Switzerland) and Karlsruhe (Germany).

In other EU Member States, there are few judicial initiatives in border areas.

Hungary mentioned informal contacts between the chief public prosecutors in border areas. Romania and Bulgaria underlined the importance of SEEPAG (South-Eastern European Prosecutors Advisory Group) network with cross-border co-operation in the (Balkan) regions.

The Spanish Contact Points mentioned the Spanish-French group of experts on counter-terrorism. The target area of this co-operation is the whole national territory, although investigations are basically oriented towards the border regions: the Western Pyrenees and Spanish and French Basque countries.

This form of co-operation is based on regular meetings of a multidisciplinary group composed of experts from both countries belonging to the respective ministries of Justice, of the Interior and specialised judicial authorities. Liaison magistrates and liaison officers are also members of this group. The mandate of this task force is to implement four specific mechanisms of judicial co-operation in the framework of terrorism such as: temporary surrenders, transfer of proceedings, immediate access to information and the setting up of joint investigation teams. Spain and France have therefore made an extensive use of these instruments, long before they were generally used by other EU countries.



While purely judicial forms of co-operation in the border areas in Europe tend to be the exception, specific police forms of co-operation are widespread in Europe (number: +/- 34 PCCs)

Denmark mentioned that persistent complex bureaucracy sometimes gets in the way of co-operation, but direct informal contacts are a good thing, and language is not a huge problem in Scandinavia. Germany looked at the urgency of working together in border areas and related issues (such as language problems).

France considered the multiplicity of channels involved in international co-operation as an obstacle.

Ireland highlighted the problem of sending evidence in a fast and flexible way in cross-border co-operation.

One of the most common problems identified by Spain was the conflict of jurisdiction occurring when investigative measures are requested by the French authorities and the Spanish authorities become aware that the offences were perpetrated in Spain. The subsequent initiation of internal criminal proceedings creates problems in sending swiftly the results of the MLA request to the requesting authority.

## CHAPTER II

### PROPOSALS FOR IMPROVING JUDICIAL CO-OPERATION IN CRIMINAL MATTERS

The EJN's activities over the two-year period 2009-2010 offered also an opportunity to share views on possible solutions to reduce the problems encountered by the European Union's judicial co-operation in criminal matters.

As described above, despite the positive evolution after the Tampere European Council, the main obstacles to an effective EU judicial co-operation, such as the differences between national legislations, bureaucracy, language issues and even the lack of trust still remain.

The European Union and its Member States need to further work to build a European judicial culture based on mutual trust.

The EJN considers that the strengthening of the judicial networks is one of the solutions to improve judicial co-operation in criminal matters. Providing the EJN and other operational networks for co-operation in criminal matters with all the necessary resources will represent a low-cost way of facilitating judicial co-operation in criminal matters, while keeping a direct contact between the judicial authorities as a rule. To that end, a comprehensive, multi-language and up-to-date EJN website, whose implementation started in 2010, will help practitioners to deal with daily cases of judicial co-operation.

The training of judicial authorities on judicial co-operation in criminal matters is a "must" in a European judicial criminal area. The judges, prosecutors and other practitioners shall be also trained in legal terminology in different languages, to facilitate communication. Thus, the EJN suggests a closer co-operation between the key players in the field of judicial co-operation with a view to promote and actively participate in training activities at national level, including through the creation of best practice guidelines in this field.

The full implementation of all existing legal instruments based on mutual recognition shall be the main priority, before going on to further legislative developments. Meanwhile, impact studies and opportunity analysis shall be used more before initiating new legislative proposals.

The practitioners' experience, including that of the EJN Contact Points, shall be taken into account systematically and synergies between those who apply the legislation and those who draft and negotiate it shall be a key element, ensuring the success of new legal instruments. It does not make sense to adopt a legal instrument if it is not used in practice, as was the case with the European Evidence Warrant and even with freezing orders (for the EEW, see the debates in the plenary meetings of the EJN in Stockholm – November 2009 - and Madrid – June 2010 - and, for the freezing orders, see the conclusions of the workshops organised

during the plenary meeting in Paris in November 2008). The EJNI strongly advises a deeper consultation with the practitioners in judicial co-operation in criminal matters when initiating and negotiating new EU legal instruments. To that end, the high expertise of the EJNI Contact Points could bring the necessary added value to the EU legislative process in the field of judicial co-operation in criminal matters.

An important element to improve the EU judicial co-operation in criminal matters is also a prior harmonisation of national substantive and procedural criminal laws, before taking new legislative steps with mutual recognition legal instruments. This must of course be done while respecting the national constitutional and legal systems and traditions.

