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NOTE

From : Belgian Presidency and the Portuguese Delegation
To : European Judicial Network

Delegations will please find enclosed the draft report that was discussed at the meeting of the EJN on 26-28 November 2001.

European Judicial Network



ACTIVITY REPORT DRAFT 1998 - 2001



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Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty of the European Union, on the creation of a European Judicial Network

PREFACE

The European Judicial Network was created by the Joint Action of the Council of the European Union of 29 June 1998. Despite its relatively recent implementation, it is completely operational today, proven by the numerous requests for assistance and intervention received since its creation and executed with success.

It has thus become one of the pillars of judicial mutual assistance in Europe. The key to its success lies unquestionably in its flexible-horizontal structure, allowing rapid contacts, conferring real additional value to the system of mutual assistance which benefits the local judicial authorities.

This report accounts for the first three years of activity of the Network.

All the contact points of the member States as well as the general Secretariat of the Council have participated in the work on this report while the co-ordination and editorial function were provided by a partnership between Belgium and Portugal.

The activity report essentially has four objectives:

The first comes from the concern to inform the reader of the achievements of the European Judicial Network through the daily activities of the contact points.

It is also important to demonstrate that the achievements have been efficient.

Then we wish to tackle the future orientation of the activities of the Network in order to enable it to situate itself better in the relation to the other players in the field of international co-operation.

Finally it is necessary to evaluate the Network as provided by article 12 of the joint action which stipulates that: « (...) *the Council then proceeds every three years, at the initiative of the presidency, to the evaluation of the functioning of the European Judicial Network, on the basis of a report established by the Network (...)* ».

To fulfil these objectives, we have subdivided the report in six parts.

The first is dedicated to the legal foundations of the Network and also to the legal functions that have been assigned to it. Not only the Joint Action of 1998 will be considered, but also the other texts, Treaties, Joint Actions, Action Plans and

Recommendations that mention the European Judicial Network and attribute particular functions to it.

The second section will deal with the structure of the European Judicial Network whose originality lies in its entirely horizontal structure, with a composition reflecting the particularities of each Member State.

The instruments of the Network are mentioned in the third section which presents the list of contact points, the legal instruments, the fiches belges, the cover note and the recently finalised European judicial Atlas.

Next part will be devoted to the periodic meetings which have taken place in Brussels and in the various Member States who have held the presidency of the European Union since 1998. This part will describe the topics discussed, underlining the often operational character of these meetings and re-iterating the conclusions adopted at these meetings.

The last chapter but one will deal with the heart of the activities of the European Judicial Network. By the answers given to a questionnaire that has been communicated to them for this purpose, the contact points have described their operational activities, given examples of co-operation and detailed the problems with which they are confronted during the execution of their functions.

The report ends with conclusions and recommendations aimed at reinforcing the structure of the Network and suggesting improvements in its functioning.

Finally we wish to take this opportunity, not only to thank all those who have contributed to the preparation of this document, but also to express our gratitude to all those, practitioners or political officials, who support and encourage the activities of the European Judicial Network and come within the scope of our common will to reinforce the international fight against any form of serious and organised criminality.

In the name of the contact points of the European Judicial Network:

Fatima Adélia MARTINS – Serge BRAMMERTZ

Section 1. Legal Basis

This part of the report intends to give an overview of the legal texts that mention the European Judicial Network, whether it concerns actions to develop or progresses to make.

Only the extracts of the texts are reproduced, exception made to the text of the Joint Action that creates the European Judicial Network that is integrally reproduced, as an annex of this report, for it constitutes the fundament of its existence.

One final note just to underline that the texts are presented by chronological order.

§ 1. JOINT ACTION of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a European Judicial Network (OJL 191/4, 07/07/1998 ; 98/428/JHA)

-complete version of this text attached to the present report-

§ 2. JOINT ACTION of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters (OJ L 191, 07/07/1998; 98/427/JAI)

This text establishes the good practice existent in the 15 Member States of the European Union, with the aim of improving, in the practical plan, mutual legal assistance in criminal matters, namely in what concerns the serious kinds of crime.

“Article 3 European Judicial Network

*The General Secretariat of the Council shall make the Statements referred to in Article 1(1) available to the **European Judicial Network** as soon as they are deposited. The **Network** shall take stock of the Statements in the light of its own competencies and experience, and may make any proposals it considers appropriate with a view to improving legal assistance in criminal matters, including finding common methods for evaluation of performance.”*

§ 3. ACTION PLAN of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of

freedom, security and justice. Text adopted by the Justice and Home Affairs Council of 3rd December 1998 (Doc.n.13844/98)

This is an Action Plan presented by the Council and the European Commission following the European Council of Cardiff with the aim of fulfilling the objectives established by the Amsterdam Treaty.

“F. STRUCTURE OF WORK IN THE FIELD OF JUSTICE AND HOME AFFAIRS

23. The new provisions of the Amsterdam Treaty as well as its Protocol integrating the Schengen acquis into the framework of the European Union, with their emphatically cross-pillar characteristic, will need to be reflected also in the working structures of the Council. It was clearly not the intention of the Treaty to compartmentalise the way in which the different components of this area of freedom, security and justice are handled as between the structures of the European Community on the one hand and the European Union on the other, particularly since in both cases the responsibility for taking the objective forward will fall irrespective whether they are 1st or 3rd pillar competence, to the Council in its composition of Ministers of Justice and Home Affairs. It will therefore be essential to establish before the entry into force of the treaty of Amsterdam for this purpose appropriate arrangements which both respect the provisions of the Treaty and facilitate the co-ordinating role of the Committee of Permanent Representatives.

It will also be important to establish the appropriate arrangement to cover the particular case of the Schengen Information System in order to ensure smooth transition, with no reduction in the system's efficiency. A discussion could, also, be started in the medium term on the prospects for developing SIS II after it has been expanded.

Work on the necessary structural arrangements, including reflections on the need for further coordination in the fields of migration and asylum as well as in the area of civil law by Committees composed of high officials is already under way within the K4 Committee acting on the basis of art. K4 par.1. of the TEU.

*This reform of the working structures should be based on the following principles: rationalisation and simplification (an appropriate number of working Parties to meet the objectives laid down in the Treaty, no duplication), specialisation and responsibility (Working Parties to consist of experts having an adequate degree of responsibility in their Member States, appropriate allowance for operational structures - Europol, **European judicial network**), continuity (permanence of Working Parties to reflect the permanent objectives of the Treaty, mechanism for following-up all the instruments adopted), transparency (clarity of terms of reference and of relations between Working Parties) and flexibility (possibility of extremely*

short-term adjustment of structures to deal with new problems requiring urgent specific handling).

The entry into force of the Treaty of Amsterdam also raises a number of legal questions resulting from the transition of certain policies from the third pillar to the first pillar as well as from the transition to new forms of acts and procedures in the third pillar. This concerns, for example, the question of how to handle conventions in the field to be transferred to Community competence which will be signed but not yet ratified at the time of entry into force of the Treaty of Amsterdam.

(...)

II. Judicial cooperation in criminal matters

45. The following measures should be taken within two years after the entry into force of the Treaty:

*a) Implement effectively and, where appropriate, further develop the **European judicial network***

*The effective implementation of the **European judicial network** is a priority matter. It will bring about a practical improvement in cooperation and needs to be equipped with modern tools to enable efficient cooperation. Consideration ought to be given now to making it more operational.”*

§ 4. JOINT ACTION of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ 09/12/98; 98/699/JAI)

The aim of this Joint Action is to improve the means to combat organised crime, by a more effective co-operation between Member States in the field of identification, tracing, freezing, seizing and confiscation of instrumentalities and proceeds from crime, through the implementation of compatible practices between them.

“Article 2

- 1. Within the framework of the functioning of the **European Judicial Network**, each Member State shall prepare a user-friendly guide, including information about where to obtain advice, setting out the assistance it can provide in identifying, tracing, freezing or seizing and confiscating instrumentalities and the proceeds from crime. The guide shall also include any important restrictions on such assistance and the information which requesting States should supply.*
- 2. The General Secretariat of the Council of the European Union shall be sent the guides referred to in paragraph 1 and shall translate them into the official languages of the institutions of the European Community. The General Secretariat shall distribute the guides to Member States, the **European Judicial Network** and Europol.*
- 3. Each Member State shall ensure that the guide referred to in paragraph 1 is kept up-to-date and that any changes are sent to the General Secretariat of the Council for translation and distribution in accordance with paragraph 2.”*

§ 5. TAMPERE EUROPEAN COUNCIL – 15 and 16 October 1999

The European Council held a special meeting on the creation of an European area of freedom, security and justice within the European Union, by making full use of the possibilities offered by the Amsterdam Treaty.

*“46. To reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. EUROJUST should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of co-operating closely with the **European Judicial Network**, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.”*

§ 6. SCOREBOARD to review progress on the creation of an area of “freedom, security and justice” in the European Union (24/3/2000)

This scoreboard and its updates are the result of the invitation from the Tampere European Council to the Commission to keep under constant review the progress made in the implementation of the necessary measures and the respect of the deadlines established by the Amsterdam Treaty, the Vienna Action Plan and the Tampere conclusions.

The three existent scoreboards were grouped, as their reference to the Network is similar.

“4.2. Stepping up co-operation in the fight against crime

*Actions needed: implement and where appropriate further develop the **European Judicial Network**”.*

§ 7. European Union ACTION PLAN on common action for the Russian Federation on combating organised crime (OJ C 106 , 13/04/2000)

The present action plan implements, in part, the common strategy of the European Union concerning Russia, underlined by the Cologne European Council. This strategy confirmed that Russia and the European Union have a common interest: the one of reinforcing their co-operation in the fight against organised crime, by the creation of tools and co-operation mechanisms between the competent bodies and by the development of the exchange of experts.

“B. AREAS OF COOPERATION

(ii) Framework for judicial cooperation

To enhance the effectiveness of Russian Federation judicial cooperation in the field of organised crime, the European union will work with the Federation to encourage efforts to ensure that:

*(c) links are established by the Russian Federation judicial cooperation authorities with their counterparts in the Member States and, as appropriate, with the **European Judicial Network**”*

§ 8. The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium (OJ C 124, 03/05/2000)

The Amsterdam European Council, in its session of 16th and 17th July 1997, approved an action programme on organised crime. Since its application, several and important progresses were achieved in the elaboration and implementation of measures to prevent and control organised crime against the European Union and its Member States. The present document gathers these elements, specifying the actions that must be taken, its priority order, establishing the calendar and allocating responsibility for their implementation.

“Recommendation 8. The Council should continue and strengthen the process of mutual evaluation based on the Joint Action of 5 December 1997, with an appropriate balance between law enforcement, prosecutorial and judicial issues. The objective should be to be able to evaluate in an in-depth manner the international undertakings decided under Title VI of the TEU. The Council should consider the possibility of defining common standards for the mutual evaluations made by the different teams of experts, and provide sufficient and permanent resources to be able to undertake such evaluations. The mutual evaluation mechanism established under the Joint Action of 5 December 1997 should be reserved for the most important activities of interest in the prevention and control of organised crime, such as mutual assistance in criminal matters, drugs and law enforcement aspects and extradition. In addition, the Council should further consider the possibility of supplementing this mutual evaluation mechanism with a simplified and expedited mechanism, to be applied to the implementation by Member States of specific undertakings. The simplified and expedited mechanism could be used for the evaluation of specific areas of implementation or for questions which necessitate rapid evaluation.

*Responsibility: Council. Close cooperation, where appropriate, with Commission, Europol or **European Judicial Network**.*

Target date: ongoing activity; supplementary mechanism in place before 31 December 2000

Priority: 1

*“Recommendation 10. In line with paragraph 43(1)(a)(iii) of the 1998 Action Plan and paragraph 23 of the Presidency Conclusions from the Tampere European Council, combating illegal immigration networks should be a high priority of operational cooperation. With this in mind, Member States shall undertake, in close cooperation with Europol, the Commission and the **European Judicial Network**, to ensure that clear rules on the coordination of investigations into such networks are laid down at both the law enforcement and the judicial level. Furthermore the Council shall review the operation of investigations in this field with a view to further improving the effectiveness of the prevention and disruption of illegal immigration*

networks. Guidelines should be prepared, in close cooperation with Europol, the Commission and the **European Judicial Network**, on the exchange of information between national law enforcement units on illegal immigration networks, and on other forms of cooperation in identifying and responding to such networks. In order to be able to pool resources at the level of the European Union, the possibility of establishing a task force consisting of the competent authorities should be explored.

Responsibility: Member States, Council, Commission, Europol, **European Judicial Network**

Target date: 31 December 2001

Priority: 1

Recommendation 12. Member States shall ensure that Europol's role as an organ for criminal intelligence is supported and strengthened in order for Europol to fulfil its tasks to provide Member States with information and intelligence leading to the most effective results in preventing and combating organised crime. The study called for by paragraph 43(1)(a)(i) of the 1998 Action Plan should involve also the expertise of judicial authorities. The establishment of compatible criminal intelligence systems among Member States should be a long-term goal.

Responsibility: Council, Europol, **European Judicial Network**

Target date: 31 July 2001

Priority: 1

*Recommendation 23. In line with paragraph 46 of the Presidency Conclusions from the Tampere European Council, the Council is requested to draw up and adopt, as soon as possible, a legal instrument concerning the establishment of Eurojust specifying its structure, sphere of competence, powers and responsibilities. Particular attention should be given to determining the general framework of the new body's relations with national prosecuting authorities, Europol, Commission (OLAF) and the **European Judicial Network**.*

Responsibility: Council

Target date: 31 December 2001

Priority: 1

*Recommendation 24. The **European Judicial Network** should be implemented effectively and, where appropriate, further developed, for example by exploring ways in which to equip it with modern tools to make efficient co-operation possible, and ways in which to make it more operational. Particular attention should be paid to the development of efficient procedural standards that will improve mutual assistance in criminal matters while complying with the requirements of fundamental rights.*

*The General Secretariat of the Council serves also as the secretariat of the **European Judicial Network**, and must therefore be given, on a permanent basis, the necessary resources to ensure that the **European Judicial Network** will be able to fulfil its tasks.*

Responsibility: Member States, Council

Target date: ongoing activity

Priority: 2

Recommendation 26. The possible need for additional funding, and in particular the possibility of greater flexibility and expedited procedures in the use of EU funding for training and support activities should be explored, in particular in the light of TEU 41(3). Examples include the supporting of interpretation services, the provision of language training, and the acquisition of international experience for specialised law enforcement officers, prosecutors and judges. The possibility of the use of such funds in improving the organisation of meetings of practitioners at the EU level (including meetings related to the use of joint investigative teams) should be considered. The attention of competent authorities should be drawn to the possibility of using three-way conferences between two officials using an interpreter, and the Member States should encourage such use by making available resources to that end. With due regard to the need to safeguard the legitimate interests of control of public funds, the use of such funds to promote judicial cooperation should not impinge on judicial independence.

