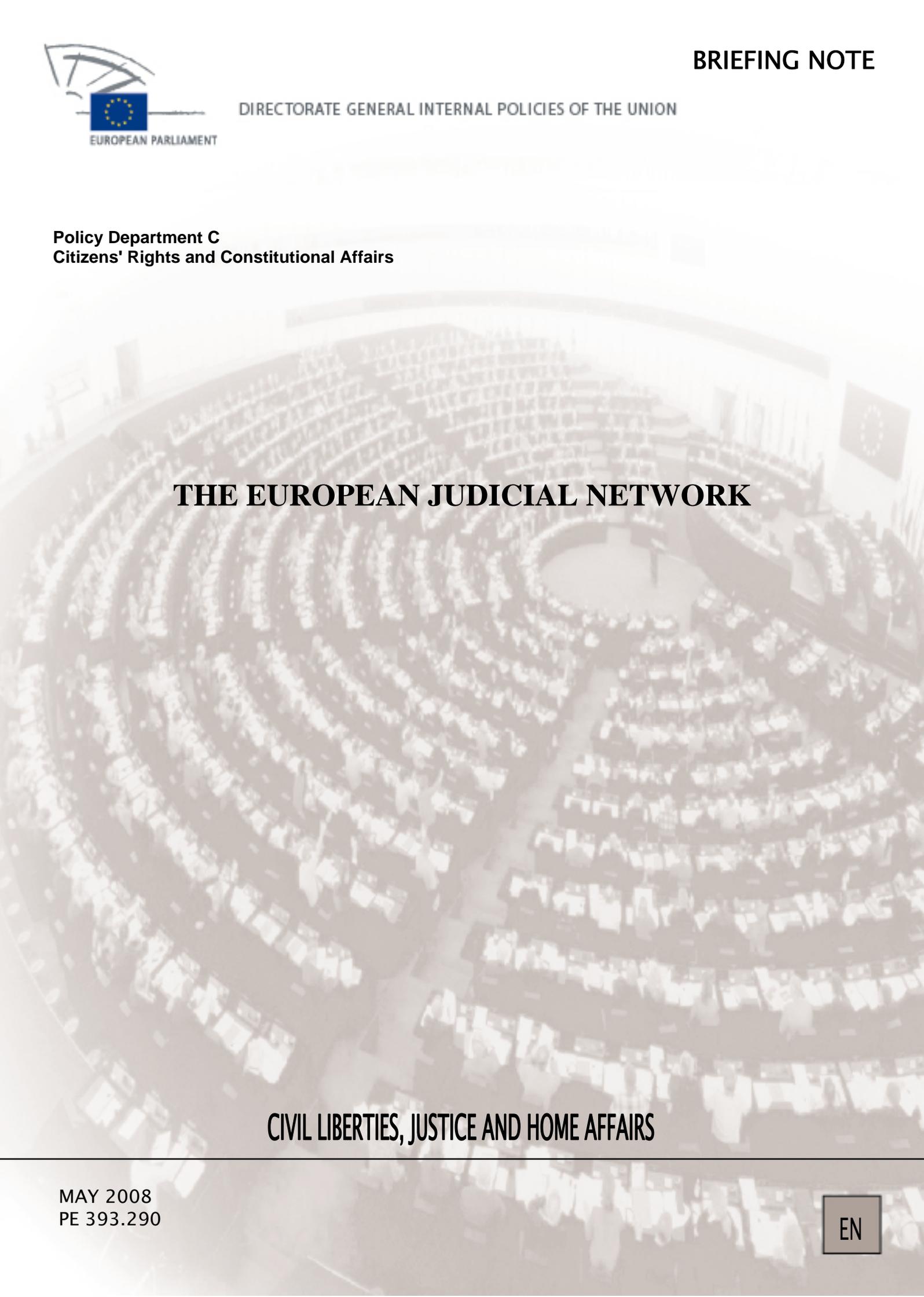


Policy Department C
Citizens' Rights and Constitutional Affairs



THE EUROPEAN JUDICIAL NETWORK

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS



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**Directorate-General Internal Policies
Policy Department C
Citizens Rights and Constitutional Affairs**

THE EUROPEAN JUDICIAL NETWORK

BRIEFING NOTE

Abstract:

The draft Council Decision on the European Judicial Network reflects to the highest extent the need for a new legal basis, a strengthening of the Network, an improvement of its operation and a new relationship with Eurojust. The draft confirms the practice of the Network and can be considered as a modern and effective tool for 21st century. However, certain areas will require further analysis and possible amendments to the text. In almost all areas the draft Decision accurately reflects the needs of the EJM as formulated in numerous documents of the Network in recent years. To a certain extent it also addresses the issues formulated by the Commission in its Communication on this matter of October 2007. The new legal instrument, if adopted, will facilitate the role of the EJM and its assistance to competent judicial authorities of the Member States. It also takes into account the new development in the field of judicial cooperation in the European Union based on the principle of mutual recognition. The draft also aims to resolve the issue concerning the relationship between the EJM and Eurojust. In this area the draft could be further improved in order to achieve a better exchange of information and complementarity of the work of the two entities. Cooperation between them should be strengthened and based on a principle of privileged and strategic partnership. The draft Decision will help to improve judicial cooperation in criminal matters, to increase mutual trust between the judicial authorities of the Member States and to promote the principle of mutual recognition as the cornerstone of judicial cooperation in criminal matters. Thus, it will help to strengthen the area of freedom, security and justice.

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BRIEFING NOTE

THE EUROPEAN JUDICIAL NETWORK

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I. Introduction:

Article K.3 of the Treaty on the European Union was taken as the legal basis for the creation of the European Judicial Network (hereinafter referred to as “EJN”). It was set up by the Joint Action (98/428/JHA) of 29 June 1998 on the creation of a European Judicial Network (OJ L 191 of 7.7. 1998). Various networks existed at the time of its creation in the area of international judicial cooperation in criminal matters, in particular the contact points within the operation of the Committee of the experts on the operation of conventions in the field of criminal law (PC-OC) in the Council of Europe. The list of contact points was available to the members of the Committee. Comparing the role of the PC-OC and the role of the EJN, major differences should be recognized. One of the tasks of the PC-OC is also the preparation of the texts of the international binding or non-binding instruments. Before the EJN was established in the European Union, the 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 EU was approved.

The creation of the EJN was a response to recommendation No. 21 of the Action Plan to Combat Organized Crime, which was approved by the European Council on 17 June 1997. Nevertheless the EJN was never restricted to cooperation only in the area of organized crime. Its role was in particular focused on mutual legal assistance. It aimed to provide assistance to all the competent authorities of the Member States in cases of international judicial cooperation. In practice it took advantage of networking – it brought together experts in particular fields from Member States and provided them with an opportunity to meet each other face to face. Knowing a person from another state helped in providing assistance in cases of international cooperation. Assistance between experts of Member States unbeknown to each other did not take place. The flexible, dynamic, horizontal and informal structures were another crucial element for the proper functioning of the EJN. The EJN did not aim to change the national legal systems or the organisation of judicial authorities of Member States. While keeping the national structures untouched and respecting the national laws and practices, it created a means for a significant improvement of international cooperation in the European Union. By doing their daily work, the contact points of the EJN succeeded in increasing the knowledge of the legal systems of the Member States and in building mutual trust between the authorities of Member States. It also allowed for a better understanding of the legal systems of candidate countries and third countries as well.

As regards the internal structures of the EJN the setting up of the EJN secretariat in the second half of 2003 contributed to a better organization of its work.

While the Joint Action only addressed cooperation between contact points of the Member States of the European Union, a closer co-operation was needed with the competent authorities of candidate countries. Therefore it was necessary to find appropriate mechanisms for cooperation. The candidate countries nominated contact points for international judicial

cooperation and the list of these contact points was distributed via the EJM secretariat to contact points of the EU Member States. This procedure allowed for the avoidance of substantial problems relating to cooperation after the accession of 10 states to the European Union on 1 May 2004. The recent enlargements of the European Union in 2004 and 2007 also increased the need for cooperation between judicial authorities.

The elaboration and updating of technical tools was added to the assistance provided on a daily basis by contact points of the EJM to judicial authorities of Member States.

The EJM is working very well. A monitoring mechanism was established and introduced by Article 12 of the Joint Action which obliges the Council, upon proposal from the Presidency, to carry out an assessment of the work of the EJM every three years based on the EJM report. These reports are also used by the EJM itself to improve its operation.