On the other hand, new mutual recognition legal instruments must be drafted in such a manner to be flexible: the forms attached to each mutual recognition instrument are very useful but in the future these forms should allow for more flexibility, as is the case with the “classic” requests for mutual assistance.

The further strengthening of Eurojust and the possible creation of a European Public Prosecution Office should take into account the national values and fundamental principles of law and the need to preserve the EJNI as an independent, flexible, horizontal and decentralised mechanism to facilitate judicial co-operation. Eurojust and / or the EPPO shall have clear defined powers, mainly for prosecutions in multilateral cases, without prejudice to direct judicial co-operation between Member States with the support of the EJNI, which shall be strengthened. To this end, new approaches on the role and place of the EJNI Secretariat and the financing of the EJNI to preserve and strengthen the EJNI identity and functional independence should be explored.

As observed in several mutual evaluations reports, the EJNI Contact Points have also raised the issue of proportionality as a matter of interest for future legislative developments.

The EJNI also encourages the Member States to create their own internet and intranet webpages dedicated to judicial co-operation in criminal matters, containing practical information and tools, on the basis of best practices already implemented in some Member States.

Regional co-operation between judicial authorities, on the model of police co-operation, shall be further encouraged.

The exchange of experience between the judicial authorities of the Member States, within exchange programmes supported by the EJNI or study visits organised in the EJNI framework, shall become a permanent practice.

The Member States should support the organisation of the EJNI meetings at national level, to discuss problems occurred in the judicial co-operation in criminal matters process.

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## ANNEXES

### ANNEX 1

#### THE COUNCIL DECISION 2008/976/JHA OF 16 DECEMBER 2008 ON THE EUROPEAN JUDICIAL NETWORK

Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) By Joint Action 98/428/JHA [2], the Council set up the European Judicial Network which has demonstrated its usefulness in the facilitation of judicial cooperation in criminal matters.

(2) In accordance with Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [3], mutual legal assistance takes place through direct contacts between competent judicial authorities. This decentralisation of mutual legal assistance is now widely implemented.

(3) The principle of mutual recognition of judicial decisions in criminal matters is being implemented gradually. It not only confirms the principle of direct contacts between competent judicial authorities, it also accelerates the procedures and makes them entirely judicial.

(4) The impact of these changes on judicial cooperation was further increased by the enlargement of the European Union in 2004 and 2007. Because of this evolution, the European Judicial Network is even more necessary than at the time of its creation and should therefore be strengthened.

(5) By Decision 2002/187/JHA [4], the Council set up Eurojust to improve coordination and cooperation between competent authorities of the Member States. Decision 2002/187/JHA provides that Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity.

(6) Five years of coexistence of Eurojust and the European Judicial Network have demonstrated both the need to maintain the two structures and the need to clarify their relationship.

(7) Nothing in this Decision should be construed to affect the independence that contact points may have under national law.

(8) It is necessary to strengthen judicial cooperation between the Member States and to allow contact points of the European Judicial Network and Eurojust for this purpose to communicate, whenever needed, directly and more efficiently through a secure telecommunications connection.

(9) Joint Action 98/428/JHA should therefore be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

## Creation

The network of judicial contact points set up between the Member States under Joint Action 98/428/JHA, hereinafter referred to as the "European Judicial Network", shall continue to operate in accordance with the provisions of this Decision.

## Article 2

### Composition

1. The European Judicial Network shall be made up, taking into account the constitutional rules, legal traditions and internal structure of each Member State, of the central authorities responsible for international judicial cooperation and the judicial or other competent authorities with specific responsibilities within the context of international cooperation.
2. One or more contact points of each Member State shall be established in accordance with its internal rules and internal division of responsibilities, care being taken to ensure effective coverage of the whole of its territory.
3. Each Member State shall appoint, among the contact points, a national correspondent for the European Judicial Network.
4. Each Member State shall appoint a tool correspondent for the European Judicial Network.
5. Each Member State shall ensure that its contact points have functions in relation to judicial cooperation in criminal matters and adequate knowledge of a language of the European Union other than its own national language, bearing in mind the need to be able to communicate with the contact points in the other Member States.
6. Where the liaison magistrates referred to in Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union [5] have been appointed in a Member State and have duties analogous to those assigned by Article 4 of this Decision to the contact points, they shall be linked to the European Judicial Network and to the secure telecommunications connection pursuant to Article 9 of this Decision by the Member State appointing the liaison magistrate in each case, in accordance with the procedures to be laid down by that Member State.
7. The Commission shall designate a contact point for those areas falling within its sphere of competence.
8. The European Judicial Network shall have a Secretariat which shall be responsible for the administration of the Network.