*Responsibility: Commission, Council, **European Judicial Network**, Europol, Member States*

Target date: 31 December 2001

Priority: 2”

§ 9. TREATY « OF NICE » amending the treaty on European Union, the Treaties establishing the European Communities and certain related acts (Doc. 2001/c 80/01, OF C 80, 10/03/2001)

The Treaty of Nice aims at the improvement and development of the process launched by the Amsterdam Treaty, in view of the preparation of the institutions to function in an enlarged European Union.

“Article 31

1. *Common action on judicial co-operation in criminal matters shall include:*
 - a) *Facilitating and accelerating co-operation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, co-operation through Eurojust, in relation to proceedings and the enforcement of decisions;*
 - b) *Facilitating extradition between Member States;*
 - c) *Ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such co-operation;*
 - d) *Preventing conflicts of jurisdiction between Member States;*
 - e) *Progressively adopting measures establishing minimum rules relating to the constituent element of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.*

2. *The Council shall encourage co-operation through Eurojust by:*
 - a) *Enabling Eurojust to facilitate proper co-ordination between Member States’ national prosecuting authorities;*
 - b) *Promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly in the case of organised crime, taking account, in particular, of analyses carried out by Europol;*
 - c) *Facilitating close co-operation between Eurojust and the **European Judicial Network**, particularly, in order to facilitate the execution of letters rogatory and the implementation of extradition requests”.*

§ 10. CONCLUSIONS adopted by the Council and the representatives of the Governments of the Member States on 13 July 2001 on security at meetings of the European Council and other comparable events (Doc. 10916/01 JAI 82)

Following the European Council of Gothenburg and their violent happenings, the Council “Justice and Home Affairs” has adopted the present conclusions, in view of the maintenance of public order in the meetings of the European Council and in other similar events.

“4. Judicial cooperation

- (a) *Facilitation of direct cooperation between the judicial authorities or other competent authorities, in particular the execution of requests for mutual legal assistance through the drawing up of standard letters rogatory and use of contact points available 24 hours a day, allowing for the necessary judicial assistance to be*

*mobilised. Such direct contacts may be facilitated by the **European Judicial Network**.*”

§ 11. Outcomes of the proceedings : CONCLUSIONS adopted by the Council (Justice and Home Affairs) of 20th September 2001 (Doc. 12156/01 JAI 99)

The Council has met, at an extraordinary session, on the 20th September to analyse the international situation following the terrorist attacks to the United States, electing, in the present conclusions, the fight against terrorism as a priority objective of the European Union.

“- II -

Measures to be taken in order to step up the fight against terrorism within the European Union

Judicial Cooperation

*7. The Council has decided to speed up the linking of the **European Judicial Network's** contact points to the secure electronic network. It is asking the Secretary-General of the Council to study the practical details.”.*

SECTION 2. STRUCTURE

§ 1. Principle

The European Judicial Network is a non concentrated, dynamic structure, with a horizontal character and possessing only the integration level necessary to its functioning. Therefore, it is characterised for its flexibility.

It was the first practical mechanism of judicial co-operation, in the EU, to become truly operational (we are referring only to structured mechanisms).

This Network was created to fulfil recommendation n° 21 of the Action Plan to Combat Organised Crime, approved by the Council on 28th April 1997 (OJ C 251 de 15/08/1997). Nevertheless it has, since the beginning, a material field of application larger than the one anticipated in the mentioned Recommendation, since it was not restricted to the matters concerning organised criminality.

In fact, the EJM has a universal vocation, encompassing all types of transnational criminality.

According to the Joint Action that created it, its main tasks are:

1. Active intermediation between the contact points that compose it in order to facilitate and deepen judicial co-operation in criminal matters, in view of the fulfilment of the functions committed to the contact points (article 4°), namely the establishment of contacts between responsible local authorities;
2. Build and give, in a permanent and actualised way, basic information in the framework of its competencies through a Telecommunications Network (vide section 3. of this report, " Instruments");
3. Create a forum of discussion and knowledge through periodical meetings (vide section 4 of this report, " Meetings of the Network").

Thus, the philosophy of the EJM is based on the personalisation of institutional relations. With the EJM, the intention was to make it possible to build a European judicial culture based on the mutual knowledge both in the human plan and in the plan of national judicial competencies and practices.

It was assumed, from the beginning, that this was the indispensable basis to the effective construction of a real European criminal policy, based on the diversity of the 15 judicial systems that integrate the European area of freedom, security and justice.

§ 2. Composition

The EJM is composed of contact points of the Member States and of the Commission (in the areas falling within its sphere of competence) and is assisted by the General Secretariat of the Council, which has specially the management, among others, of the Telecommunications Network, provided for in article 9° of the Joint Action.

Attending to EJM's flexibility and in view of a complete dissemination throughout the whole of the EU territory, the responsibility was left to each Member State for the choice and appointment of the contact points.

This led to the existence of *circa* 200 contact points in the several Member States giving the image of a mosaic, due to the various existing functions, according to the different nature and competence of those contact points from country to country.

In fact, the contact points of the EJM may be:

- Central authorities, in charge of judicial international co-operation;
- Judicial authorities;
- Other competent authorities in international co-operation against all kinds of crime or specialised in certain types of serious crime.

All the countries have appointed judicial authorities as contact points, from the number of 2 (Greece) to the number of 38 (France).

A great number of those judicial authorities are prosecutors ("procureur"). In fact, all the countries, except Austria, have appointed prosecutors as contact points. For the majority (12 countries) the judicial contact points are only prosecutors.

Three countries have also appointed instruction judges ("juges d'instruction") (Austria, Luxembourg, Netherlands).

These contact points have different territorial and material competencies according to the judicial organisation of their countries: in most cases they belong to an Appellate Prosecutor ("parquet d'appel") (France, Germany, Greece, Italy), but in some cases they depend directly on the General Prosecutor (this is the case of the contact points

or some among them in Denmark, Finland, Luxembourg, Portugal, Sweden, United Kingdom) or they belong to a prosecution department that has co-ordination competencies between different regional areas (this is the case of the contact points or of some among them in Belgium, Ireland, Italy, Netherlands, Spain).

There are also authorities that belong to departments specialised in some areas of criminality. That is the case of the “Direzione Nazionale Antimafia” in Italy, the “Fiscalía Especial Anticorrúpcion” or “tráfico ilegal de drogas” in Spain, “Serious Fraud Office” in United Kingdom, “Departamento Central de Investigaçã e Acção Penal” in Portugal, or a body in charge of the management of the judicial authority (“Consejo General del Poder Judicial” in Spain).

In the Member States where the police also have also judicial functions, some of their members have also been appointed as contact points (Denmark, Finland, Ireland, United Kingdom).

Only to give some examples of the diversity that led to the appointment of the contact points, aiming at the operationality of this network, we will mention Germany, France and Italy.

For instance Germany is a federal State and therefore legal competency is first within the “Länder”. Each of the 16 "Länder" has its own Ministry of Justice, its own courts and prosecution departments. The federal department of prosecution, the “Generalbundesanwalt” is only competent in terrorist and espionage crimes.

Due to this federal structure there is one contact point of the EJM for each one of the “Länder” and another one for the federal authorities.

Functionally the contact points are established at the directorates of prosecution (Generalstaatsanwalt) of the Appellate Courts (Oberlandesgericht), because most of the rogatory letters are sent to and from the prosecution department. Another reason is the fact that the general prosecutors have the competence to supervise the handling of the requests as well as for the handling of extradition requests.

As for France, the criteria for the appointment of the contact points was essentially geographical, so 35 of the French contact points correspond to the 35 regions called “Cours d’Appel”, into which France is judicially divided.

Even before the creation of the EJM there was always a member of the “parquet général” in the “cour d’appel” responsible for international questions.

With the creation of the EJM, these correspondents were appointed as “regional” contact points of the Network. Besides these 35 “regional” contact points, France has also appointed 3 national contact points:

- One responsible for the EJM in France;
- The director of the Bureau of fight against Organised Crime and the Bureau for mutual legal assistance of the Ministry.
- The director of the Bureau of European criminal law who advises the Minister in all the areas concerning international relations and law.

In Italy the 31 contact points correspond to 29 magistrates that belong to each General Prosecutor Office, one magistrate from the “Direzione Nazionale Antimafia” and another for the central authority.

This was due to the fact that in the Italian judicial system, the General Prosecutor Office is the competent body for promoting the execution of rogatory letters coming from foreign judicial authorities; consequently, it is the competent office for receiving directly such letters, according to article 53° of the Schengen convention (or under article 15, paragraph 2, of the 1959 Convention, in case of urgency).

Notwithstanding this diversity, flexibility and horizontal character, the Network has its own identity; identity that has been affirmed progressively, specially in the relations with its partners and in its achievements and instruments, as we will see below.

During its three years of existence, the Network has given a special importance to the fulfilment of another task. This task, according to article 4°, n° 2, of the Joint Action, is directly committed to the contact points. We refer here to the juridical support given, on a permanent basis, to the local judicial authorities of the Member States.

This task has been playing an important role, contributing to a critical reflection of and in each of the 15 different judicial systems.

For instance, the Portuguese contact points have made a proposal to change the internal Law on International Judicial Co-operation, that is now under consideration.

The Commission has also appointed 3 contact points to the EJM : two belong to the Judicial Co-operation in Criminal Matters Unit and another to OLAF.

The General Secretariat of the Council provides for a Secretariat for the Network. This Secretariat, within the General Secretariat of the Council, consists of one detached magistrate as national expert and one secretary.¹

¹ The draft Decision that institutes Eurojust provides in its current version, that, by derogation of article 9°, par. 3 of the Joint Action of 29th June 1998 the Secretariat of the EJM shall form part of the Eurojust Secretariat, but it shall function as a separate unit and carry out its tasks with full autonomy. It shall be able to draw on those resources of Eurojust that are necessary for the performance of the Network's tasks.

SECTION 3. INSTRUMENTS

§ 1. INTRODUCTION

One of the functions of the EJM, provided for in article 3^o/c of the Joint Action of 29th June 1998, is to “*constantly provide a certain amount of up-to-date background information, notably by means of an appropriate telecommunications network, under the procedures laid down in Articles 8, 9 and 10*”.

However, and as we will demonstrate ahead, the EJM went further in the construction of the information instruments, than was anticipated in the Joint Action that created the EJM.

In fact, in an area such as international judicial co-operation in criminal matters, where each judicial operator has to deal with 15 different judicial organisations as well as 15 different legal orders, the existence of background information is essential.

Taking into account the functions of the contact points (article 4^o), the Joint Action establishes (article 8^o) the types of information that must be available within the EJM. They are:

- 1. “full details of the contact points in each Member State with, where necessary, an explanation of their responsibilities at national level”***

This is the list of contact points and it was one of the first types of information to be available (see *supra* point A of § 2.)

- 2. “a simplified list of the judicial authorities and a directory of the local authorities in each Member State”***

This point underwent development. In fact with the establishment of the principle of direct contacts between judicial authorities within the European area of freedom, security and justice, there was the need for an interactive instrument that would allow the local judicial authorities, in each Member State, to immediately identify the competent local authority in another Member State. This instrument is the European Judicial Atlas (see *supra* point E of § 2.)

3. “concise legal and practical information concerning the judicial and procedural systems in the 15 Member States”

This information is contained in the “fiches belges”: 42 technical fiches concerning the investigation measures – house-search, controlled deliveries, hearing of witnesses, etc – that provide practical information – competent authority to authorise the measure, background conditions, etc. (see *supra* point C of § 2.)

4. “the texts of the relevant legal instruments and, for conventions currently in force, the texts of declarations and reservations”

This information contains the conventions, positions or joint actions, working and financial programmes, decisions, framework decisions, resolutions, recommendations, agreements, as well as extracts from the treaties concerning mutual legal assistance made within the European Union and other institutions (see *supra* point B of § 2.)

Mention has still to be made of the “cover note”. Following the Joint Action of 29th June 1998 on good practice in mutual legal assistance in criminal matters, a standard pro forma that the requesting authority joins to its mutual legal assistance request containing an acknowledgement receipt that the requested authority must fill and return to the requesting one, has been created by the EJM (see *supra* point D of § 2.)