II. New challenges

II.1 Setting up of Eurojust

The setting up of Eurojust did not change the role and the functioning of the EJM to a large extent. However, the distribution of tasks among the EJM and Eurojust became a key issue and for several years was one of the tasks of both the EJM and Eurojust. The 12th plenary meeting of the EJM, which took place in Murcia, Spain in 2002, addressed for the first time the issue of a relationship between the two entities. The draft guidelines for cooperation between EJM and Eurojust considered the necessity to maintain privileged partnership. During this meeting of the EJM plenary the informal Troika of the EJM was created to act “as an interface with the EU institutions and to act as an interlocutor between the EJM and Eurojust. The so called “Informal Working Group”, consisting of one representative of each Member State, was also established on that occasion in order to assist the informal Troika in dealing with both budgetary questions and substantive matters relating to Eurojust”. The need to establish the informal Troika was also a result of the Rules of Procedure of Eurojust (O.J. C 286, 22.11.2002). After the meeting in Murcia the issue of relations between Eurojust and the EJM remained on the agenda of the EJM meetings. The guidelines referred to above were adopted on the occasion of a 13th EJM plenary meeting in Aarhus, Denmark in December 2002.

II.2 EJM tools for the improvement of judicial cooperation among Member States

Over the years the EJM elaborated various tools in order to avoid misunderstandings in practice and to make the cooperation speedier and more efficient. The EJM website (<http://www.ejm-crimjust.europa.eu>) was launched in 2004. Since then, its content has been improved significantly. It is continuously updated and new tools are added in order to meet the needs of practitioners.

The EJM website contains in particular the following tools:

a) Mutual legal assistance

1. Fisches Belges

The so called Fisches Belges provides information on all possible measures in the area of mutual legal assistance in the Member States of the European Union. A competent authority can select information regarding a particular measure, and a Member State from the list of options.

2. Solon glossary

The Solon glossary was elaborated in order to overcome linguistic difficulties as regards legal terminology. The glossary contains a number of terms (in different official languages of the European Union) used in the field of criminal law and cooperation in criminal matters.

3. The Atlas

The Atlas allows for the identification of the locally competent authority that can receive a request for mutual legal assistance. It can also serve as a fast and efficient channel for the direct transmission of requests.

4. Compendium

The Compendium is the most recent tool of the EJM website and provides excellent assistance to judges and prosecutors of Member States by giving them step-by-step instructions to draft rogatory letters in all official languages of the European Union, as well as Norwegian and Icelandic (25 languages in total).

b) EAW Atlas

The EAW Atlas was developed in order to react to the needs of practitioners related to the first instruments implementing the principle of mutual recognition in the field of cooperation in criminal matters. It provides contact details of receiving and executing authorities and other competent authorities, as well as information on time limits for sending the EAW and language requirements.

c) Forms

The EJM website contains various forms used in the field of international cooperation in criminal matters in different official languages.

d) Contact Points

The list of contact points of Member States and their contact details is accessible upon entry of a username and password.

The creation of a secure telecommunications network was already foreseen in the Joint Action. Although projects and plans existed to put such a network in place, the secure telecommunications network was not established until recently. The secure communication network is mentioned not only in the Joint Action, but also in Article 10 para 2 of the Framework Decision on the EAW as to the communication tool.

II.3 New legal instruments

The Tampere Conclusions adopted at the European Council summit on 15th and 16th October 1999, the Hague Programme: strengthening freedom, security and justice in the European Union (2005/C 53/01), the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (doc. 9778/2/05 JAI 2007) and the introduction of the principle of mutual recognition of judicial decisions into the reality of the functioning of cooperation in criminal matters in the European Union were significant challenges for the EJM. The need to assist to national authorities in applying new instruments has increased.

The Council Framework Decision 2002/584/JHA of 13th June 2002 on the European Arrest Warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002), which was the first legal instrument introducing the principle of mutual recognition in reality, has recognised the role of the EJM in surrender proceedings. Article 10 paras 1 and 2 of the Framework Decision provides the following:

*“(1) If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network, in order to obtain that information from the executing Member State.
(2) If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.”*

The same approach can be found in Article 4 para 3 of the Council Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003), which reads as follows:

“(3) If the competent judicial authority for execution is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the information from the executing State.”

Article 4 para 5 of the Council Framework Decision (2005/214/JHA) of 24th February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76 of 22.3.2005) contains a similar provision:

“(5) If the competent authority in the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain information from the executing State.”