## Article 3

### Manner of operation of the Network

The European Judicial Network shall operate in particular in the following three ways:

- (a) it shall facilitate the establishment of appropriate contacts between the contact points in the various Member States in order to carry out the functions laid down in Article 4;
- (b) it shall organise periodic meetings of the Member States representatives in accordance with the procedures laid down in Articles 5 and 6;
- (c) it shall constantly provide a certain amount of up-to-date background information, in particular by means of an appropriate telecommunications network, under the procedures laid down in Articles 7, 8 and 9.

## Article 4

### Functions of contact points

1. The contact points shall be active intermediaries with the task of facilitating judicial cooperation between Member States, particularly in actions to combat forms of serious crime. They shall be available to enable local judicial authorities and other competent authorities in their own Member State, contact points in the other Member States and local judicial and other competent authorities in the other Member States to establish the most appropriate direct contacts.

They may if necessary travel to meet other Member States contact points, on the basis of an agreement between the administrations concerned.

2. The contact points shall provide the local judicial authorities in their own Member State, the contact points in the other Member States and the local judicial authorities in the other Member States with the legal and practical information necessary to enable them to prepare an effective request for judicial cooperation or to improve judicial cooperation in general.

3. At their respective level the contact points shall be involved in and promote the organisation of training sessions on judicial cooperation for the benefit of the competent authorities of their Member State, where appropriate in cooperation with the European Judicial Training Network.

4. The national correspondent, in addition to his tasks as a contact point referred to in paragraphs 1 to 3, shall in particular:

(a) be responsible, in his Member State, for issues related to the internal functioning of the Network, including the coordination of requests for information and replies issued by the competent national authorities;

(b) be the main person responsible for the contacts with the Secretariat of the European Judicial Network including the participation in the meetings referred to in Article 6;

(c) where requested, give an opinion concerning the appointment of new contact points.

5. The European Judicial Network tool correspondent, who may also be a contact point referred to in paragraphs 1 to 4, shall ensure that the information related to his Member State and referred to in Article 7 is provided and updated in accordance with Article 8.

### Article 5

#### Purposes and venues of the plenary meetings of contact points

1. The purposes of the plenary meetings of the European Judicial Network, to which at least three contact points per Member State shall be invited, shall be as follows:

(a) to allow the contact points to get to know each other and exchange experience, particularly concerning the operation of the Network;

(b) to provide a forum for discussion of practical and legal problems encountered by the Member States in the context of judicial cooperation, in particular with regard to the implementation of measures adopted by the European Union.

2. The relevant experience acquired within the European Judicial Network shall be passed on to the Council and the Commission to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation.

3. Meetings referred to in paragraph 1 shall be organised regularly and at least three times a year. Once a year, the meeting may be held on the premises of the Council in Brussels or on the premises of Eurojust in The Hague. Two contact points per Member States shall be invited to meetings organised on the premises of the Council and at Eurojust.

Other meetings may be held in the Member States, to enable the contact points of all the Member States to meet authorities of the host Member State other than its contact points and visit specific bodies in that Member State with responsibilities in the context of international judicial cooperation or of combating certain forms of serious crime. The contact points participate in these meetings at their own expense.

### Article 6

#### Meetings of the correspondents

1. The European Judicial Network national correspondents shall meet on an ad hoc basis, at least once a year and as its members deem appropriate, at the invitation of the national correspondent of the Member State which holds the Presidency of the Council, which shall also take account of the Member States wishes for the correspondents to meet. During these meetings, administrative matters related to the Network shall in particular be discussed.

2. The European Judicial Network tool correspondents shall meet on an ad hoc basis, at least once a year and as its members deem appropriate, at the invitation of the tool correspondent of the Member State which holds the Presidency of the Council. The meetings shall deal with the issues referred to in Article 4(5).

### Article 7



#### Content of the information disseminated within the European Judicial Network

The Secretariat of the European Judicial Network shall make the following information available to contact points and competent judicial authorities:

- (a) full details of the contact points in each Member State with, where necessary, an explanation of their responsibilities at national level;
- (b) an information technology tool allowing the requesting or issuing authority of a Member State to identify the competent authority in another Member State to receive and execute its request for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
- (c) concise legal and practical information concerning the judicial and procedural systems in the Member States;
- (d) the texts of the relevant legal instruments and, for conventions currently in force, the texts of declarations and reservations.

#### Article 8

##### Updating of information

1. The information distributed within the European Judicial Network shall be constantly updated.
2. It shall be each Member State's individual responsibility to check the accuracy of the data contained in the system and to inform the Secretariat of the European Judicial Network as soon as data on one of the four points referred to in Article 7 need to be amended.