But, information is useless unless it is permanently updated. Article 9° of the Joint Action foresees this problem and states that “*the information distributed within the European Judicial Network must without fail be constantly updated.*”

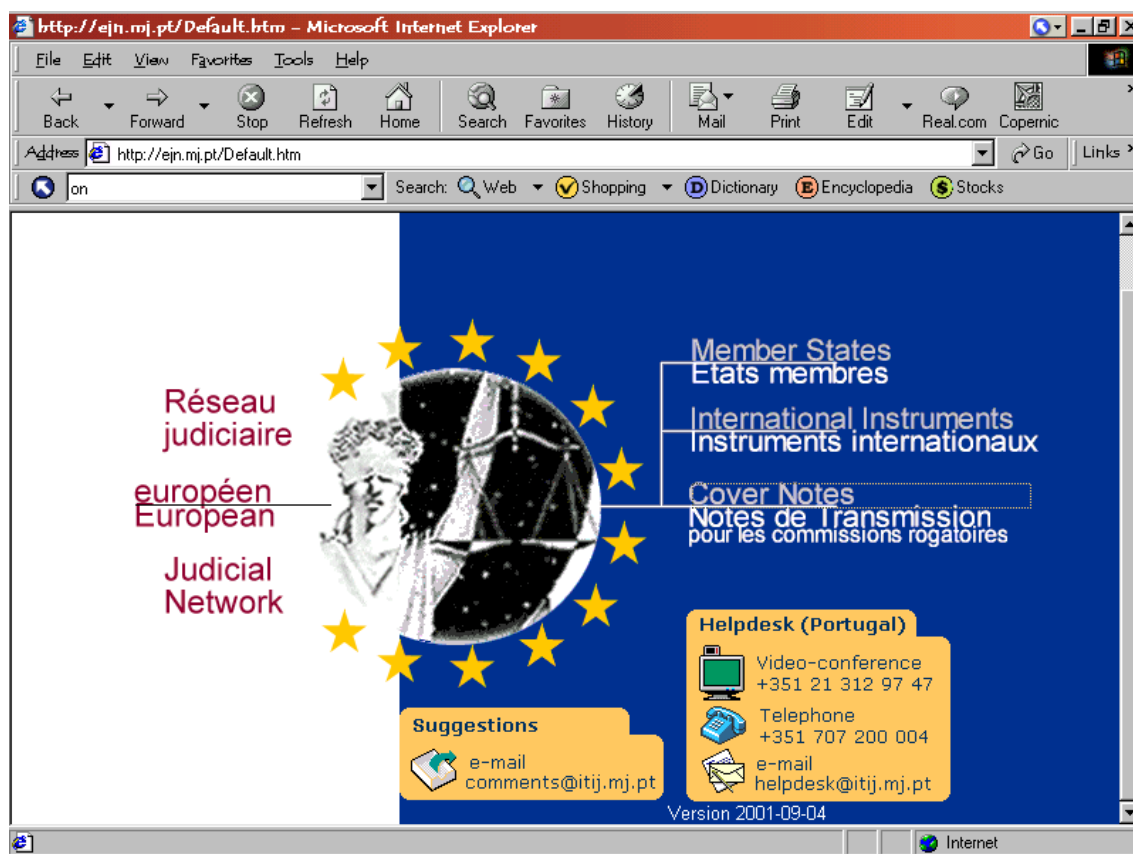
The updating task is attributed to the General Secretariat of the Council (number 3 of article 9° of the Joint Action). However, the enormous growth of the information contained in the instruments available within the EJM, led to the search for alternative updating methods.

This assumed a particular importance in the case of instruments that contained a large amount of information (as for example the “fiches belges”) as well as in the case of instruments that combine several types of information (European Judicial Atlas).

For some of these instruments an alternative method is still being discussed, but as far as the European Judicial Atlas is concerned, the Contact Management Application combined with the Digital Certificate System, that Portugal conceived and offered, solved all the problems. By transferring the task of maintaining the contact information about the competent authorities to the person (national correspondents) that is responsible for that information, it eliminated intermediaries and also time (see *supra* point E of § 2.)

From the first, this information has been distributed in various formats: paper, cd-roms, multiple web sites. The utility of the developed instruments was damaged by this diversity; certain formats also complicated the updating work.

Since 17th December 2000 (Bordeaux meeting of the EJM under French Presidency), and thanks to the intervention of the Portuguese Ministry of Justice, all the instruments are available on a site in Portugal protected by a password.



All the contact points have access to this site and it is up to each Member State to determine the local authorities that can also accede to this site.

However and according to article 10^o of the Joint Action that creates the EJM, the JHA Council of 28th and 29th May 1999 decided to provide the EJM with a secure telecommunication network (or VPN – Virtual Private Network).

The implementation of this decision has been extremely difficult. The General Secretariat of the Council announced, in the beginning of 2001, that a pilot project of the VPN, for 50 contact points would be launched in the 1st September 2001.

At the moment of the finalisation of this report, only the pilot project of the VPN exists.

The JHA Council of 20th September 2001 has insisted, in its conclusions, on the need of implementing the VPN; and we hope that this decision of the Council gives the necessary impulse to the project.

The VPN will contain all the instruments of the EJM and will allow the contact points to transmit, with security and by e-mail, information concerning the matters in progress.

The security will be assured by an encryption system and the restriction to the access by a personalised card with a password. Differently from what happens with the web site of the EJM, the VPN will be limited to the contact points of the EJM.

§ 2. The Instruments of the Network

A. *The list of contact points*

The list of contact points is a data base with, for each contact point, several pieces of information: name, surname, address, telephone and fax number; e-mail address, spoken languages, specialisation, local competence.

It was made by the General Secretariat of the Council and it has been at the disposal of the contact points since the creation of the EJM. The permanent updating of this list is a task of the General Secretariat of the Council.

B. *The legal instruments*

This instrument is composed of all the convention, positions or Joint Actions, working and financial programmes, decisions, framework-decisions, resolutions, recommendations, agreements, as well as extracts of the treaties concerning mutual legal assistance in criminal matters produced in the European Union and in other institutions (Council of Europe, UN, etc.). The compilation “Customs, police and judicial co-operation in the European Union – selected instruments” has three volumes with more than 100 international legal instruments.

It was a work done by the Secretariat and it was made available, for the first time, in January 1999. Versions in different languages of the European Union were made.

This compilation is available, for all the practitioners, in the web site of the EJM (this information is also available in the web site of the Council).

At the moment these sites are being restructured in order to allow the users to find the applicable instruments searching by subject, text extract or by chronological order. This restructure will also allow the site to be consulted for the state of the signatures and ratification of the conventions, an important question for the practitioners, facing every day the practical problems of mutual legal assistance in criminal matters.

This instrument is often used by the practitioners as well as by others that work in the field of mutual legal assistance in the European Union.

The updating of this instrument – which represents a considerable amount of work taking into account the intense legislative activity in this area - is responsibility of the Secretariat and is in process.

C. *The “Fiches belges”*

1. The elaboration work of the fiches

The elaboration work of the fiches was initiated by the Belgium Ministry of Justice with the support of a community financial programme (Grotius project 97/052 and Falcone 124) and the active participation of the Member States.

This work started in 1997. The conceptual work of the EJM had arrived at a mature phase, but still it was necessary to wait until June 1998 for its effective creation. This reflection on the fiches shows how important it was, for those responsible for the conception of the EJM from the start, to have information about the existence of information along with the facilitation of direct contacts between local authorities

Two ideas ruled this work. With regard to its content the objective was to improve the mutual knowledge of the criminal procedural systems. With regard to its structure the option was to avoid an exhaustive study of comparative law and instead to make a practical tool attending to the needs of the practitioners working in judicial co-operation.

During a meeting (Brussels, June 1997) about the implementation of the EJM, the delegations agreed to put this practical information in the format of standard fiches. Each fiche concerns one investigation measure (searches, hearing witnesses, freezing of assets...) and is divided into several fields covering all the useful information that a magistrate needs when he intends to execute an investigation measure in another Member State (possibility of asking mutual legal assistance for that measure, competent authority for the execution, background conditions...).

A questionnaire was made and sent to each of the 15 Member States in September of 1997. This questionnaire had 42 fiches, divided into twenty fields. The work needed to answer to this questionnaire was considerable and so the deadline of March 1998

was not fully met. The Belgian Ministry of Justice received the answers to the questionnaire little by little and made the analysis and comparison work. This work demonstrated a great diversity both in the quality of the answers as well as in its format.

Taking as a base this evaluation work, a meeting was organised in September 1998 that took care of the main guidelines for the answer to the questionnaire as well as formulating slight changes in the structure of the fiches.

The work of collecting information in Member States, as well as the analysis and correction of the answers took until June 1999. At the same time, as the fiches of a Member State were finished, the General Secretariat of the Council arranged the translation making it possible for the fiches to be available in French and English.

On the other hand, and since the meeting of September 1998, the question of the support of the fiches arose, which brought the question of the support of all the information of the EJN. For reasons of access and diffusion of information, as well as the need for updating, the “navigation” on the fiches and the integration of these in other types of information, Belgium, supported by other delegations, opted for an informatic support like internet.

The development of this informatic instrument constituted the principal dimension of the project since January 1999. The Belgian team in charge of the project, with the help of a specialised private society in the creation of web sites, progressed the work in three aspects: conception of the navigation of the web site and all the graphic aspects, reformatting of questionnaires in appropriate informatic language, and programming of all the site.

The Belgian team sent, six months later, to the General Secretariat of the Council a pilot project of the web site with, in addition to the fiches belges for each of the Member States (notwithstanding two translations were missing), the co-ordinates of the contact points. This site is still working with other types of information (international instruments, Atlas, cover notes...) associated to the structure proposed, that has stayed intact.

Apart from the development of the Internet site as well as from the reflection about the telecommunications network, which was proceeding slowly, the pilot site was distributed in cd-rom to the contact points of the EJN in the meeting of June 1999 that took place in Recklinghausen.

2. Description of the fiches

42 fiches correspond to an investigation measure existing in each of the 15 Member States. These 42 measures are the following:

Tracing and interception of (tele) communications

Interception, recording and transcription of telecommunications (101)
Tracing of telecommunications (102)
Interception and recording of other forms of communication (103)
Interception of mail (104)
Observation (105)

Agents and informers – Infiltration

Infiltration by undercover agents of the requested State (201)
Infiltration by agents of the requesting State in the territory of the requested State (202)
Infiltration by an informer of the requested State (203)
Handing of informers (204)

Examination, body search and expert evaluation

Superficial body search (301)
Invasive body search (302)
Psychiatric medical examination (303)
Control of identity, measures for judicial identification (304)
Technical or scientific examinations or experts evaluation (305)

Documents – obtaining

Spontaneous exchange of information (401)
Order to produce documents (402)
Other possibilities of obtaining information concerning taxes or bank accounts (403)
Access to public documents in judicial files (404)
Communication of individual police records (405)

Assets – Sequestration, confiscation and restitution

Sequestration of assets (501)
Freezing of bank accounts (502)
Restitution (503)
Interim measures in view of confiscation (504)
Confiscation (505)

Places – Visit and search

Visit to and search of homes (601)
Visit and search on the site of an offence (602)

Witnesses, victims, suspects – Summoning and hearing

Summoning witnesses (701)
Hearing witnesses
-standard procedures (702)
-by video-conference (703)
-by telephone (704)
Hearing children (705)
Hearing persons collaborating with the inquiry (706)
Hearing victims /plaintiffs (707)
Hearing experts (708)
Summoning suspects/persons accused (709)
Hearing suspects/persons accused
-standard procedure (710)
-by video conference (711)
-by telephone (712)
Confrontation (713)

Cross-border operations

Cross-border observation (801)
Cross-border hot pursuit (802)
Cross-border tracking (by placing a beeper on a vehicle or a person) (803)
Controlled deliveries (804)

Each one of these measures is divided into several fields, namely :

Scope and alternative measures

Definition and scope of the measure
Alternative measure
Possibility under mutual judicial assistance

Competent body

To authorise the measure
To execute the measure

Background conditions

Offences for which the measure can be used
People and/or places for which the measure can be applied
Duration

Conditions to be met by the requesting State
Other conditions
Exceptions

Practical details

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State
Assistance or participation of agents of the requesting State in the execution of the measure

Person concerned

Information (before, during, after) to be provided to the person concerned
Presence or participation of the person concerned or of his/her counsel at the time of the execution of the measure
Rights and recourse of the person concerned or of another party

The informatic system also allows an automatic link to measures connected with the relevant fiches, as well as to the same fiche for other countries.

Further, the division into 42 measures was also adopted in the Atlas, thus allowing the interconnection between the two tools and making it possible for the user to know the information on procedural law concerning the mutual legal request for which he is searching, together with the details of the competent authority to receive and execute such measure.

3. Updating and improvement of the fiches

The need of guaranteeing the updating of the fiches was underlined several times, and it was also underlined that this was a task of the Member States. By initiative of the Portuguese Ministry of Justice, a meeting was held in Tavira in September 2001, under the Belgian Presidency. The contact points of the EJM that participated in this meeting were invited to check the fiches concerning their countries and in due course to transmit the necessary updating. This type of meeting offers, the possibility to reinforce the need for updating, so that the information in the fiches is not out of date. The system depends entirely on the participation and good will of the contact points of the EJM.

Besides the updating of the fiches, and two years after their diffusion, there is a need to evaluate them, taking into account the judicial co-operation that they should facilitate and the evolution that this judicial co-operation has. The participants in the Tavira meeting agreed the need to give the fiches lighter structure with the aim of highlighting their practical aspect: the idea is not to present the procedural penal

system for a particular measure, but to give only to the user the information that seems necessary in order to allow him to consider the opportunity of the transmission of a mutual legal assistance request and its content. For instance, the UE Convention on mutual legal assistance in criminal matters (2000) imposes the revision on the way the fiches were conceived. At the beginning, the fiches inscribed themselves in a vision of judicial co-operation where the law of the requested State determined the execution of a mutual legal assistance request. This principle has changed. In fact, the new MLA Convention (2000), provides that the mutual legal assistance requests are executed according to the law of the requesting State. Therefore the fiches should only contain information allowing the user to evaluate the fundamental rules of the requested State that have to be respected according to paragraph 1, article 4 of the new MLA Convention.

4. Future perspectives

The later work concerning the fiches belges dealt specially with the effective implementation of the conclusions about the improvement of the content of the fiches as well as its updating.

A possibility for future development would be an updating system of the fiches similar to the one developed by Portugal for the Atlas, that would allow the correspondents of the EJM to do directly the updating work. This supposes a different format of the fiches by using a database.

For the maximum utility of this instrument, fusion between the Atlas and the fiches can be envisaged in such a way that a real system of help, formulation and sending of a mutual legal assistance request would be accomplished.

