



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 26 January 2009 (19.02)
(OR. fr)**

5684/09

**EJN 6
COPEN 13**

NOTE

from : European Judicial Network
to : Delegations

Subject : Replies to the questionnaire on the evaluation of the tools for judicial cooperation
in criminal matters

Delegations will find attached the replies to the questionnaire on the evaluation of the tools for judicial cooperation in criminal matters.

**Replies to the questionnaire on the evaluation of the tools for
judicial cooperation in criminal matters**

The strengthening of judicial cooperation in criminal matters within the EU began with the improvement of the traditional mechanisms of cooperation, and in particular the adoption of the **Convention on Mutual Assistance of 29 May 2000, together with its Protocol of 16 October 2001 on the fight against money laundering and financial crime.**

Since the Tampere European Council, this strengthening has been focused on the development of the mutual recognition principle. The Heads of State and Government sought to make this principle "*the cornerstone of judicial cooperation*" within the EU, and it is on this basis that a **genuine European judicial area** has gradually been created.

New instruments to supplement or replace the traditional mechanisms have thus been created further to the mutual recognition principle:

- **The Framework Decision of 13 June 2002 on the European arrest warrant** and the surrender procedures between Member States,
- **The Framework Decision of 23 July 2003 on the execution of orders freezing property or evidence,**
- **The Framework Decision of 24 February 2005 on the mutual recognition of financial penalties,**
- **The Framework Decision of 6 October 2006 relating to the application of the principle of mutual recognition of confiscation orders.**

This seminar is intended to initiate discussion on the implementation of these instruments and whether they match the expectations of practitioners.

The mutual evaluation exercises have revealed difficulties in both understanding and implementing the instruments of judicial cooperation in criminal matters.

In July 2008 a questionnaire was sent to all European Judicial Network contact points (European Union Member States, associated States and candidate States).

16 States replied to the questionnaire.

The aim of the questionnaire was to assess the quality of the information received by national authorities on the various tools for judicial cooperation and the implementation of these instruments of mutual judicial assistance.

I have summarised the replies received on the basis of these two main themes:

Access to information

Implementation of the instruments of judicial cooperation

I. Access to information

Question 1. Quality of information

Overall, the amount of information provided is regarded as plentiful and sufficient.

As well as direct contacts with the EJM contact points, the Eurojust unit and the officials in the Member States' Justice Ministries responsible for mutual assistance in criminal matters, the information sources listed include the websites of the European Judicial Network, the Council of the European Union, the Council of Europe and the national Justice Ministries.

However, some Member States reported difficulties in gleaning information from the internet as it was scattered among several websites.

The usefulness and quality of guides to good practice, in particular the European Arrest Warrant handbook, are universally acknowledged.

The main problems encountered relate to mutual assistance practitioners' lack of knowledge of the legal and judicial systems of the other Member States and of the mechanisms of the new instruments for cooperation.

It would thus appear necessary to develop the different channels for transmitting information on mutual assistance.

A number of initiatives on dissemination of information have been developed in the Member States, particularly at the instigation of the EJM national contact points. For example, a discussion list has been set up in which all the regional contact points participate to exchange information on the use of judicial cooperation instruments, and there is a regular newsletter sent to prosecutors responsible for operational cooperation in criminal matters.

Question 2. Suggestions for improved access to information

The Member States unanimously consider that there must be significant improvements in training.

One of the focal points for discussion is the establishment of **common curricula**, involving prosecutors from every Member State, on improved understanding of the tools for judicial cooperation.

In addition, seminars could be organised within the European Union, themed by regional crime area or by subject (a specific criminal field). There could also be discussion on standardising legal language, on the creation of a glossary of equivalents in the main EU languages or on the organisation of training and traineeships in foreign languages for court prosecutors in border areas.

It would also be sensible and useful for all links to the most useful websites on cooperation in criminal matters to appear on the EJN website. And academic contributions to the documentary information on the EJN website, regarded as a mine of information, could lead to the establishment of formal or informal relations with universities.

The guide to drawing up international letters rogatory on the EJN website should be a permanent feature and further developed.

II. Implementation of the instruments of judicial cooperation

QUESTION 1 – THE INSTRUMENTS USED, IN ORDER OF FREQUENCY

The most frequently-used instruments of cooperation are, in order:

- the European Arrest Warrant,
- the conventions on mutual assistance in criminal matters, (Schengen, Convention of 29 May 2000, 1959 Council of Europe Convention),

- the 1995 and 1996 European Conventions on Extradition between the Member States of the European Union,
- the 1957 Council of Europe Convention on Extradition,
- the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders,
- the 1983 Convention on the Transfer of Sentenced Persons,
- the Framework Decision of 23 July 2003 on the execution of orders freezing property or evidence (unanimously cited as the least used instrument owing to its complexity).

Implementation of these various instruments is deemed to be relatively easy, the forms are generally regarded as clear and easy to understand, although some problems of interpretation were reported. Some Member States point out that European Arrest Warrant forms are not drawn up as they are supposed to be under the Framework Decision.