#### Article 9

##### Telecommunication tools

1. The Secretariat of the European Judicial Network shall ensure that the information provided under Article 7 is made available on a website which is constantly updated.
2. The secure telecommunications connection shall be set up for the operational work of the contact points of the European Judicial Network. The setting up of the secure telecommunications connection shall be at the charge of the general budget of the European Union.

The setting up of the secure telecommunications connection shall make possible the flow of data and of requests for judicial cooperation between Member States.

3. The secure telecommunications connection referred to in paragraph 2 may also be used for their operational work by the national correspondents for Eurojust, national correspondents for Eurojust for terrorist matters, the national members of Eurojust and liaison magistrates appointed by Eurojust. It may be linked to the Case Management System of Eurojust referred to in Article 16 of Decision 2002/187/JHA.
4. Nothing in this Article shall be construed to affect direct contacts between competent judicial authorities as provided for in instruments on judicial cooperation, such as Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

#### Article 10

##### Relationship between the European Judicial Network and Eurojust

The European Judicial Network and Eurojust shall maintain privileged relations with each other, based on consultation and complementarity, especially between the contact points of a Member State, the Eurojust national member of the same Member State and the national correspondents for the European Judicial Network and Eurojust. In order to ensure efficient cooperation, the following measures shall be taken:

- (a) the European Judicial Network shall make available to Eurojust the centralised information indicated in Article 7 and the secure telecommunications connection set up under Article 9;
- (b) the contact points of the European Judicial Network shall, on a case-by-case basis, inform their own national member of all cases which they deem Eurojust to be in a better position to deal with;

(c) the national members of Eurojust may attend meetings of the European Judicial Network at the invitation of the latter.

### Article 11

#### Budget

In order for the European Judicial Network to be able to carry out its tasks, the budget of Eurojust shall contain a part related to the activities of the Secretariat of the European Judicial Network.

### Article 12

#### Territorial application

The United Kingdom shall notify in writing the President of the Council when it wishes to apply this Decision to the Channel Islands and the Isle of Man. A decision on that request shall be taken by the Council.

### Article 13

#### Assessment of the operation of the European Judicial Network

1. Every second year from 24 December 2008, the European Judicial Network shall report to the European Parliament, the Council and the Commission on its activities and management.
2. The European Judicial Network may, in the report referred to in paragraph 1, also indicate any criminal policy problems within the European Union highlighted as a result of the European Judicial Network's activities and it may also make proposals for the improvement of judicial cooperation in criminal matters.
3. The European Judicial Network may also submit any report or any other information on its operation which may be requested by the Council.
4. The Council shall, every four years from 24 December 2008, carry out an assessment of the operation of the European Judicial Network on the basis of a report drawn up by the Commission in cooperation with the European Judicial Network.

### Article 14

#### Repeal of Joint Action 98/428/JHA

Joint Action 98/428/JHA is hereby repealed.

### Article 15

#### Taking of effect

This Decision shall take effect on the day of its publication in the Official Journal of the European Union.

Done at Brussels, 16 December 2008.

For the Council

The President

R. Bachelot-Narquin

[1] Opinion delivered on 2 September 2008 (not yet published in the Official Journal).

[2] OJ L 191, 7.7.1998, p. 4.

[3] OJ C 197, 12.7.2000, p. 3.

[4] OJ L 63, 6.3.2002, p. 1.

[5] OJ L 105, 27.4.1996, p. 1.

## ANNEX 2

EXTRACT FROM THE COUNCIL DECISION 2009/426/JHA OF 16 OF DECEMBER 2008 ON THE STRENGTHENING OF EUROJUST AND AMENDING DECISION 2002/187/JHA OF 28 FEBRUARY 2002 SETTING UP EUROJUST WITH A VIEW TO REINFORCING THE FIGHT AGAINST SERIOUS CRIME

### *Preamble*

(19) Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Decision should help clarify the respective roles of Eurojust and the European Judicial Network and their mutual relations, while maintaining the specificity of the European Judicial Network.

(20) **Nothing in this Decision should be construed to affect the autonomy of the secretariats of the networks** mentioned in this Decision when they discharge their function as Eurojust staff in accordance with the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council ( 3 ).

.....  
"Article 25a  
.....