Article 4 para 4 of the Council Framework Decision (2006/783/JHA) of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328 of 24. 11. 2006) regulates the role of the EJM in a similar way:

“(4) If the authority competent to execute the confiscation order is not known to the competent authority in the issuing State, the latter shall make all necessary enquiries, including via the contact points of the European Judicial Network, in order to obtain the information from the executing State.”

Article 5 para 4 of the draft Council Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (doc. 5602/08 COPEN 12) states the following:

“(4) If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA, in order to obtain the information from the executing State. “

Article 6 para 6 of the draft Council Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (doc. 6836/08 COPEN 35) reads as follows:

“(6) If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA, in order to obtain the information from the executing State”.

Finally, Article 7 paras 3 and 4 of the draft Council Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters (doc. 13076/07 COPEN 132) contains a provision similar to the regulation of the role of the EJM in the FD on the European Arrest Warrant:

“(3) If the issuing authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

(4) If the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the information from the executing State.”

The Treaty of Lisbon will provide a basis for historical changes in the structures of the pillars and communitarisation of judicial cooperation in criminal matters. More cooperation will be needed, more responsibilities will be given to judicial authorities of the Member States, and more requests made by judicial authorities may be addressed to the EJM contact points. The EJM is reflected in Article 69 H para 1 c) of the Reform Treaty, which provides for a close cooperation between EJM and Eurojust.

III. EJM for 21st century

a) An internal need for changes

The Joint Action as a non-binding legal instrument served its purpose, but it does not seem to be an appropriate legal basis for the 21st century. The reasons are not purely legal, but also practical. The EJM proved its importance for judicial cooperation in criminal matters. It is highly recognised among the judicial authorities of the European Union. The Treaty contains a direct reference to the European Judicial Network in Article 31 para 2c. Further reflection of the role of the European Judicial Network is welcome and Article 34 para 2 c) of the Treaty on

the European Union, which provides for the adoption of the decision of the Council, should serve the purpose. It can be concluded that the increasing importance and recognition of the EJM both in the practice of judicial authorities and the legal instruments of the European Union, as well as some of the lacunas defined by the EJM itself, justify the updating of the legal basis for the operation of the EJM. Discussions on the future of the EJM took place during a number of plenary meetings of the EJM. A debate on the future structure and development of the EJM was commenced during the Luxembourg Presidency. At the 21st meeting of the EJM which took place in Luxembourg in June 2005 the plenary “reaffirmed the need to use the established informal structures (informal working group, informal Troika, “coordinating contact points”) of the network.” Discussions were resumed during the plenary meeting in Graz in June 2006. In addition, “A seminar with 2020 vision: The future of Eurojust and the European Judicial Network” was organised in September 2006 in Vienna. The report from the seminar can be found in the document 14123/06 Eurojust 48 EJM 24 COPEN 108. The EJM Vision Paper was approved by the 25th EJM plenary in Rovaniemi, Finland in December 2006 (doc. 16444/06 EJM 28). Both documents provided an adequate basis for the future development of the EJM and also for the relations between EJM and Eurojust. The following ideas for improvement should be highlighted:

1. Given the complexity of the work of the contact points of the EJM, it was necessary to consider the common guidelines for the selection of the contact points in the Member States. Particular attention should be given to the language skills of contact points, including training in this field. Contact points should have sufficient powers at the national level to perform their duties. They should have sufficient resources to do so. The contact points should gather information on best practices and share such information with judicial authorities.
2. It was concluded that three regular meetings per year are sufficient, although the regular meetings of the contact points at national level are feasible. The promotion of the regional meetings of contact points should be also necessary. It was concluded that one of the contact points should be appointed as a coordinating contact point. One of the tasks of this coordinator should be to submit an annual report on the actions of the contact points, on which basis the overall EJM report should be drafted. The Informal Working Party of the EJM should elaborate the standardised evaluation form.
3. The EJM budget forms a part of the budget of Eurojust. Consideration should be given to the question as to whether the EJM budget should be a part of the Eurojust budget or a separate one. In the first case a mandatory consultation procedure should exist in the Eurojust system.
4. The EJM secretariat forms a part of the Eurojust secretariat. The need for assistance by the seconded national experts in the EJM secretariat was formulated. A number of different networks have been created in the meantime. Therefore, two options were mentioned – to create an overarching structure or to develop a smart linking-interface between the EJM and other relevant networks in the field. The role of the EJM should also be increased in the process of preparation of new legal instruments.
5. A need to strengthen the flexibility of the network was also highlighted.
6. A complementarity of the work between Eurojust and EJM was considered important. Eurojust and EJM should work as a team.
7. The need for tools for practitioners.
8. The establishment of informal links with third countries and structures outside of the EU.