D. The cover notes

Following the Joint Action of 29th June 1998 on good practice in mutual legal assistance in criminal matters, the cover note was prepared : it is a standard pro forma that the requesting authority joins to the mutual legal assistance request containing an acknowledgement receipt that the requested authority fills and sends to the requesting authority.

Fulfilling the Joint Action of 29th June 1998 on good practice in mutual legal assistance in criminal matters (98/427/JAI)², all Member States have deposited

² **Article 1**

Statements of good practice

1. Each Member State shall deposit with the General Secretariat of the Council of the European Union within 12 months of the coming into force of this Joint Action a Statement of good practice in executing requests, including transmission of results, from other Member States and sending requests to other Member States for legal assistance in criminal matters.

declarations on good practice in mutual legal assistance in criminal matters. The purpose of these declarations is to make further practical improvements regarding mutual legal assistance between the Member States.

The European Judicial Network has studied how these declarations could be implemented³ and it has found that direct contact between the requesting and the requested judicial authority can further contribute to a swift and effective execution of rogatory letters.

For that purpose, the European Judicial Network has developed a cover note for rogatory letters. By using the cover note, the requesting and the requested authorities will be able to establish direct contact on the content and/or the execution of the rogatory letter. The forms are available in all official languages of the European Union.

The cover notes are also distributed to the candidate countries. They can use them for their mutual legal assistance requests and create versions in their mother tongue.

This instrument is available in the EJM web site as well as in the web site of the Council and is very simple to use. The first time they were made available was in June 2001.

E. The European Judicial Atlas

1. Definition and structure

The prime goal of the Atlas is to allow the local judicial authorities, in each Member State, to immediately identify the competent local authority in another Member State, who can receive and execute a mutual legal assistance request in criminal matters.

Thus, the European Judicial Atlas enables the fulfilment of the principle that establishes the direct contacts between judicial authorities within the European area of freedom, security and justice, according to what is provided for in the MLA Convention of 2000.

³ **Article 3**

European Judicial Network

The General Secretariat of the Council shall make the Statements referred to in Article 1(1) available to the European Judicial Network as soon as they are deposited. The Network shall take stock of the Statements in the light of its own competencies and experience, and may make any proposals it considers appropriate with a view to improving legal assistance in criminal matters, including finding common methods for evaluation of performance.

It is an information technology system that combines in a dynamic process and simultaneously, several types of information:

- The geographical component of each Member State;
- The judicial organisation;
- The type of crime;
- The type of measure to be undertaken;
- The applicable international legal instruments.

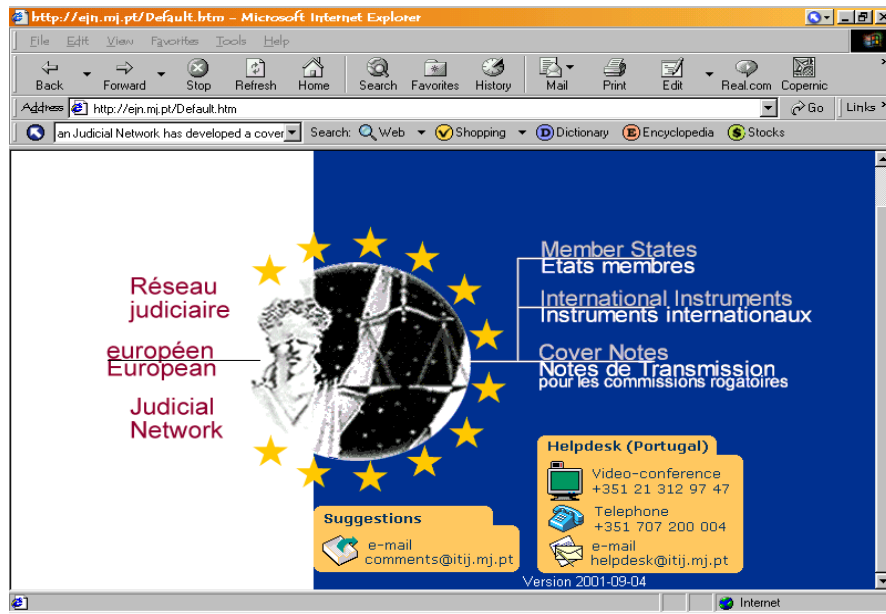
It is based in a standard question/answer scheme that intends to be an instrument easy to consult and effective to the user. It is a personalised system as the user directs its answer through the options that he takes to the questions that, successively, he is faced with.

The Atlas also supplies information concerning the contact points of the EJM in order to assist other European colleagues who deal with matters related to judicial co-operation. Plus, it also contains the “fiches belges”.

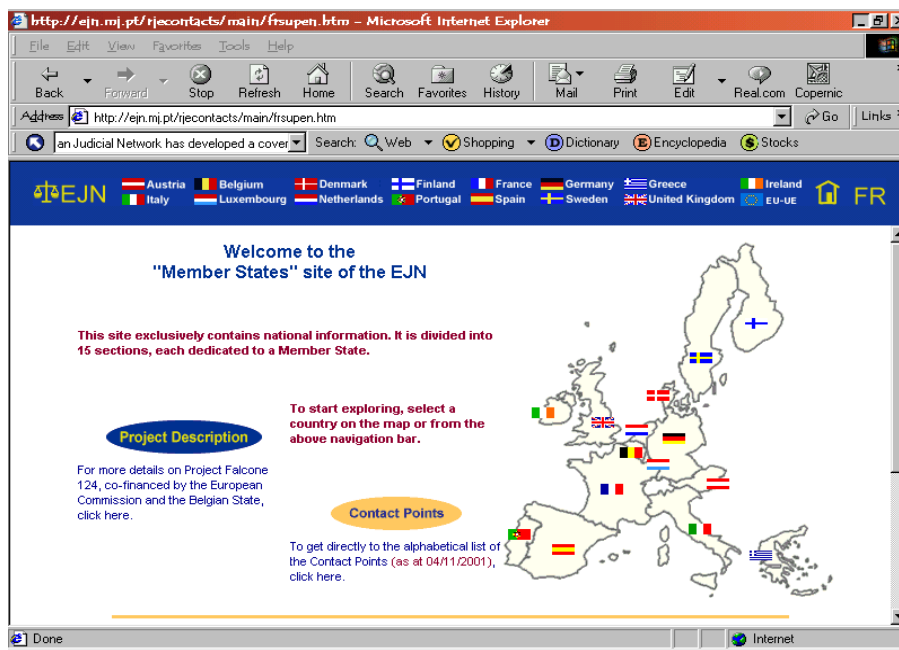
But, to truly understand this instrument - that intends to be a practical tool in the every day work of the local judicial authorities - there is nothing better than to see a practical example.

Imagine that you are a German magistrate who needs send a rogatory letter to hear a witness in Portugal: you need to know which is the local Portuguese competent authority to send the request to. By using the Atlas, in just one minute, you can find this information. Let us see:

1. You enter the following web site: <http://ejn.mj.pt> or www.atlas.mj.pt; **user name: rje, password: dgsi**



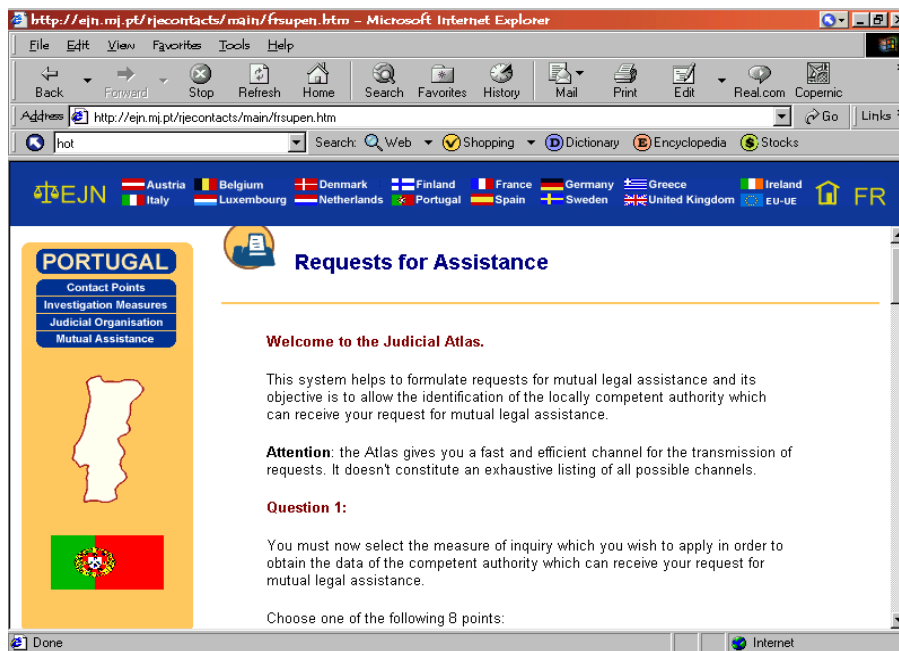
2. Then you click on Member States and you will see the European map



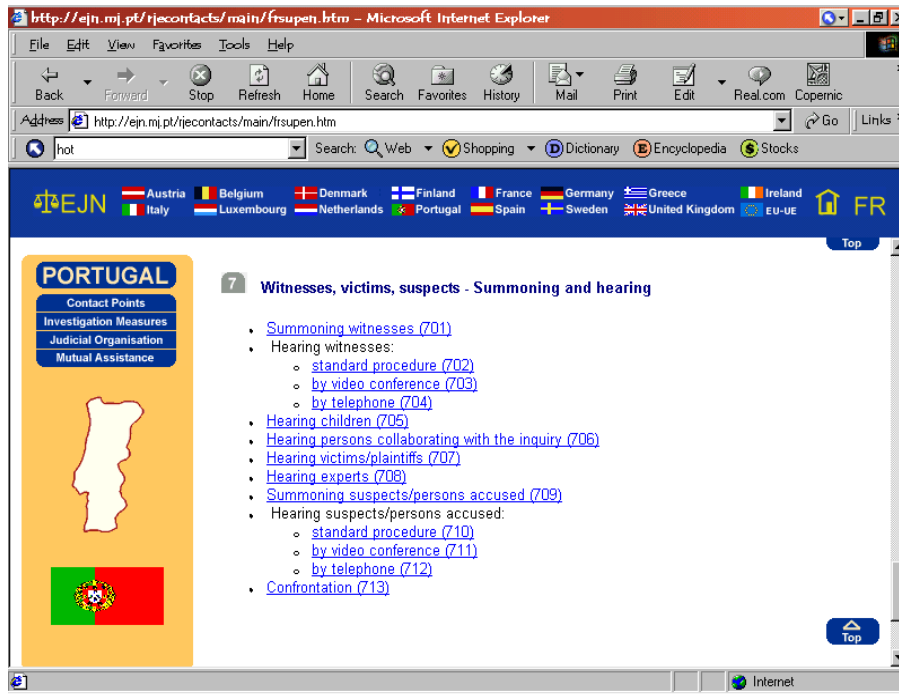
3. As you need to know which is the Portuguese competent authority you click on Portugal, and you will have the following options



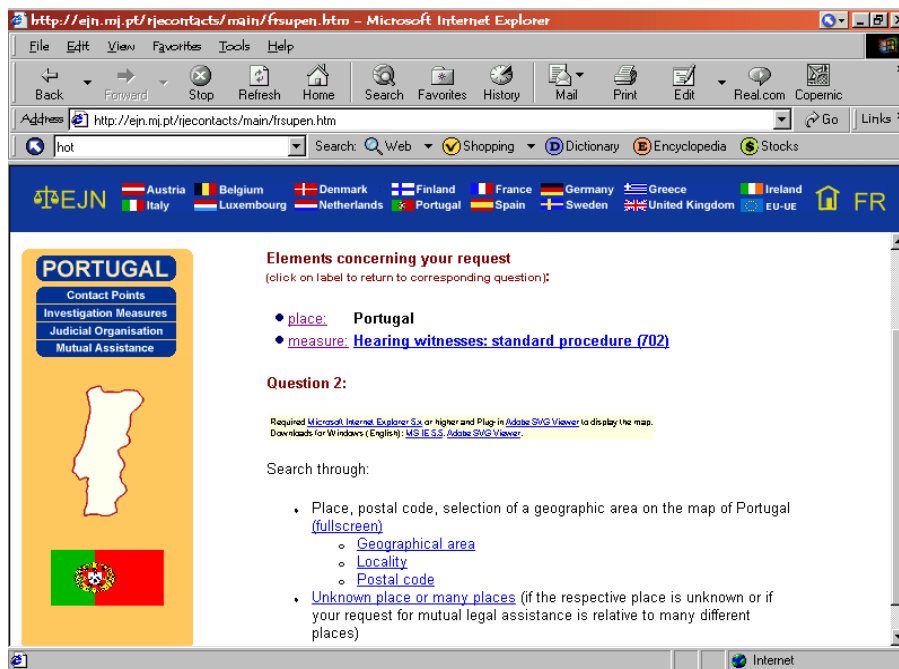
4. You choose “Requests for Assistance” and you have entered the Atlas. Now you have to choose the investigation measure you want to request



5. As you remember you want to hear a witness, so you click on the corresponding item



6. The next step is to choose how you want to make the search: by geographical area, by locality or by postal code



7. Let's suppose that you know the locality and that it is Albufeira. After clicking on the option "search by locality" you write the name of the locality in the following box and click on search

Portugal

Measure: Hearing witnesses: standard procedure [Back](#)

> Search through locality

Localities	
Albufeira	Search
Your request may be sent to:	

8. You have finally obtained the **local competent authority**, with all the contacts – address, telephone and fax number, e-mail address

Portugal

Measure: Hearing witnesses: standard procedure [Back](#)

> Search through locality

Localities	
Albufeira	Search 1/1
Your request may be sent to:	
Tribunal da Comarca de Albufeira Palácio da Justiça, Cerro da Alagoa 8200-859 - ALBUFEIRA Tel. : (+351) 289 510700 / 009 / 011 / 179 Fax : (+351) 289 514834 E-Mail : correio@albufeira.tc.mj.pt	
Contact Point:	