(b) **the Secretariat of the European Judicial Network** shall form part of the staff of Eurojust. It shall function as a separate unit. It may draw on the administrative resources of Eurojust which are necessary for the performance of the European Judicial Network's tasks, including for covering the costs of the plenary meetings of the Network. Where plenary meetings are held at the premises of the Council in Brussels, the costs may only cover travel expenses and costs for interpretation. Where plenary meetings are held in the Member State holding the Presidency of the Council, the costs may only cover part of the overall costs of the meeting;

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### ANNEX 3

#### GUIDELINES ON THE STRUCTURE AND FUNCTIONING OF THE EUROPEAN JUDICIAL NETWORK

##### **Guidelines on the Structure and functioning of the European Judicial Network**

This document is intended to provide guidance on the structure and operation of the European Judicial Network (hereinafter “the EJN”), in the light of the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network<sup>40</sup> (hereinafter “the EJN Decision”) and taking into account the Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by the Decision 2009/426/JHA of 16 December 2008<sup>41</sup> (hereinafter “the Eurojust Decision”).

Nothing in this document shall be construed as affecting the flexible nature of the EJN, informal contacts between the EJN contact points, their daily work or internal relations within the Member States.

##### **I. The Presidency of the European Judicial Network**

The Presidency of the European Judicial Network (EJN) is assumed by the Member State holding the rotating Presidency of the Justice and Home Affairs (JHA) configuration of the Council. This Member State will work in close cooperation and coordination with the Member States which form part of the Trio Presidencies of the JHA configuration of the Council in accordance with the Decision of 1 December 2009 on the exercise of the Presidency of the Council (2009/881/EU), published in the Official Journal of the European Union (OJEU 2.12.2009 L 315/50).

The Presidency Member State, assisted by the two incoming presidencies, hereinafter referred to as the “EJN Trio Presidencies”, should work in close cooperation with the EJN Secretariat in the interest of the Network and of the continuity of its activities.

Ensuring the **continuity** of the EJN activities is one of the core tasks of the EJN Secretariat, as responsible for the Network’s administration in accordance with the EJN Decision. The Trio Presidencies mechanism would represent an added value in ensuring the coherence of the EJN activities according to its annual Work Programmes with the Work Programmes of the rotating Presidencies of the J.H.A. Council configuration.

The EJN Trio Presidencies should function and cooperate with the EJN Secretariat on the basis of common principles and best practices, such as those identified so far by the first formal EJN Trio composed of Spain, Belgium and Hungary, in their meeting of 4 February 2010:

- (1) In the case of the European Judicial Network, the Trio Presidencies have to work closely with the EJN Secretariat for the implementation of the Work Programme during the respective 18 months.
- (2) The Trio Presidencies and the Secretariat of the EJN should meet regularly and at least in the preparation of each of the EJN meetings and to decide on the agenda of the EJN meetings and on future activities and projects within the 18 months time frame. These meetings “EJN Trio meetings” will be organised either in the premises of Eurojust, in The Hague or in the Member State holding the rotating presidency of the Justice and Home Affairs configuration of the Council.
- (3) The EJN Secretariat should prepare the Work Programme in close cooperation with the EJN Presidency, assisted by the two other Member States composing the EJN Trio Presidencies.

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<sup>40</sup> OJ from 24/12/2008, L 348.

<sup>41</sup> The Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, O.J. L 138/14 from 04/06/2009

- (4) Further proposals of a member of the Trio or from the EJM Secretariat on future projects and activities of the European Judicial Network should be subject of discussion in the EJM Trio Presidencies meetings.
- (5) In the beginning of the last semester of an 18 months cycle, on the occasion of the EJM National Correspondents meeting, the acting Trio Presidencies would have to handover the EJM “dossier” to the incoming Trio. To that end, a joint meeting of the current and incoming Trio has to be organised on that occasion. The incoming Trio Presidencies will present their objectives and activities for EJM in the plenary meeting before the takeover of the Trio.
- (6) The EJM Secretariat is entrusted by the Trio Presidencies in the administrative matters of the EJM, particularly the information system and the telecommunication tools, and the management of the relevant projects for the effective implementation of the EJM Decision and of the EJM Work Programmes.
- (7) Taking into account that there is a chronological difference between the Council’ s configurations Trio presidencies cycle (18 months) and the civilian calendar, the EJM Secretariat will continue to manage its annual / biannual planning inside Eurojust in conformity with the objectives of the Trio Presidencies.
- (8) In order to contribute to the strengthening of the privileged relations between the EJM and Eurojust, the EJM Trio Presidencies and the EJM Secretariat will gather informally with the Eurojust Presidency Team, the National Members of the Trio Presidencies of the JHA Council and the Administrative Director of Eurojust to discuss common interests or matters related to both structures. With the view of enhancing the relations and the coordination between both structures the Trio alongside with the Secretariat may participate in Eurojust internal meetings at the invitation of its College or Administration.