Further inputs for the future work can also be found in the Evaluation Report of the European Judicial Network 2005-2007 (doc. 16242/07 EJM 41 COPEN 175), which contains statistical

data. In 2005 the EJM assisted prosecutors and judges in 1343 cases, in 2006 the number of cases increased to 1371 and last year the EJM assisted in 1569 cases. The assistance of EJM is provided at low cost.

The report also indicates the main areas in which the EJM contact points were involved. These include the provision of information on legislative aspects, interventions as a facilitator of video conferences, urgent information on the previous criminal situation, urgent assistance in the execution of EAWs, and other cases.

b) External need for changes

The improvement of the work of the EJM was also reflected in the “Communication from the Commission to the Council and the European Parliament on the role of Eurojust and the European Judicial Network in the fight against organized crime and terrorism in the European Union” (doc. COM (2007) 644 of 23.10.2007). The Communication was based on the Hague Programme, which invited the Council to consider the future development of Eurojust, on the basis of the Commission’s proposal. The Action Plan for the Hague Programme envisaged that the Commission should present a proposal on Eurojust. The Communication was discussed during the Lisbon seminar which took place on 29th – 30th October 2007. As regards the role of the EJM and Eurojust, the Commission is of the opinion that close cooperation between them is needed. This could be achieved by ensuring that each Member State designates one national coordinating contact person, who at the same time will act as Eurojust’s national correspondent. The contact person should send Eurojust all information regarding cross-border cases on the national territory.

IV. Current operation of the EJM and the improvement foreseen by a draft Council Decision (2008/C54/03)

On 7th January 2008 Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal submitted a proposal for a Council Decision on the European Judicial Network. The main ideas behind the text are to provide the EJM with a more up-to-date legal basis, to improve the EJM’s work, where appropriate, and to reflect the current situation and the future needs in a single binding legal instrument. The results of the EJM’s work from 1998 to 2008 show that there is no need for significant changes in the operation of the EJM. However, certain practices developed over the 10 years of the EJM’s existence should be confirmed in the legally binding instrument. The EJM shall continue working on the new legal basis.

a) Composition of the network

The EJM operates on the basis of contact points, which represent competent authorities of Member States. The numbers and the structures of the contact points vary from one state to another. The contact points of the EJM are selected from the authorities competent for international cooperation in criminal matters in compliance with the systems of their states. They should speak foreign languages. Currently one contact point per state performs the functions of the so called coordinating contact point, who is responsible for all the tasks as a contact point, and additionally for any budgetary issues and other important issues of the EJM. However, the role of the coordinating contact point was not foreseen in the Joint Action.

As compared to the current situation, the proposal for the Council Decision contains the following improvements in this field:

- 1) no reference to any particular categories of criminal offences
 - it confirms the development in the EJM; such an improvement of the legal basis is needed in order to allow the EJM to perform its tasks properly;
- 2) an obligation to appoint a national correspondent for the EJM (the proposal does not reflect the terminology contained in documents of the EJM, which uses the term “coordinating” contact point)
 - it confirms the current situation and such a proposal should be welcomed. It aims to better coordinate the action of the contact points. This proposal reflects the requirements contained in the EJM documents regarding the way to improve the functioning of the EJM
- 3) additional criteria are laid down for contact points – functions in relation to judicial cooperation in criminal matters;
- 4) a national correspondent should have the possibility to provide an opinion on any new contact point before his or her appointment
 - since it is important to maintain the informal nature of the EJM structures, such an issue could be addressed in a better way by the Member States themselves. However, this mechanism provided by the decision is purely optional.
- 5) a reference is made to the possibility for liaison magistrates to be linked to the secure telecommunications network if they perform tasks analogous to those of the contact points of the EJM;
- 6) the establishment of a Secretariat responsible for the administration of the network, in cooperation and in consultation with the Council Presidency. The possibility to represent the EJM in consultation with the Presidency is also foreseen;
 - this proposal addresses a particular question, namely whether the EJM, which is not a legal entity, can be represented by a Secretariat which lacks legal personality. The role of the Presidency should also be considered further.

b) Manner of operation of the network

The EJM provides assistance especially by establishing appropriate contact points, organising periodic meetings of the Member States’ representatives and providing up-to date background information, in particular by means of an appropriate telecommunications network. No changes are foreseen in this area.