ALBUFEIRA

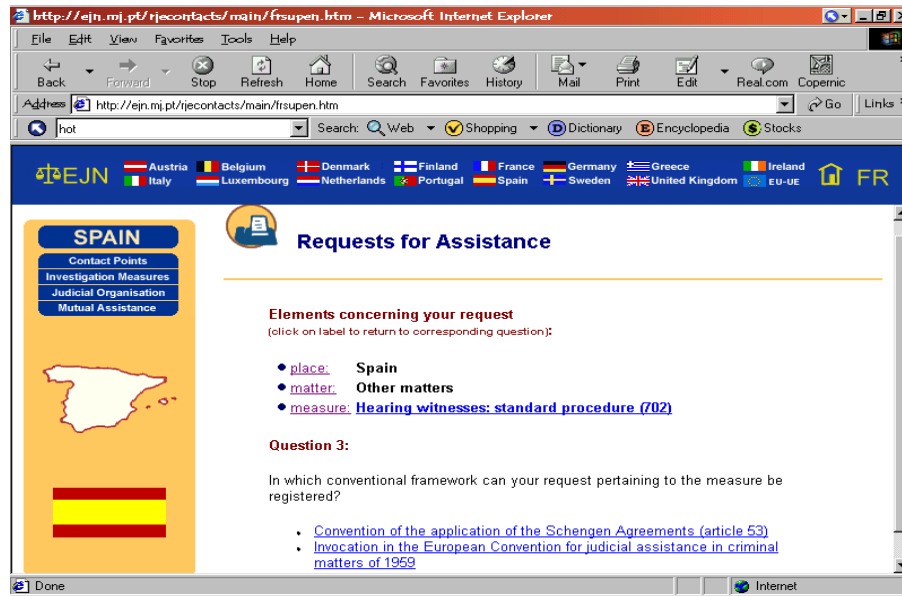
9. You also have the location in the map of the locality. You have also the co-ordinates of the contact point of the EJM who can help you should you encounter any difficulty

The screenshot shows a web interface for Portugal. At the top, it says 'Portugal' and 'Measure: Hearing witnesses: standard procedure'. Below this, there is a search bar and a 'Search through locality' link. A search results box titled 'Localities' shows 'Albufeira' with '1/1' results. Below the search results, there is a 'Your request may be sent to:' section with a list of contact information for the Tribunal da Comarca de Albufeira, including the name Alcides Rodrigues, address (DIAP (Évora) Rua Serpa Pinto, 44, 7000-537 - ÉVORA), telephone (+351) 266 709468, fax (+351) 266 701106, and email (correio@evora.diap.mj.pt). To the right of the search results is a map of Portugal with the Albufeira region highlighted in green. A 'Back' button and the text 'ALBUFEIRA' are also visible.

For the other countries the process is as simple as for Portugal: only the number of questions posed to the user varies according to the specialities of each country.

For instance, for Spain you would still have to answer to the following questions related to type of crime and applicable convention, but in end you will always obtain the co-ordinates of the local competent authority.

The screenshot shows a web browser window displaying the EJM website for Spain. The browser address bar shows 'http://ejm.mj.pt/rjecontacts/main/frsupen.htm'. The website header includes the EJM logo and flags for various countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom, and EU-UE. The main content area is titled 'SPAIN' and includes a map of Spain and the Spanish flag. Below the map, there are four categories: 'Contact Points', 'Investigation Measures', 'Judicial Organisation', and 'Mutual Assistance'. The 'Mutual Assistance' section is active, showing a 'Question 1:' section. The text reads: 'You must now select the measure of inquiry which you wish to apply in order to obtain the data of the competent authority which can receive your request for mutual legal assistance. Choose one of the following 5 points:'. The list of options includes: 'Money counterfeit and monetary crime', 'Terrorism', 'Frauds when a generality of people in the territory of more than one 'audiencia provincial' are affected', 'Drug trafficking and alimentary, pharmaceutical or medicinal frauds when committed by organised groups and effects in different places pertaining to several 'audiencias provinciales' are caused', and 'Other matters'.



2. History

The project of the European Judicial Atlas was presented in the meeting of the EJM in January 2000 that took place in Brussels, under Portuguese Presidency (see Doc. N° 5083/00 CRIMORG 3 EJM 3).

At that stage, it was only a draft, presented by Portugal and taking as a model the Portuguese judicial system; now it has a truly European dimension.

Belgium associated itself from the first with the construction of the Atlas and since then begun a fruitful and healthy partnership until the end of 2000.

Important for the execution of this project was the active and co-operative support of the correspondents, essential in the individual approach of the system for each country and in the gathering of the data as well as the support of the General Secretariat of the Council.

The idea of building the European Judicial Atlas was born from the belief that the effectiveness and utility of structures such as the EJM depends, a great deal, on the existence of proper tools for the execution of the their tasks.

In the meeting of the EJM in January 2000 Portugal asked each country to appoint one contact point that would function as correspondents to this project. The project

was discussed and all countries were asked to contribute to the definition of the common model suitable for all Member States.

Later on, a questionnaire was conceived and distributed to the correspondents in order to obtain all the information needed for the project: the answers were analysed and a scheme for the judicial organisation of each Member State was made.

These schemes were distributed in an informal meeting that took place in Lisbon, on the 10th April 2000, devoted only to the European Judicial Atlas, and in which were present the correspondents appointed by each Member State.

In this meeting the final conception of the project was obtained: in its substantial aspect as well as in its informatic one.

As far as the substantial aspect is concerned it was decided that the Atlas would be restricted to the field of mutual legal assistance.

This was not the original idea presented by Portugal, but the decision taken in the meeting of 10th April 2000, in Lisbon, was due, essentially, to two reasons:

1. First, of all the co-operation forms mutual legal assistance is, without a doubt, the most frequent in the every day work of the contact points;
2. Second, it was decided to integrate in the Atlas the information that already existed in the EJM, especially the “fiches belges”.

The final model of the Atlas was also approved by the 15 correspondents through the definition of the scheme that would be implemented for each Member State.

As far as the informatic aspect is concerned, the graphical aspect of the project was decided as well as all the technical requirements needed for the construction of the Atlas.

During the Portuguese Presidency, the Atlas was presented on the 11th May 2000 in the Multidisciplinary Group on Organised Crime meeting; on the 19th May 2000 in the Article 36^o Committee meeting, and finally in the Justice and Home Affairs Council of 28th and 29th May 2000, where the Portuguese Minister of Justice together with the Belgian Minister of Justice presented the project, receiving the political support from all the Ministers of Justice of the European Union.

After this occasion, the Atlas was also presented in the meeting of the EJM in Bordeaux, in 17th, 18th and 19th December 2000 and also in the meeting of the EJM in Stockholm in 18th, 19th and 20th June 2001, mainly to report on the progress of the project.

In the 1st Portuguese Annual meeting of the EJM, that occurred on 13th and 14th September 2001, in Tavira, with all the countries built, the correspondents could check their countries so that Portugal could complete the last details, in order to present the concluded project in the meeting of the EJM, in Brussels, in November 2001.

In the meeting of the EJM, that will occur in November 2001, under Belgian Presidency, the Atlas, primarily born in the EJM, will be proudly offered to all the local judicial authorities in the fifteen Member States.

3. *Updating*

The updating of the data contained in the Atlas is a fundamental point: the Atlas would lose its utility if the authority identified by the system is not the competent one.

On the other hand, this update has to be as accurate and as permanent as possible. It also has to be secure.

The Contact Management Application combined with the Digital Certificate System (smart card), that Portugal has created and offered to the 15 correspondents, foresees all of this.

It is conceived in such a way that allows the national correspondents to update, in a simple, and most important of all, secure way, the data contained in the Atlas, that refers to her/his country.

In fact, the national correspondents are the ones in the best position to do the update work: they have a complete knowledge of the project and by doing it directly (without the need to use intermediaries) they enable the Atlas to be always as accurate as possible.

Therefore, two informatic systems were developed and offered by Portugal:

(a) The Digital Certificate System (smart card)

Each national correspondent has his own smart card, with his secret pin number that enables him to access to the Contact Management Application.

By using the digital certificate, a channel is established between the web server and the user (in this case the national correspondent) with three basic properties:

- The channel is private. Encryption is used for all messages after a simple handshake is used to define a secret key;
- The channel is authenticated. Both server and client, endpoints of the conversation, are always authenticated;
- The channel is reliable. The message transport includes a message integrity check (using a MAC – Message Authentication Code).

A digital certificate binds an entity to a public key. Public keys (large, unique, integer numbers) are used in encryption for confidentiality.

The digital certificate is saved in a smart card (a plastic card about the size of a credit card, with an embedded microchip that can be loaded with data) because it is safer: only it's owner is able to use his digital certificate with a pin number given only to him.

This smart card needs to be issued by a proper authority, called Certification Authority. To be able to read the digital certificate included in the smart card, it is therefore necessary to install a so-called smart card reader: Portugal has also offered one smart card reader to each national correspondent.

(b) The Contact Management Application

The purpose of the Contact Management Application (created and offered by Portugal) is to transfer the task of maintaining the contact information about the competent authorities to the person (national correspondents) who is responsible for that information. The application is designed to be as simple as possible as to allow a non-technical person to manage the data of his/her country.

It allows the manager to:

- Create new authorities and associate them with existing judicial regions;
- Change the contact data (name, address, telephone and fax numbers, e-mail address) of existing authorities;
- Create new localities and associate them with existing judicial regions;
- Change the name of existing localities;
- Create new postal codes and associate them with corresponding locality;
- Change the association of postal codes to localities.

This application does not allow the correspondents to change the judicial organisation of his country (approved in the informal meeting in 10th April 2000, that took place in Lisbon), that is, to create or change the area of competency of the judicial regions.

Although all this may seem too technical and confusing, these are really user-friendly systems and it is really simple for the national correspondents to update the Atlas, in the part that concerns her/his country.

SECTION 4. MEETINGS OF THE NETWORK

§ 1. General framework

The Decisions and texts establishing the principle of the meetings of the contact points and their frequency are set out below chronologically:

- **8 to 10 May 1996** : Conclusions of the *seminar "European judicial network and organised crime"*, held in Brussels;
- **June 1997**: *Recommendations of the Action Plan on Organised Crime* approved by the European Council in Amsterdam;
- **19 and 20 June 1997**: Conclusions of the *seminar "European judicial network and organised crime"*, held in Brussels and organised by the Belgian Ministry of Justice with financial support from the European Union.

The following guidelines for the setting up of a EJN were adopted by the participants in this seminar as regards meetings of the network :
(9417/97 - DG H - conclusions)

"Object of periodic meetings of contact points:

The purpose of these meetings should be to allow the contact points to get to know each other and to exchange their experience, notably with regard to the functioning of the network, and to be a forum of discussion on practical and legal problems (such as disparities in systems or diverging interpretations of contractual provisions applicable) encountered by the Member States in the context of judicial cooperation.

Frequency of the contact points' meetings:

Given the fact that the initial objective is to allow a personal contact between the contact points, the quarterly meeting option seems most appropriate for the launching phase.

In a subsequent phase, in view of the decisions taken on the content of the meetings, these will be organised on an ad hoc basis.

Organisation of the contact points' meetings:

Questions relative to the organisation of meetings are linked to the institutional framework in which the network fits and will have to be examined later. Nevertheless, there would be an advantage in holding the meetings in the capital of the Member States in turn. This would make it possible to meet authorities of the host State other than contact points and to visit specific bodies in that State (Sirene office, central police authorities, the general prosecutor's office, services specialised in the fight against certain forms of crime.) That kind of meeting in different capitals would be organised on a financial basis still to be examined."

- **29 June 1998: Joint action on the creation of a European Judicial Network (doc. 98/428/JHA)**

“TITLE III

PERIODIC MEETINGS OF THE EUROPEAN JUDICIAL NETWORK

Article 5

Purpose of the periodic meetings

1. *The aims of the periodic meetings of the European Judicial Network 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 competent European Union working parties to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation.*

Article 6

Frequency of meetings

1. *The European Judicial Network shall first meet within three months following the entry into force of this Joint Action.*

2. *The European judicial Network shall thereafter meet periodically on an ad hoc basis, as its members feel the need, at the invitation of the Presidency of the Council, which shall also take account of the Member States wishes for the Network to meet.*

Article 7

Venue of meetings

1. *Meetings shall in principle be held on the premises of the Council in Brussels, in accordance with the provisions laid down in the Council's Rules of Procedure.*

2. *However, alternative meetings in the Member States should be contemplated, to enable the contact points of all the Member States to meet authorities of the host State other than its contact points and visit specific bodies in that State with responsibilities in the context of international judicial cooperation or of combating certain forms of serious crime."*

- **25 September 1998: First meeting of EJN contact points**, Brussels (doc. 11630/98 LIMITE CRIMORG 147)

Presentation of the Joint Action by the (German) Presidency and by Belgium:

"regarding the frequency of the Network's meetings, the Presidency's proposal in a non-paper won participants' support for the view that the network should initially meet 3 times per year, including at least once in a Member State, so that the contact points can get to know each other better and learn in day-to-day practice how mutual assistance is organised in each State.

Some contact points have proposed that the network also be able to meet in smaller Working Parties or workshops to discuss specific points in mutual assistance between countries or groups of countries."

- **26-28 June 2000: 6th meeting of EJN contact points**, Sesimbra (P), no official document :

The Portuguese Minister for Justice informally undertook to organise one meeting a year in Portugal bringing together one contact point per Member State for, namely, training in technical aspects of the development, setting up and updating of the communication and information tools provided to contact points.