Henceforward, it will be taken into account the working methodology resulting from the best practices between the Trio Presidencies of the EJM and the EJM Secretariat.

### II. The Administration of the Network (Articles 2(8), 7, 9(1), 11, 13 of the EJM Decision)

The EJM Secretariat shall be responsible for the administration of the EJM (Article 2(8) of the EJM Decision). It is therefore essential that the EJM Secretariat may provide effective support to the work of the EJM contact points in general and also assistance to the Member State holding the Presidency of the Council.

As the administrating unit which should be able to provide the necessary professional experience, history and continuity, its tasks should in practical terms *inter alia* include:

- ensuring the proper administration of the EJM (including the financial and budget management in close cooperation with the Budget unit of Eurojust), with a view to enabling the EJM contact points to fulfill their tasks and keeping the EJM identity;
- setting up, maintenance and improvement of the EJM information system/website;
- drafting documents related to the activities of the EJM (including reports referred to in the Article 13 of the EJM Decision);
- keeping a general up-to-date record of projects and decisions taken within the EJM;
- providing support to the Member State holding the Presidency of the Council in relation to the organization of the meetings;
- sharing of information on the challenges, achievements, difficulties and any other issues of general interest for the EJM with the EJM contact points on a permanent consultation basis (e. g. through a newsletter);
- preparation of draft Action plans for the new and ongoing projects of the EJM after consultations with the national correspondents;
- establishment and maintenance of relations with other bodies and structures in the field of judicial cooperation in criminal matters within and outside the EU; and
- promotion of the EJM, including presentation of the EJM in meetings, conferences or other events organized both within the EU or outside by partners in the third countries or international organizations.

In accordance with the best practice within the EJM, the EJM Secretariat may establish, on an *ad hoc* basis, a subgroup for a specific purpose and within a specified time frame, when it considers it important for the

accomplishment of the specific outcomes, in particular regarding the EJNI information tools and the drafting of the EJNI biannual reports in accordance with article 13 of the EJNI Decision.

The role of the EJNI Secretariat is of the utmost importance for the effective functioning of the EJNI as such. The EJNI Secretariat shall have its own identity to be able not only to represent the EJNI in close consultation and coordination with the Member State which holds the Presidency of the Council and to fulfill its tasks according to the EJNI Decision, but also to be a visionary team, to identify new areas where the EJNI may be involved or focused on, taking advantage of its strategic position and transmitting to the national correspondents updated information concerning what is going on in the field of the international judicial cooperation. For those reasons, the EJNI Secretariat has to be equipped by all the means necessary in order to fulfill its important tasks, including human, financial and other material resources.

The EJNI Secretariat is located on the premises of Eurojust and the staff of the EJNI Secretariat is part of the staff of Eurojust. The EJNI Secretariat may draw on the administrative resources of Eurojust which are necessary for the performance of its tasks.<sup>42</sup> It should be able to fully use and benefit from all the means which are at the disposal of Eurojust, such as the legal, IT and financial support. This should allow for the effective functioning of the EJNI Secretariat, while at the same time keeping its low cost profile, which has been continuously considered as a very good example of cost-efficient administration. This should not preclude a possible need to increase the human or financial resources of the EJNI Secretariat subject to concrete and reasonably presented facts.

### III. The EJNI Meetings

#### 1. The Plenary meetings

The plenary meetings of the EJNI contact points shall take place at least three times a year, being organized by the Member State holding the Presidency of the Council in close cooperation with the Secretariat of the EJNI (Article 5(1)(3) of the EJNI Decision). The first plenary meeting held in Brussels or in The Hague will usually take place during February, the other two meetings will usually take place towards the end of the Presidency period in the Member State which holds the Presidency of the Council.

##### *1.1. The Plenary meetings of the EJNI contact points in the Member State holding the Presidency of the Council (Article 5(1)(3) of the EJNI Decision)*

At least three contact points per Member State shall be invited to the plenary meeting organized in the Member State holding the Presidency of the Council.<sup>43</sup> The meeting should consist of two parts:

- One part should be devoted to the matters related to the functioning of the EJNI, which have been discussed and prepared in advance by the national correspondents meeting (NCM), and submitted to the plenary meeting for discussion and adoption of final decisions. The role of the NCM in identifying matters for discussion at the plenary meeting is described below in the part related to the NCM.
- The other part should be left to the organising Member State who will decide on the theme of the conference (in general related to the practical and legal problems encountered by the Member States in the context of the judicial cooperation in criminal matters within the EU (Article 5(1)(b) of the EJNI Decision).

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<sup>42</sup> See Article 25a(1)(b) of the Council Decision on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime of the new Eurojust Decision.