c) Functions of contact points and national correspondents

The functioning of contact points over the last ten years has shown that there is no need for significant changes in the role of contact points. The role of contact points as intermediaries

with the task of facilitating judicial cooperation between Member States is important and necessary. Their role in the establishment of direct contact domestically and EU-wide is crucial. The contact points shall provide the competent authorities of their own country and contact points of other countries with legal and practical information in order to assist in the preparation of requests for judicial cooperation and improve judicial cooperation in general. The novelty of the proposal lies in the new obligations for contact points to organise training, in cooperation with European Judicial Network Training. The idea behind this proposal is an excellent one. The contact points have significant knowledge about international cooperation, applicable instruments and/or difficulties in this field, not to mention the means of overcoming such difficulties. Therefore, judges and prosecutors can benefit greatly from the exchange of information with contact points. However, the wording of the draft could be improved during negotiations in order to allow for some flexibility. The obligation on contact points to organise training should be replaced by an encouragement to involve themselves in training activities, in particular because judicial training in Member States is organised in a different way (by ministries of justice, judicial academies etc.). In other words, the contact points should be involved in training provided by authorised institutions. Further, the role of the national correspondent should be clarified. The draft Decision does not indicate more precisely the role of the national correspondent. Once the role of such a person is recognised in the EU instrument, the most important tasks of this person should be regulated in order to achieve their effective and uniform implementation. In addition to the tasks of the contact point, the main tasks should be:

- 1) the coordination of action between contact points of a particular Member State, where necessary
- 2) the coordination of responses to questionnaires
- 3) the preparation of opinions concerning the internal functioning of the network, budgetary issues and other important issues of the EJM.

There are other experts within the EJM who could be recognised by this draft decision, namely the experts who prepare the IT tools of the EJM. In some states these people are also contact points of the EJM. However, this is not the case in all Member States.

d) Organisation of the EJM's work

In addition to the daily work of the contact points as the representatives of their national authorities and to their ordinary work as contact points, the EJM meets three times a year (one meeting per Presidency and one meeting within the formal Council structures at the Council's premises). For plenary meetings organised in a Member State which holds the Presidency, up to three contact points are invited. There is no particular reason for limiting this number to two contact points as foreseen in the draft Decision. It is important to keep the current practice, since the plenary meetings provide a platform for practitioners to discuss problems, to exchange information on each other's legal systems and solutions, and to resolve cases of judicial cooperation. These meetings are also considered as an opportunity to approve the internal documents of the network. Currently the EJM also organises meetings of coordinating contact points and experts on IT tools of the EJM. A clear reference to these structures should be included in the instrument.

The provisions regulating various forms of meeting could be clarified further and possibly merged into one single Article. The encouragement of regional meetings of contact points as foreseen by the above mentioned documents of the EJM could be highlighted.

e) Content of the information disseminated within the EJM and the need to update

This part of the proposal recognises the important role of the EJM in elaborating the IT tools, which are not only available to contact points, but also to all judicial authorities. The EJM IT tools are transparent and (with the exception of the internal documents and the contact details of contact points) available to public. The proposal confirms the role of the EJM in the area of the European Arrest Warrant, where the Atlas was already established, but also provides a basis for the creation of similar tools in other areas of judicial cooperation.

The IT tools can be helpful and useful only if updated. The requirement to update was already mentioned in the Joint Action.

f) Telecommunications Tools

Although already mentioned in the Joint Action, the telecommunications tools have not yet been elaborated. Several projects were initiated in order to meet this goal. The new roles given to the contact points may justify the existence of such tools. However, it is also known that it is rare that the tasks of the EJM contact points require the exchange of personal or restricted data. From this point of view there is only a limited need for such telecommunication tools. Article 10 para 2 of the Framework Decision on the EAW presupposes the existence of such tools for the purpose of transmission of EAW. The wording of Article 10 para 1c) of the proposal seems to go too far, and to this extent may not be justified. The direct contacts between respective judicial or competent authorities are considered as a rule in the field of judicial cooperation. However, this could imply that all requests for judicial cooperation should be sent through the telecommunications tools of the EJM, which would be contrary to the main principle of direct contacts. Thus, the principle may not have been given due consideration. Alternatively, one could conclude that this is merely a drafting problem. In addition, there exists a new legal situation after the implementation of the concept of mutual recognition. In other words, it is not only requests for judicial cooperation that are transmitted. Rather, decisions themselves as well as decisions accompanied by certificates are increasingly sent between judicial authorities. Where appropriate, it would be feasible to allow for the use of the telecommunications tools also in such cases. The novelty of the provision of Article 10 also lies in the idea of connections between these tools and the Case Management System of Eurojust, and the use of these tools by others, e.g. by national correspondents.