§ 2. Periodical meetings

A. Outline

1998

1 July 1998 - 31 December 1998: Austrian Presidency

- 1st meeting of the EJM: Brussels, 25 September 1998

1999

1 January 1999 – 30 June 1999: German Presidency

- 2nd meeting of the EJM: Brussels, 26 and 27 January 1999
- 3rd meeting of the EJM: Recklinghausen (D), 23 to 25 June 1999

1 July 1999 – 31 December 1999: Finnish Presidency

- 4th meeting of the EJM: Helsinki (FIN), 3 to 5 November 1999

2000

1 January 2000 – 30 June 2000: Portuguese Presidency

- 5th meeting of the EJM: Brussels, 28 January 2000
- 6th meeting of the EJM: Sesimbra (P), 26 to 28 June 2000

1 July 2000-31 December 2000: French Presidency

- 7th meeting of the EJM: Bordeaux, 17 to 19 December 2000

2001

1 January 2001 – 30 June 2001: Swedish Presidency

- 8th meeting of the EJM: Brussels, 7 March 2001
- 9th meeting of the EJM: Stockholm (S) 18 to 20 June 2001

1 July 2001 – 31 December 2001: Belgian Presidency

- 10th meeting of the EJM: Brussels (B), 26, 27, 28 November 2001 (forthcoming)

B. Account of periodic meetings

1. Brussels (17 December 1997)

Participants: 70 people

Themes: The European Judicial Network and its European partners: Europol, UCLAF and the liaison magistrates. Instruments/tools available to contact points (CD-ROMs, website and internal telecommunications network).

Programme:

At this first meeting of the EJM contact points, a whole series of documents was provided to participants in accordance with Article 8 of the Joint Action of 29 June 1998.

The first item on the agenda was the presentation of the Joint Action, which followed a brief history of the creation and development of the network. The role of the contact points and the tasks of the EJM were also discussed (10528/98 CRIMORG 118).

A report was then given on work in progress to create a file on internal law and procedures on the main investigative measures (better known as the "fiches belges"), which originated at the meeting held in Brussels on 16 September 1998. To that end, the conclusions of the meeting were presented to the contact points. The fiches were to be accompanied by the texts of the main Conventions, the associated reservations and declarations, references to points of substantive national law and an organisation chart for the judicial organisation of each State. It was suggested that this information be made available on CD-ROM and/or via Internet.

UCLAF, which had two representatives at the meeting, presented its activities, stressing its increasing role in the area of organised crime. It was noted that the judicial unit of UCLAF was made up of magistrates from different countries, whose role was to act as privileged intermediaries with national judicial authorities involved in investigations relating to the fight against fraud in the Community.

The contact points welcomed UCLAF's proposal to organise a seminar for them on the protection of the Community's financial interests. UCLAF also said that it would investigate the possibility of allowing contact points to take part in the meetings of the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF).

The role of liaison magistrates was then discussed. A French liaison magistrate described a very encouraging experience that clearly illustrated the required complementarity which must underlie relations between the liaison magistrates and the EJM.

The future role of Europol in the light of the broadening of responsibilities arising out of the Amsterdam Treaty was explained to the participants. Particular attention was given to the support Europol will have to be able to give to national investigations, in close collaboration with the judicial authorities.

Discussing a recent narcotics investigation that required constant coordination of police forces and support for the judicial authorities concerned, Europol expressed the hope that it could serve as a transmission point for international letters rogatory for investigations involving a number of States, and that this task could be facilitated by the EJM.

The General Secretariat then spoke about the communication network that would have to link the contact points and the legal and practical information to be provided to them. The contact points had been consulted on the type of communication system to be installed (paper, telephone, fax, e-mail, CD-ROM) and on its content. The conclusions of that discussion were set out in 11629/98 CRIMORG 146. It was decided, in particular, to create an informal working party made up of interested contact points and of experts (Europol, etc.) to investigate the various possibilities. The report they drew up would be forwarded to the MDG, which would discuss the appropriate steps; it would also be the subject of a communication to contact points for discussion at the next meeting. The Presidency would report to the Council.

The first meeting of the contact points was brought to a close with a presentation, and the distribution, in drive form, of the manual of the Public Prosecutors' Offices of the Baltic region, which would facilitate judicial cooperation within that geographical area.

The conclusions of the "Euro Justice" Conference held in Noordwijk (NL) in June 1998 were presented in 10838/98 CRIMORG 126, which was distributed to the contact points.

2. Brussels (26 and 27 January 1999)

Participants: 71

Topics: measures adopted by the Member States to make the EJM known to the local judicial authorities; first informal evaluation of contact points' experiences, the Network's tools - the website and the CD-ROM; extension of the EJM to candidate countries.

Programme:

This second meeting of the contact points in Brussels began with a presentation of the National Magistrates' Office in Brussels and the role of national magistrates, particularly in coordinating public proceedings both nationally and internationally. Representatives of the General Police Support Service gave an outline of the activities of this new Belgian police service created to support local police and exchange national and international police information.

Each Member State was invited to describe the national initiatives it had taken to make the EJM known to the local judicial authorities involved in international mutual assistance. This *tour de table* revealed the diversity of national procedures for disseminating information, attributable in part to the diversity of judicial systems involved. In numerous States, however, a continuing need for provision of information was recognised.

Among the suggestions that followed the *tour de table*, a desire to avoid multiplying channels for transmission of requests for assistance was expressed several times. The contact points also expressed a hope that the role of the EJM would be to give added value, in terms of speed and success, to the execution of a request. Some even suggested that the EJM should operate only in emergencies or where there were special problems.

The second subject discussed was that of initial practical experiences within the EJM. Most contact points agreed that it was still too early to form an opinion, though the first impression was fairly positive. Some practical difficulties were reported, however, such as the round-the-clock availability of the contact points.

The telecommunications network was the third item on the agenda. Here, the General Secretariat presented the CD-ROM and the website (<http://ue.eu.int/jai>) which had been in preparation since the first meeting.

At this juncture, the Netherlands demonstrated the KRIS software, a computerised system to assist in drafting international letters rogatory.

The results of the questionnaire on the effects of the limitation period in the context of mutual assistance (11631/1/98 REV 1 CRIMORG 148) were presented to the meeting. No particular problems were pointed out; nor were there any regarding extradition, since the EU Convention was shortly to come into force.

The question of the enlargement of the Network to candidate countries was discussed in a full meeting (11096/98 CRIMORG 133 and 5453/99 CRIMORG 10). It was decided that the candidate countries could have access to the list of contact points at the request of the competent authorities but that it was still too early to invite them to the Network's periodic meetings. As for more sensitive information, the view of the contact points was that such information should not be made available for the time being.

The Netherlands representative announced a comparative study, financed by the FALCONE programme, on special techniques, and asked contact points to respond to a questionnaire which they would receive.

Europol used its floor time to announce the creation of a new counter-terrorism database.

The French contact points asked for a meeting to be devoted entirely to case investigations that the contact points would have to analyse and solve. The General Secretariat said that it would study the proposal with the Presidency.

3. Recklinghausen

Dates: 23 to 25 June 1999

Participants: 80 people

Topics: "Criminal justice in Europe; cross-border cooperation in criminal matters"

Programme:

After the official opening, which dealt in particular with actions undertaken under the German Presidency, such as the common positions on computer crime and child pornography, the first day of work began with a presentation of the principles

governing mutual assistance in Germany. To that end, the participants were shown how an electronic file of places and areas of jurisdiction in Germany worked. The database was stored on a drive made available to the contact points.

The next item was a presentation of experiences in mutual assistance between Germany and the United Kingdom, France, Spain and the Netherlands, experiences whose success was attributable, according to the speaker, to the personal relationships developed between the authorities responsible.

The Council Secretariat used the meeting to give a progress report on the various communication and information tools for the Network's contact points, namely, the CD-ROMs containing the main international legal instruments on mutual assistance, information on legal systems in Europe and the fiches belges, and also on the website (<http://ue.eu.int/jai>) and on VPN, which, in the long term, was intended to link contact points to one another to speed up transmission of requests and to provide secure communication between them.

Those present then heard a presentation on the setting up of a research and documentation centre which, in the form of a project named "Eurojust", would allow judicial authorities centralised access to all information on international conventions, case law and national legislation.

The theme of the discussion that followed was: challenges for the EJM in the light of other European initiatives such as "Eurojust" and "the European public prosecutor". Was there a need to create centralised units to improve international judicial cooperation? The issues were what subjects were to be assigned to joint investigation teams on the basis of Article 30(2) TEU, the competence and role of the EJM, and so on. Many stressed that the EJM could play a significant role in future developments in European judicial cooperation on criminal matters, on the basis of the existing instruments.

The second day began with a presentation on the theme of money laundering and confiscation of assets in Germany, followed by a *tour de table*. Two instances of cooperation with specialist investigation units were presented, on the same subject.

The Deputy Director of Europol was invited as a speaker by the meeting's organisers, to address the contact points on Europol's future perspectives, in the light of the growth in transnational crime. He summarised the present situation on the basis of the Europol report based on national contributions. He called for the EJM to become more involved in Europol's work.

Representatives of the United Kingdom and Ireland each presented a document containing guidelines on international mutual assistance in criminal matters

(10018/99 EJM 8 CRIMORG 104 COPEN 19 and 10583/99 EJM 12 CRIMORG 123 COPEN 31).

4. Helsinki

Dates: 3 to 5 November 1999

Participants: 65 people

Topics: mutual assistance in Finland, international cooperation in practice and developments in the European Union

Programme:

This 4th meeting took the form of a "working seminar". On the first day participants were given an outline of the legislation on and practice of mutual assistance in the Nordic region and a presentation of judicial cooperation between Finland and the Baltic Republics, and with Russia.

The theme of the second day was international judicial cooperation in practice. To this end, the statements of good practice in mutual assistance in criminal matters deposited by the Member States (Joint Action 98/427/JAI, 28 June 1998) were examined.

The remainder of the day was devoted to the study of a scenario concerning trafficking in human beings from the Middle East to the European Union. This case was inspired by a real case of illegal immigration, in connection with which the Network had organised a number of coordination meetings between the Austrian, Netherlands, German and Belgian contact points. Numerous countries were implicated in this trafficking, which included such features as corruption of border police officers, use of a network of refuges, money laundering via various banks and the use of mobile telephones, trucks and cars.

Participants were asked to provide a list of the mutual assistance measures which everyone within their own country was able to provide in respect of the problems thrown up by the exposition of the case. They were also asked to identify the practical obstacles to establishing a scenario of coordinated investigations and/or prosecutions.

This type of approach was unanimously regarded as being very fruitful and made it possible to highlight a number of legal and practical problems relating to differences between national legislations; this led to numerous suggestions for improving the activities of the Network.

One of the practical questions repeatedly stressed was the need for both national and international coordination of investigations. A number of suggestions were made here:

1. first, a coordination meeting should be held at the start of the judicial cooperation so that the criminal information already available could be shared, targets identified (if possible) and an initial checklist drawn up of the measures to be taken;
2. second, it would be useful if the States concerned nominated the persons who were to take part in the coordinating team, which ideally would be set up as multidisciplinary team;
3. third, it was suggested that a coordinator be appointed for the investigation – a role that might eventually be taken on by Eurojust?

The participants in the meeting ended by concluding that it would be desirable for other case studies to be included on the agendas for future meetings so that the legal and practical obstacles to international mutual assistance could continue to be identified.

It was also stated that some of the results of this study on illegal immigration and trafficking in human beings should be submitted to the relevant EU working parties in accordance with Article 5 of the Joint Action of 29 June 1998 concerning the Network so that the useful experience obtained could serve as a basis for any legislative changes and practical improvements. (We may cite here the draft Council Directive defining the facilitation of unauthorised entry, transit and residence and the draft Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (10075/01 DROIPE 54 MIGR 51 COMIX 457).

The third day was devoted to new developments in the sphere of justice and home affairs. The Finnish Presidency wanted to inform the contact points of the conclusions of the Tampere European Council, the 1998 Vienna Action Plan, the Amsterdam Treaty and the Convention (at the draft stage when this meeting was held) on Mutual Assistance in Criminal Matters, which, as we know today, is opening up broad new horizons in terms of international judicial cooperation. Another matter raised was the Euro-Justice Conference held in Rouen from 27 to 29 October 1999.

The Finnish Presidency asked the Council General Secretariat to prepare the initial assessment of the operation of the Network (as required by Article 12 of the Joint Action) with the involvement of the contact points. The findings from the assessment questionnaire drawn up by the General Secretariat and sent to the contact points were presented at the meeting (12393/99 LIMITE EJM 17 CRIMORG 155 COPEN 51). A constant theme clearly emerging from this exercise was the need for greater awareness of the Network within each Member State. The findings also indicated that language training for contact points needed some improvements.

The meeting also discussed the Eurojust mandate. Many contact points were concerned about its lack of precision and asked for its role and powers to be defined more clearly so as to avoid any overlap with the duties of the EJM.

5. Brussels (28 January 2000)

Date: 28 January 2000

Participants: 60

Topics: Improvement of judicial cooperation, illegal immigration, delays in executing requests for judicial cooperation, European judicial atlas project and VPN project.

Programme:

The participants began by examining the discussion paper (14045/99 CRIMORG 191 EJM 24 + ADD 1) on further improvement of judicial co-operation.

First, in the context of the Joint Action on good practice in mutual legal assistance in criminal matters, there was a discussion of the draft cover note accompanying requests for mutual assistance, in accordance with what had already been stated at Helsinki. Various practical recommendations were made concerning its form and content. It was also recommended that the cover note should be available on the EJM website.

There was also a discussion on facilitating the coordination of investigations, the dissemination of information concerning the existence and operation of the network, the updating of the *fiches belges* and the importance of including other case studies in the programme of future meetings. It was agreed that these matters would be discussed in more detail at the next meeting in Sesimbra.

The contact points were in favour of inviting the judicial authorities of the candidate countries to meetings of the EJM and giving them access to the available information.

As to the number of EJM contact points (13763/99 CRIMORG 185 EJM 22), the participants agreed that all the contact points should be involved in the EJM's work, since each of them had a vital part to play in it. One possibility here might be for contact points to attend on a rota basis.

One important item discussed at this meeting was the document (5082/00 CRIMORG 2 EJM 1) concerning delays in the execution of requests for cooperation. The participants were conscious of their role concerning the facilitation of international cooperation and agreed to identify between two and five cases of requests for mutual

assistance sent to the authorities of other Member States where a year or more had been spent in trying to speed up their execution. They agreed to share all their experiences at the meeting in Sesimbra with the aim of making a detailed analysis of the causes of the delays.