<sup>43</sup> Plus delegates from candidate/accessing countries, as well as from Norway, Iceland, Liechtenstein and Switzerland, observers from other international judicial networks and other participants from third countries and international institutions invited by the Presidency on an “ad hoc” basis. Invited will be also Eurojust and the European Commission. According to the Council’s Rules of Procedure, the Council Secretariat participates “ex officio” in the EJNI meetings. See The EJNI plenary meetings under the rotating EU Presidency – Guidelines.

The EJNI contact points should exchange information and share best practice during the plenary meeting. Workshops may be used as a forum to enable a proper operational discussion on concrete subject matters (e. g. specific case examples or the theme of the conference).

## 1.2. The regular meetings of the EJNI contact points in Brussels / The Hague (Article 5(3) of the EJNI Decision)

The regular meeting of the EJNI contact points may be held on the premises of the Council in Brussels or on the premises of Eurojust in The Hague once a year (Article 5(3) of the EJNI Decision). Two EJNI contact points per Member State shall be invited to this meeting.

It is a specific, more limited, form of the plenary meeting which otherwise takes place at the end of the Presidency period and is organized in the Member State holding the Presidency of the Council, on the other hand providing greater number of participants than the NCM.

The regular meeting shall have different objectives and role in comparison to the plenary meetings organized in the Member State holding the Presidency of the Council and the NCM. It should be devoted to practical and organizational matters of the EJNI or new initiatives on the judicial cooperation in the EU. Its particular content shall be determined by the Member State holding the Presidency of the Council in close cooperation with the EJNI Secretariat, the Council Secretariat and the European Commission. It should be restricted to the EJNI contact points only, unless the Member State holding the Presidency of the Council decides otherwise. If the meeting is held in Brussels, the travel expenses cannot, as from 2010, be paid out of the Council's budget.<sup>44</sup>

## 2. Meetings of national correspondents (NCM) (Articles 2(3), 4(4), 6(1), 10 of the EJNI Decision)

The NCM should act as a steering committee of the EJNI. The objective of the NCM should be to ensure detailed examination of the relevant activities of the EJNI, discussion thereof and preparation of possible solutions, which are subsequently submitted to the plenary meetings of the EJNI contact points for discussion and adoption of final decisions. Tasks of the NCM, performed by the national correspondents in close cooperation with the EJNI Secretariat, should *inter alia* include:

- preparation and execution of the budget of the EJNI and other budgetary issues;
- internal policy of the EJNI, including administrative matters, documents or rules to be applied within the EJNI and relevant statistics on the workflow in each Member State;
- external policy of the EJNI, including public relations and the list of activities arranged or likely to take place in the field of the external relations of the EJNI towards partners in the third countries over a given period;
- preparation of strategic decisions concerning further developments of the IT tools within the EJNI website (the tool correspondents are responsible for the technical preparation), including the allocation of the financial resources;
- providing feedback from the EJNI contact points and up-to-date information on the main issues of concern from the national practitioners;
- providing feedback on the implementation of the Council Decision on the EJNI in the Member States; and
- preparation, elaboration and implementation of possible Action plans on the new and ongoing projects of the EJNI.

Should the NCM consider it appropriate, it may on the request of the EJNI Secretariat or any Member State on an *ad hoc* basis, establish a sub-group for a specific purpose and within a specified time frame.

According to the EJNI Decision, the NCM shall take place on an *ad hoc* basis, at least once a year (Article 6(1) of the EJNI Decision). Taking into account the challenges of the EJNI and the foreseen role of the NCM, the NCM should

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<sup>44</sup> With regard to the adoption of the EJNI Decision, the EJNI meetings in Brussels shall not be considered as the meetings of the Council working party anymore and hence the travel expenses cannot be paid out of the Council's budget.



be held regularly twice a year (usually in October and March/April) in order to examine the relevant activities of the EJNI and prepare the plenary meetings organized in the Member State which holds the Presidency of the Council at the end of the Presidency period.

The NCM should take place on the premises of Eurojust in The Hague and should be prepared and chaired by the national correspondent of the Member State which holds the Presidency of the Council, with the support and close cooperation of the EJNI Secretariat (Article 6(1) of the EJNI Decision).

Each Member State shall be represented in the NCM by its national correspondent (Article 6(1) of the EJNI Decision). The contact point of the European Commission shall also be invited to the NCM (Article 2(7) of the EJNI Decision). Travel and accommodation expenses of the national correspondents (one representative per Member State) are reimbursed from the EJNI budget. Whether a participation of a second EJNI contact point for each Member State (without the possibility of reimbursement of the costs) is also allowed, should be determined on a case-by-case basis by the Member State which holds the Presidency of the Council. It should be borne in mind that one of the main advantages of the NCM is its format as a small and effective group.