The proposal does not regulate who will bear the expenses of such tools and to what extent.

g) Relationship between the European Judicial Network and Eurojust

The complementarity of the work of Eurojust and EJM is necessary. Eurojust should focus more on the complex cases of transnational organised crime, whereas EJM should focus on bilateral cases of international cooperation. A better exchange of information should be achieved and at the same time respect for fundamental rights has to be guaranteed. More coordination between national members of Eurojust and the contact points of EJM will be needed. The privileged and strategic partnership between EJM and Eurojust needs to be improved in order to enable them to properly assist authorities of Member States in transnational cases of judicial cooperation. The new regulation of the relationship between the EJM and Eurojust is crucial. Both Eurojust and the EJM tried to deal with the issue for many

years and this issue has to be solved by this legal instrument. The access of Eurojust to the centralised information of the EJM and to the secured communication network is established. This requirement is justified by practical needs. The obligation of the EJM contact points to Eurojust in any cases involving two Member States under the competence of Eurojust, in cases where conflicts of jurisdiction are likely to arise, or in cases of refusal of a request for judicial cooperation, including the refusal of a decision in cases of application of new framework decisions, seems to go beyond the practical needs. The contact points of the EJM usually do not have access to the complex information on the cases. The “owner” of the information is a particular competent judicial authority of the Member State dealing with the case. Therefore the EJM contact points will not be in a position to provide this information. Both the EJM and Eurojust should primarily assist the national authorities when requested. The EJM and Eurojust should keep each other constantly informed about the difficulties in performing their tasks. The extent of reporting as regulated by the proposal leads to a question of justification and proportionality of this particular requirement. It is beyond any doubt that the flow of information between the two entities should be increased. The extent of such an exchange of information should be analysed further. How would Eurojust use the information?

The EJM should keep its autonomous position. Therefore the clarification of the position of the EJM Secretariat in the text is justified. On the other hand, it should be clear that general budgetary and staff rules are applicable to the EJM Secretariat staff and its operation. Thus, it is probably unnecessary to refer to these issues in the new legal instrument.

h) Information and assessment

As regards the new Articles 12 and 15, it would be feasible to merge them. It should be noted that the role of certain bodies (as regulated in Article 12) is not necessarily addressed in an appropriate way. The administrative director of Eurojust is responsible for the staff and budget, but he or she is not responsible for the EJM’s activities. The Presidency should take any decisions on the basis of the authorisation of the Council. The role of the Presidency in Article 12 should be reconsidered. The reporting of the Commission on the activities of the EJM as well as the assessment of the operation of the EJM by the Council should be welcomed. The self-evaluation provided by the EJM and the reports of the EJM can be considered as an appropriate working method.

V. Conclusions

The draft Council Decision on the European Judicial Network reflects to the highest extent the need for a new legal basis, a strengthening of the Network, an improvement of its operation and a new relationship with Eurojust. The draft confirms the practice of the Network and can be considered as a modern and effective tool for 21st century. However, certain areas will require further analysis and possible amendments to the text. In almost all areas the draft Decision accurately reflects the needs of the EJM as formulated in numerous documents of the Network in recent years. To a certain extent it also addresses the issues formulated by the Commission in its Communication on this matter of October 2007. The new legal instrument, if adopted, will facilitate the role of the EJM and its assistance to competent judicial authorities of the Member States. It also takes into account the new development in the field of judicial cooperation in the European Union based on the principle of mutual recognition. The draft also aims to resolve the issue concerning the relationship

between the EJM and Eurojust. In this area the draft could be further improved in order to achieve a better exchange of information and complementarity of the work of the two entities. Cooperation between them should be strengthened and based on a principle of privileged and strategic partnership. The draft Decision will help to improve judicial cooperation in criminal matters, to increase mutual trust between the judicial authorities of the Member States and to promote the principle of mutual recognition as the cornerstone of judicial cooperation in criminal matters. Thus, it will help to strengthen the area of freedom, security and justice.