The Presidency gave participants a progress report on the development of the software for the European judicial atlas, which was intended to enable a country's competent authorities to easily identify the competent authority of the State to which they wished to send a request for international mutual assistance. National contact points/correspondents were to be designated in each Member State to provide the project leaders with the necessary information about the courts' domestic powers.

The contact points accepted that one or more correspondents per Member State had to carry out the updating of the information available on the *fiches belges* concerning the applicable investigation measures.

The third instrument to be discussed at the meeting was the Virtual Private Network (VPN), still in preparation. A very satisfactory trial was carried out for those present.

6. Sesimbra

Dates: 26 to 28 June 2000

Participants: 120 contact points only

Topics: Portuguese legal system, reasons for delays in international mutual assistance, further developments in the Network, including the preparation of a European Judicial Atlas.

Main aim of the meeting: to develop and intensify cooperation between the contact points and the other authorities working in the area of mutual assistance in criminal matters.

Programme:

This sixth meeting of EJN contact points began with a presentation of the Portuguese criminal procedural system, which was followed by a discussion of the practical aspects and a visit to the Office of the Public Prosecutor in Lisbon.

On the second day, Portugal's new legislation on judicial cooperation in criminal matters was presented to the contact points. The discussion that followed was concerned with the relationship between the Portuguese legislation and the obligations arising from international conventions. Portugal had undertaken to

abolish all obstacles to international cooperation. There was also much discussion of the possibility of freezing bank assets located in Portugal and of disclosing the existence of accounts held in Portugal by persons subject to a national or foreign investigation.

Reference was then made to a particular experience involving a contact point, highlighting the assistance which had been provided for outstanding letters rogatory, mainly as a result of direct contacts with other members of the Network.

The problem of translations of letters rogatory was raised during the discussion that followed the presentation; it was noted that, in many cases, the central authority was in the best position to provide such translations. The General Secretariat was asked to produce a document on the matter.

Further to the last EJM meeting in Brussels on 28 January 2000, the Presidency had asked the contact points to make an inventory of cases of mutual assistance where delays of at least one year had occurred. In the course of preparing for the present meeting, the contact points had contacted their colleagues in the requesting State and, as a result, most of these unprocessed requests had been resolved.

The cases were discussed by the participants at four workshops whose purpose was to analyse the actual causes of the problems and to propose solutions and make recommendations for overcoming them. On the conclusion of the workshops, a majority of the cases had been resolved through direct bilateral contacts. The exercise was deemed to have definitely given added value to the Network's activities.

The results of the workshops were presented in plenary session at the end of the day. They may be presented as follows:

1. The authorities in the requesting State and in the State addressed should contact one another directly.
2. In order for this to be achieved, it is essential that the authority addressed should inform the requesting authority as soon as possible that letters rogatory have been received, specifying the contact details of the performing authority (name, phone number, fax number and e-mail address), the EJM contact point whose assistance may be sought and the language facilities available.
3. The requesting authority should inform the authority addressed of the time within which letters rogatory are to be carried out.
4. Indications of urgency must be properly used, with clear reasons for such urgency always given.

5. Delay of over three months may warrant a reminder from the requesting authority to the authority addressed.
6. In the absence of any reply, the requesting authority may seek the assistance of one of the EJM contact points.
7. Some contact points thought that States should establish a system for centralised monitoring of incoming and outgoing letters rogatory. If possible, this should be a computerised system.
8. A common standard form for letters rogatory should be introduced in order to make them easier to carry out. The reply from the State addressed should be accompanied by a summary of the results of steps taken, for ease of understanding.
9. The establishment of specialist mutual judicial assistance units within each State is to be recommended.
10. Within each State, circulation of information on the work of contact points is desirable.
11. Each State's judiciary training college – insofar as these exist - should train magistrates in mutual judicial assistance.
12. Installation of the virtual private network (VPN) should be speeded up, since it forms an important channel of communication between contact points.
13. The workshops' proceedings showed the very important role played by contact points in the handling of requests for mutual judicial assistance. During the proceedings, contact points demonstrated their effectiveness by helping to resolve a number of cases involving delay. They should therefore repeat the exercise at least once a year, making their own choice of cases to be dealt with.

These conclusions were presented on the meeting of the MDG.

The participants then heard the representative of the Council General Secretariat, who described recent developments in the EJM since the previous meeting in Brussels.

The results of the questionnaire on improvement of judicial cooperation (14045/99 CRIMORG 191 EJM 24) which had been circulated to the contact point were passed on to the meeting, as was a draft cover note for rogatory letters sent abroad, which will be placed on the EJM's website. It was stressed during the discussions that setting up the VPN required total commitment and that the General Secretariat should make up the budget shortfall.

The problem of the accessibility of "fiches belges" was also discussed. It was decided that they could be circulated to all the Member States' judicial and police authorities with competence in international judicial cooperation. Each Member State was asked to arrange for the fiches to be circulated to their authorities and to bear the related costs.

On the third day, there was a presentation of the Judicial Atlas and the various institutional stages involved in its construction. The contacts points were given a demonstration on the website of how to access documents on Portugal and Belgium, countries on which full information was already available on the net at the time of the meeting. The creators of the Atlas encouraged Network members to visit the site and submit their comments.

Lastly, the participants were given an overview of work in the Justice and Home Affairs field over the preceding six months.

7. Bordeaux

Dates: 17, 18 and 19 December 2000

Participants: 106 persons + for the first time since the creation of the Network, 1 representative from each candidate country, invited as an observer to meetings of the Network + French liaison magistrates and liaison magistrates seconded to France, as provided for in the Joint Action of 29 June 1998.

Topics: "The fight against Economic and Financial crime: a playing field for the EJM?" (day 1) and: "Eurojust and the EJM, what are the perspectives for 2001?" (day 2).

Programme:

On the first day, a presentation was given on a recent experiment in France, namely the establishment, since June 1999, of economic and financial centres in four Tribunaux de Grande Instance (courts of first instance) (Paris, Lyon, Marseille and Bastia).

They consist of multidisciplinary teams placed at the disposal of specialised courts and composed of examining magistrates, public prosecutors, officials of the judicial services and assistants specialising in various fields (customs, Banque de France, tax administration, etc.).

Their task is to offer their expertise in economic matters to determine the requirements of investigations. Magistrates can then call on the experience of experts in cases where a multidisciplinary team is vital in combating this form of crime.

A recent financial case relating to irregular insider trading on the Amsterdam stock exchange was described to the participants to illustrate the Netherlands' approach to this form of crime and the problems created by the non-ratification of certain international conventions.

Five workshops on case studies of transnational financial crime (one of the French Presidency's priorities for action) were then open to the participants. The exercise was designed to give participants an idea of the help that OLAF or other specialised bodies could provide in investigations on the protection under criminal law of the financial interests of the Communities, money laundering or misuse of company property or credit. Each workshop had a computer on which participants could, if they wished, refer to the Atlas (at its current stage of development) and test its user-friendliness.

Following this group work, the contact points made a series of proposals aimed at improving mutual assistance.

The proposals included:

- the voluntary use of the cover notes (acknowledgment of receipt) on the Council's website when sending letters rogatory, even outside the European Union;
- increasing the number of direct links between magistrates so that useful contacts can be identified as easily as possible;
- making it easier for magistrates and police to travel abroad for the purpose of executing international letters rogatory;
- a return to partial execution of letters rogatory to simplify the administration of cases;
- in urgent cases, or to expedite the issue of the request, producing a translation spontaneously in complex criminal cases;
- applying of the law of the requesting State in the spirit of the new Convention of 29 May 2000 insofar as it conforms with the national law of the requested State;
- setting up a data base for funds seized within the European Union during execution of international letters rogatory.

Spontaneous information exchange, sharing of knowledge using criminal analysis and meetings between magistrates must be encouraged in order to establish greater cooperation between the economic and financial centres of the Member States.

There was also discussion of the synergy that was necessary between all those involved in judicial cooperation, EJM, Eurojust, Olaf, liaison magistrates etc. (the latter should always be invited to network meetings).

There was also mention of the joint investigation teams provided for in Article 13 of the new Convention on Mutual Assistance in Criminal Matters of 29 May 2000, not yet ratified. It was suggested that a legal instrument could establish them in advance.

The Secretariat gave a progress report on the VPN. All the instruments available (fiches belges, list of contact points, legal instruments, cover-note and European Judicial Atlas) would be temporarily incorporated, using a password, in the EJM website that Portugal created.

The Belgo-Portuguese team working jointly on the atlas project reported on the progress of the work in a document issued to the participants. The Secretariat hoped that the candidate countries would also be involved in the preparation of the atlas and the fiches belges.

The members of the Network gave a positive response to the Portuguese Justice Minister's proposal to receive each year the group of correspondents appointed by each Member State so that the data supplied for the Network's information and communication tools could be updated.

During the second day, devoted to the relationship between the EJM and the new EUROJUST unit, reference was made to the framework which had enabled the unit to be set up, starting with the Tampere European Council.

Prior to the meeting, a questionnaire on the connection between the EJM and Eurojust was distributed to the contact points.

Three aspects were highlighted in the answers to the questionnaire:

- First, the relationship between the contact points and the Eurojust judges should be free of any hierarchical implication; it should be one of complementarity and partnership. As far as possible, the Eurojust national correspondents should be selected from among the members of the EJM.
- Second, it was felt that a common secretariat and common tools (Atlas, CD-Rom, VPN) should be favoured.
- Third, the task of PRO-EUROJUST should be clearly focused on the coordination of cases so as to give added value to the facilitation of international assistance in criminal matters carried out by the Network.

One last topic caught the attention of members of the Network, namely the standing of victims of an accident occurring abroad. Portugal's initiative for a Framework Decision on the subject prompted the Network to widen its sphere of competence by providing assistance for letters rogatory for which it was necessary to coordinate the hearings of victims. Two liaison magistrates described their experiences in this matter.

8. Brussels (7 March 2001)

Participants: 51

Topics: final report on mutual assistance in criminal matters and urgent assistance requests for the tracing and restraint of property (first round of mutual evaluations), presentation of the members of PRO-EUROJUST, the EJN's communication instruments and information tools.

Programme:

The day began with a discussion of the final report on mutual legal assistance in criminal matters and urgent assistance requests for the tracing and restraint of property (first round of mutual evaluations) (outcome of proceedings in 7049/01 CRIMORG 29 EJN 9).

Contact points stressed that the experience had been most instructive for the countries evaluated and the representatives who took part in the exercise. The meeting expressed a wish to make the evaluation report accessible to its members via the EJN website.

For about ten recommendations in the report, the network decided to make its comments available in the above-mentioned documents, which will be noted below in this report (association of EJN with various initiatives).

The contact points discussed the standardised form for international requests for assistance (5673/01 EJN 6). On this point, it was noted that the forwarding note had not always been used, despite the conclusions adopted at the Bordeaux meeting.

Participants noted that, as regards enforcement actions, the standardised form was difficult for the courts called upon to order such measures to use.

The Eurojust theme was of course on the agenda of this meeting, just a few days after the provisional unit had been set up. With that in mind, participants were reminded of the Bordeaux meeting's conclusions on relations between the EJN and PRO Eurojust.

The contact points noted that the Secretariat would be shared between them. PRO EUROJUST representatives then introduced themselves to their EJM colleagues. The Secretariat then reviewed the various instruments intended for members of the network: CD-ROMs, website, VPN and Atlas.

Regarding the CD-ROM, a tour de table showed that a new version of the international instruments was needed, along with the names of national correspondents for the improvement and updating of the fiches belges (whose content should also be simplified, or corrected, according to some participants) and the participation of 50 contact points for the provisional setting up of the VPN. A report was presented on the placing of the various instruments in the Portuguese site.

A questionnaire on judicial cooperation with Russia on organised crime was distributed to the contact points, as was a questionnaire on crime and the public sector.

9. Stockholm

Dates: 18 to 20 June 2001

Participants: 130, including 1 representative per candidate country, 15 members of the Eurojust provisional unit and 1 representative of the Russian Federation

Themes: presentation of the Swedish law on mutual assistance and the Nordic legal cooperation system, presentation of Eurojust and of cooperation between Eurojust and the EJM. Workshops: case studies on cross-border crime (economic, computer and environmental crime, drug trafficking and trafficking in human beings, racism) and the role of the central authority.

Programme:

The aim of the proceedings of this meeting shared the goal of focusing thinking on how to make better use of the tools created to combat organised and transnational crime so as to avoid, as far as possible, allowing criminals to benefit from differences in Member States' legal systems.

The first day began with a presentation on the Swedish law on mutual assistance, and a presentation from the Swedish Public Prosecutor on how Sweden had adapted its system to new challenges in crime, particularly transnational crime.

An overview was then given of the Nordic judicial cooperation system which was based – notwithstanding separate legal traditions – on a degree of uniformity of the fundamental principles governing the field, particularly with regard to the importance attached to crime prevention, the low rate of criminal sanctions, etc. The current trend

was to continue cooperating closely while taking account of the region's present European context.

The Secretariat of the Network outlined recent initiatives drawn up in the context of the European Union: reference was made to mutual recognition measures (freezing of assets: announcement of a political agreement by the end of 2001) and extradition arrest warrants.

As at each meeting, the progress of IT tools was examined: CD-ROMs, website, VPN and the various instruments (fiches belges, cover notes, European judicial atlas, and standardised forms for mutual assistance requests – which were distributed to those present).

The contact points agreed to use those instruments as much as possible and felt that an evaluation for the purposes of improvement should take place within the coming year. It was pointed out that it was a matter of urgency for all contact points to be equipped with the VPN. Communication between judicial authorities, central authorities and the members of Eurojust would be greatly facilitated by it.

The Portuguese initiative to update the fiches belges was welcomed by the participants at the meeting. At the same time, they referred to an evaluation of the practical application of these and the continuous updating of the information.