A large majority of Member States report hitches occurring when applying the provisions on freezing of property or evidence. It is clear that in most instances prosecutors still prefer to request the seizure and confiscation of assets by means of a simple request for assistance.

Member States regret that the procedure set up by the Framework Decision of 23 July 2003 concerns only confiscation of the proceeds of an offence or evidence of an offence, and does not authorise seizure of all the assets of the person being prosecuted, even where the relevant law provides for this additional further penalty.

There are difficulties with carrying out some specific requests for assistance, in particular the setting up of joint investigation teams or phone tapping, within useful operational deadlines.

There are also criticisms of the complexity of implementing the Framework Decision as regards application of the principle of mutual recognition of financial penalties and confiscation orders.

Question 2. Translation of requests for assistance

There have been problems of semantics in translations of requests for assistance or European Arrest Warrants, sometimes making it impossible for the court seised to determine national legal equivalents for offences in foreign applications.

Some Member States report that the quality of translations is still patchy and the time it takes to obtain translations is frequently too long.

It is therefore proposed that a **central translation service** be set up for use by all Member States' courts, with the guarantee of translations being done swiftly by professionals with a thorough understanding of the Member States' different legal systems.

Question 3. Contacts with the competent authorities of other Member States

Contacts with the competent authorities of other Member States are regarded as fairly easy given that there are the EJM contact points, Eurojust, liaison magistrates and internal security liaison officers and attachés.

There are also direct contacts, but here the problem of the language barrier arises. E-mail is thus preferred to the telephone. It is pointed out that the contact details on the EJM website are generally correct.

Cross-border contacts in the form of regular meetings are regarded as easier.

Lastly, it is emphasised that exchanges in the EJM are more efficient when the contact points are spread geographically in all the courts of a country, rather than when they are within centralised national structures.

Question 4. The role of the EJN and Eurojust in contacts between judicial authorities

The EJN contact points are most frequently requested:

- to settle procedural problems,
- to give the reasons for a delay in carrying out a request,
- to confirm the location of a witness, victim or suspect,
- for an opinion on the chances of success of a specific request or for the name of the person who will be responsible for dealing with the request.

Calling on the services of EJN members helps to speed up the execution of requests for assistance, although the reaction times of the contact points can vary.

The assistance of Eurojust is also frequently sought in cases involving several Member States which are complicated either by the nature of the offence or because the persons sought are in several countries.

The Member States unanimously consider Eurojust very effective in coordinating:

- investigations which are to be conducted in several EU Member States, in particular through coordination meetings between judicial and police authorities involved in the same proceedings,
- prosecutions which are to involve a number of countries working on the same transnational criminal group.

Question 5. Methods of transmission used to implement instruments of cooperation

The methods of transmission used are post, fax and e-mail.

In most cases the competent foreign authority is identified by consulting the EJN atlas, through liaison magistrates or the Eurojust unit.

Member States are unanimous in considering that immediate, direct methods of transmission such as fax and e-mail should be used.

It is very much hoped that a **secure network** can be set up.

Question 6. Understanding requests for cooperation

Generally speaking, there do not seem to have been any problems in understanding requests for cooperation.

However, some Member States report difficulty in carrying out requests which may require the application of foreign procedural rules with which their national courts are not familiar.

It is therefore asked that requests be set out clearly and explicitly, describing the alleged offence in relation to the facts and what action is to be taken.

In the case of requests for interviews, given the procedural rules to be applied, it is essential that the status of the person (witness, suspect) to be interviewed is clearly stated in the request for assistance.

However, discrepancies have been noted in the way in which countries carry out requests for assistance; some Member States ask for more than is laid down in the EU instruments, while others fail to carry out requests in full.

Also, too many requests are returned without the procedural support originally transmitted, necessitating a further request for assistance.

It is also seen as unfortunate that there is practically never any feedback on action taken on alleged offences.

In the case of European Arrest Warrants, it is often very difficult to find out how long a person has already been detained pending surrender for extradition.

On the other hand, it is noted that contacts prior to transmission considerably increase the speed at which requests for assistance are dealt with.

Question 7. Suggestions for ways to improve the efficiency of judicial cooperation in criminal matters

Firstly, all Member States agree that the efficiency of judicial cooperation depends first and foremost on the uniform, unrestricted implementation by the Member States of existing agreements and instruments.

It is also suggested that:

- standard format requests for assistance be created and generally used on the basis of the principle of mutual recognition,
- a guide to good practice in executing requests for assistance be drawn up,

- there be an opportunity for recourse to the EJN Secretariat where requests to contact points are unanswered,
- use of videoconferencing and teleconferencing be developed,
- work on the creation of joint investigation teams be developed and investigation methods standardised in order to rationalise the work of investigators.

Finally, the replies on the qualitative aspects of instruments for cooperation were a little less detailed than those on matters concerning the practical aspects of mutual assistance and access to information, leading to the conclusion that certain instruments are not well understood and little used.

All these points, in particular the many and varied suggestions made by practitioners, will, I hope, serve as a very interesting working basis for this afternoon's workshops.