### **3. Meetings of tool correspondents (Articles 2(4), 4(5), 6(2), 7, 8 of the EJNI Decision)**

The meetings of tool correspondents shall take place at least once a year (Article 6(2) of the EJNI Decision). The tool correspondents meetings should take place on the premises of Eurojust in The Hague and should be prepared and chaired by the tool correspondent of the Member State which holds the Presidency of the Council, with the support and close cooperation of the EJNI Secretariat (in particular the EJNI webmaster). Tasks of the tool correspondents should *inter alia* include:

- ensuring that the information referred to in Article 7 of the EJNI Decision is provided and updated in accordance with Article 8 of the EJNI Decision (Article 4(5) of the EJNI Decision);
- discussion on the new EJNI information tools and further development of the existing EJNI information tools;
- discussion on the technical details concerning the EJNI website;
- assessment of the state of play of questionnaires distributed within the EJNI;
- training issues relating to the handling of the EJNI information tools.

### **IV. Budgetary matters and time frame for the preparation, adoption and execution of the EJNI budget**

According to the EJNI Decision, in order for the European Judicial Network to be able to carry out its tasks, the budget of Eurojust shall contain a specific part related to the activities of the Secretariat of the EJNI (Article 11 of the EJNI Decision).

In accordance with the Eurojust Decision, the EJNI shall be informed on the parts related to the activity of its Secretariat "in due time before the forwarding of the estimate to the Commission" (Article 35 paragraph 1 b).

In order to ensure an effective consultation of the Network and an active involvement of the EJNI at an early stage in the process of preparation of the part of the Eurojust budget related to the activity of its Secretariat, the following steps should be taken on an annual basis:

By October:

- the EJNI Secretariat presents the initial draft budget of the EJNI for two years in advance in the NCM;
- the EJNI Secretariat informs about the execution of the budget in the course of the budgetary period for which the budget has been adopted in the NCM;
- after the October NCM, the EJNI Secretariat submits to Eurojust College their proposal pre-agreed in the NCM for the forthcoming year;

- the EJNI (EJNI Presidency and Secretariat) attends Eurojust College plenary to discuss their budget proposal for the forthcoming year.

Subsequently, **the EJNI plenary meeting at the end of the calendar year** agrees on:

- the draft of the EJNI budget for two years in advance;
- the draft of the EJNI budget for the next year in accordance with Eurojust College's approval<sup>45</sup>, and;
- the execution of the budget in the course of the budgetary period for which the budget has been adopted.

An official notification from the College of Eurojust is given to the EJNI Secretariat about their adopted budget.

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In March:

The European Commission gives feedback to the Eurojust's draft budget for the forthcoming year and consequently to EJNI budget (lines).

There may be a short turnout time between receiving feedback from the European Commission and the deadline for submitting the adjusted budget. This may mean that the EJNI may be required to execute cuts at short notice. Should these cuts occur, the EJNI Secretariat, in cooperation with the Budget and finance unit of Eurojust will redraft an adjusted budget with indications of key items for the execution of EJNI activities where cuts are not desirable.

Once the EJNI budget is finally approved by the European Commission through Eurojust's budget, the EJNI Secretariat will inform the national correspondents accordingly.

At **the March/April NCM** and **the EJNI plenary meeting in the middle of the calendar year** the EJNI Secretariat informs about the interim execution of the budget in the course of the budgetary period for which the budget has been adopted.

Should the EJNI Secretariat consider it necessary to reallocate expenditures between the budget lines within the already approved budget during the course of the budgetary period for which the budget has been adopted, it may do so solely up to a maximum of 1% of the total EJNI budget and on condition that the transfer does not lead to the full cancellation of a project for which the financial resources have been allocated. For reallocation of higher sums or reallocation resulting from the full cancellation of a project, approval of the NCM has to be secured before any reallocation is made. Decision on such reallocation shall be adopted by a simple majority of the national correspondents, who may communicate their decision by email.

Where approval has been sought by email, the national correspondents shall have a reaction period, according to the EJNI budget cycle constraints, in which they assess on such reallocation. After this time-limit, reallocation shall be deemed to have been approved if majority of the national correspondents has agreed or remained silent.

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<sup>45</sup> Due to the fact that the Eurojust college approved the EJNI budget lines in mid December and due to the fact that the European parliament approves the Eurojust budget every year in the middle/end of December, the EJNI plenary meeting at the end of the calendar year may agree on the EJNI budget forecasts only in the form of a draft.