The Portuguese delegation then gave a presentation of the European judicial atlas with regard to the Swedish judicial system.

The second day was devoted to workshops on topical matters relating to the role of the central authority, racist crimes and cross-border crime such as financial, computer and environmental crime, drug trafficking and the trafficking of human beings.

During the workshops, participants were, in accordance with Article 7(2) of the common action establishing the Network, able to visit several specialised judicial institutions in order to familiarise themselves with the practical operation of the Swedish judicial system. They noted that such meetings contributed to a greater understanding of European legal systems and of crime in Europe. They also recommended that future Presidencies organise such visits at subsequent meetings.

During the third day of the meeting, there was much discussion on Eurojust and its position in relation to the Network. For that reason, representatives of PRO-Eurojust had been invited to the meeting.

In the conclusions adopted at the end of the meeting, the contact points recommended that the Presidency, in cooperation with future Presidencies, conduct further case studies in order to achieve the following objectives alongside Eurojust:

- a joint approach to priorities in the fight against crime at European level;
- a political approach to the circulation of information concerning the Network and Eurojust;
- a shared vision on the distribution of work in order to avoid the duplication of representations.

While Eurojust and the Network had shared objectives, overlaps in their responsibilities could not, however, be ruled out. The contact points stressed the need to distinguish clearly between the characteristics of each mechanism:

- bilateral v. multilateral
- local v. European level
- reactive v. pro-active
- short-term v. long-term projects
- cooperation v. coordination
- operationality v. strategy

Future policy should be shaped on the basis of this approach and an in-depth discussion should rapidly be launched.

It was suggested that informal working parties bringing together members of the Network and PRO-Eurojust be established under the aegis of the Council in order to study specifically the way in which to approach joint work.

Participants heard the Prosecutor-General of Liechtenstein, who gave them an overview of his country's current rules on international mutual assistance in criminal matters.

The meeting noted the events which had occurred during the Göteborg European Summit; several contact points had met with some Eurojust members in parallel with the meeting to discuss the operational follow-up to international judicial cooperation in the field of hooliganism. The results of the meeting were set out in a note from the General Secretariat which, in particular, suggested:

- organising the exchange of experiences between prosecutors specialising in investigation methods, applicable legal provisions, etc.
- systematically using standard forms for international letters rogatory;
- requesting an analysis of the "anti-globalisation" phenomenon in Europol;
- continuing efforts for harmonisation of ad hoc legislation, particularly in relation to criminal organisations;
- allowing contact points specialising in the field to meet in ad hoc restricted meetings.

§ 3. Informal meetings

A. Outline

2000

1 January 2000 – 30 June 2000: Portuguese Presidency

– EJM meeting: Lisbon (P), 10 April 2000

2001

1 July 2001 – 31 December 2001: Belgian Presidency

– 1st annual meeting in Portugal: Tavira, 13 and 14 September 2001

B. account of the informal meetings

1. Lisbon (10 April 2000)

Participants: 24 contact points

Subject: European Judicial Atlas

Programme:

The meeting provided the opportunity for the Portuguese and Belgians working on the completion of the Atlas to report on the progress of their project and to raise certain aspects of methodology and, in particular, the particular structure which Atlas was to have in each country. For that purpose, a questionnaire had been submitted to participants in advance (*see infra Section 3 "Instruments".*)

2. Tavira (13 and 14 September 2001)

Participants: 24 contact points

Subject: the European Judicial Atlas, the digital signature, the fiches belges : improvement and updating, EJM evaluation report.

Programme:

Portugal had designed software to allow remote updating of the European Judicial Atlas. For that purpose, a "smart" chip giving secure access to the software was

distributed to the correspondents responsible for updating the Atlas data. The main aim of the Tavira meeting was to train those correspondents in the technical aspects of updating the Atlas.

SECTION. 5 ACTIVITIES OF THE CONTACT POINTS

This part, devoted to the tasks of the contact points of the Network, has been prepared on the basis of the answers given to the questionnaire transmitted to this end to the contact points of the Member States.

Three reference fields were covered by this questionnaire, namely: the actual operational activities, the particular missions devoted to the contact points and the recommendations in order to improve the functioning of the Network.

One contact point per country was asked to gather the answers of the other national contact points and to transmit them to the Presidency.

Instead of opting for one presentation of the functioning of the Network country by country, we have chosen an integrated form of the answers, gathered by theme.

§ .1 Operational missions

The questions concerning the operational activities related to the type of intervention, the fields of intervention, the "clients" of the contact point, the quantitative data, the co-operation with other institutions and the different obstacles encountered by the contact point during the execution of their mission.

A. Type of intervention

The interventions asked of the contact points are very varied; they concern active as well as passive mutual assistance. Sometimes they even go beyond the parameters envisaged by the joint action and are, for certain countries, conditioned by the specific competencies of certain contact points, even by their location.

One could say that the intervention of the contact point is most necessary when a current investigation becomes urgent and needs rapid results, either concerning a serious crime and/or when prisoners are involved or when there is a risk of prescription. In most of the cases, the person who has referred to the contact point wants to make sure that his request is dealt with in an efficient way.

In general, the answers given by the contact points show that the nature of the requests from abroad or their national authorities is rather similar.

The following non-restrictive list mentions most of these activities.

Application is made to the contact points by their national authorities and their foreign correspondents in order to:

- provide them **information on foreign law, both substantive and procedural** (for example on the possibility of using undercover agents in certain Member States, provide information and advice to the instructing magistrate concerning foreign law applicable to a complex procedure like removal of seals, the seizure of litigious benefits, phone tapping, etc.);
- **authorise, even co-ordinate cross-border operations** (cross-border observations, controlled deliveries, undercover operations);

- provide **assistance to the requesting authorities during the preparation, the execution and the co-ordination** of rogatory commissions, **whether it concerns:**
 - bringing into direct contact the national and foreign magistrates within the framework of the execution of rogatory commissions;
 - transmission of information on the addressee of a rogatory commission;
 - participation in the execution of a rogatory commission abroad because of the linguistic knowledge of the contact point;
 - assisting in the editing of a request for international judicial assistance;
 - interceding with the person charged to execute a request to attract his attention to the urgent nature of the request or to the fact that the execution of a request is harmfully delayed;
 - provision of an explanation on the cause of a delay observed during the execution of a rogatory commission;
 - obtaining an acknowledgement for a rogatory commission addressed to foreign authorities and of which there is no news;
 - intercession with the competent persons in order to ensure that the execution of the request for assistance will be brought to a successful conclusion (eg: in order to receive or prolong abroad, certain measures of investigation like voluminous phone tapping or rapidly proceeding to the seizure of criminal assets like vehicles, bank accounts, etc...);
 - ensuring that seized exhibits are rapidly transferred;
 - provision of a copy of a repressive file, of the police record, of an psychiatric evaluation or a verdict pronounced abroad;
 - facilitation the organisation of a video conference to interrogate a witness abroad;
 - co-ordination of the execution of requests for judicial assistance if several judicial districts, even several countries, are involved;
 - (...)
- **support the national authorities in procedures that, in principle, do not directly fall under the tasks attributed to the contact points.**

It can be:

- specific aid for the *temporary transfer of witnesses detained abroad* for the purpose of a hearing;
- intervention in *extradition* procedures;
- assistance for the *transfer of convicted persons*, in view of the execution of their imprisonment sentence;
- (...)

B. The field of intervention

Article 2.1. of the joint action instituting the Network, stipulates that the persons appointed within each Member State to play the role of contact point need to have specific responsibilities within the framework of international co-operation or more general responsibilities in the fight against certain serious forms of criminality such as organised crime, corruption, drug trafficking or terrorism.

The daily work of the contact point shows that they are mainly appealed to in these matters, but that their support is also asked in the field of "traditional" criminality.

Besides organised crime in general, the particular fields of intervention that are most mentioned are:

- criminality linked to drugs (traffic, destruction of clandestine laboratories of synthetic drugs,...);
- economic and financial crime (money laundering, VAT carousel, divers frauds...);
- terrorism ;
- trafficking in human beings;
- illegal immigration;
- traffic of stolen vehicles;
- traffic of cigarettes;
- other serious crimes: murders, armed attacks or with explosives, rapes, ..)

Certain contact points have only been involved with certain matters like in Jersey and the Isle of Man where the requests addressed to the contact point have concerned questions linked to money laundering. The same goes for the contact point of the Office of the German Federal General Prosecutor whose competence is exclusively limited to the fight against international terrorism.

C. The « clients »

The contact points were asked to designate the services or institutions that form their customers. The persons who make an appeal to the Network come from the country of origin of the appealed to contact points, from a foreign country or from international institutions.

1. The national clients

Within their respective States, the contact points are most often contacted by the magistrates of the public Ministry and the investigative magistrate. Others, but less

often, are the police services, the central authority and the customs services or the Ministry of Foreign Affairs.

2. *The foreign clients*

When their support is asked by foreign authorities, the contact points generally answer to a request coming from a contact point of another Member State.

It also happens that they are directly contacted by the competent judicial authorities of the requesting State, namely by the prosecutor or judge of investigation charged with the investigation or the central authority charged with the transmission of a request for mutual assistance.

Note that in the system of Common Law where there is no investigative magistrate, nor a magistrate conducting the investigation, the investigators address themselves directly to the contact point of the Network. This is in particular the case in the United Kingdom where the HM Customs & Excise and the Crown Prosecution Service are designated to this end as judicial authorities.

3. *The « international » clients*

Concerning relations established between the contact points of the European Judicial Network and the representatives of other institutions, whether it concerns horizontal relations, such as the magistrates and liaison officers or vertical relations like with OLAF, EUROJUST, etc...

Most of the contact points have indicated that they have maintained occasional contacts with these entities during special files which needed a joint approach.

This is for example the case of Ireland which mentions reciprocal contacts with OLAF for investigations concerning fraud, of France which also points out numerous contacts with the French and foreign liaison magistrates, of Portugal where the collaboration with OLAF, Pro-Eurojust and also with the magistrates and foreign liaison officers is judged in an extremely positive way. In Finland, the contacts with the national liaison officer based in Estonia are very frequent. In The Netherlands there are contacts every week between the contact point and the foreign liaison officers concerning incoming rogatory commissions.

The success of these collaborations is explained by the complementarity that exists between the numerous entities and the expertise they acquired internally, whether it concerns the knowledge of languages and local traditions (for the liaison officers and magistrates for example), the command of certain specific matters or particular procedures etc.

D. The quantitative data

Most of the countries do not have absolute numbers on the number of interventions experienced by their contact points. Several reasons explain this absence of statistical data:

Certain contact points occupy on a national level functions that lead them to have daily contacts with national and foreign authorities. It is very difficult from then on to distinguish if these persons have acted in the framework of these national responsibilities or as contact point of the EJN.

Furthermore, a great number of contacts are done by phone or e-mail and do not give rise to the systematic opening of a file.

The number of cases dealt with by the contact points also varies according to the needs of judicial assistance that are more important in certain countries than in others.

As an indication, it is only mentioned that the contact point of the central authority in London on average deals with one request from the Network per week, while the intervention of the contact point at the Ministry of Justice of The Netherlands is sought daily. In France, the extent of the work executed by the various contact points is also very variable and can be estimated between 2% and 70% of the time of occupation according to the various jurisdictions.

The contact points of the German Federal Republic counted in 1999 150 interventions. An increase has been observed for 2001 or for the first 9 months of the year, already more than 200 requests have been registered. Also in France, an absolute increase of the requests to contact points is observed.

In Portugal, the quantitative data concern some 130 interventions of which 50 occurred in the months' of June to September 2001, mainly in collaboration with the United Kingdom, Germany, Spain and France. Mostly it concerns requests for information on the state of execution of a request for mutual assistance, requests for unfreezing a rogatory commission which has an abnormal delay or more specific demands (like for example, the joint preparation of a rogatory commission between Portuguese and foreign contact points,...)

E. Case examples

In order to relate the most realistic way of the operational interventions, the contact points were asked to describe some representative cases in which they have been involved. Some are presented hereafter as an example:

1. B-NL-D-A. – Illegal immigration

An international criminal organisation had organised clandestine immigration on a large scale from the Middle East to Central Europe from where the immigration candidates were then transported to several European countries. Some of these persons were immediately after their arrival at destination, exploited by networks. Belgian, Dutch, German and Austrian contact points have met several times at EUROPOL in order to give a common orientation to the investigation, to facilitate the exchange of rogatory commissions between the concerned judicial authorities and to centralise the investigations in one country only which was then able to proceed to the arrests of the suspects.

2. B-F-E – Undercover operation – co-operation with the liaison officers

An investigation had been opened with a Belgian Judge of Investigation on a criminal organisation active in drug trafficking which a police officer was able to infiltrate. Thanks to the work of the French and Spanish contact points, that the undercover agent was able to continue his activities on the relevant territories. Their intervention mainly consisted of legal feasibility expertise, supporting the editing of necessary rogatory commissions and obtaining the agreement of the legal authorities that are locally competent to authorise this kind of practice. The Belgian liaison officers situated in Paris and Madrid were brought in at the various stages.

3. NL-F – Drug trafficking

In the framework of an investigation on the traffic of drugs and a murder, a search with travelling of police officers was requested with extreme urgency by a Dutch Prosecutor. The intervention of the French contact point allowed the execution of this complex rogatory commission within 48 hours.

4. D-NL – Phone tapping

In the framework of a German investigation concerning drugs, a voluminous phone surveillance (600 to 800 phone calls in Turkish language a day) had been installed in The Netherlands on the basis of a request for judicial assistance. After several weeks, the Dutch investigation authorities informed the German Prosecutor that the phone surveillance could be maintained no longer than three days due to a lack of personnel and that it would be stopped then. The absolutely indispensable continuation was finally obtained thanks to the intervention of the Dutch EJM contact point.

5. F-P-D - Financial crimes

In the framework of a German investigation into a highly competent swindler who acted on an international level, some 20 searches had to be executed simultaneously in Germany, in Poland and in France. At the request of the German colleague, it was

first of all possible to take contact with the locally competent prosecutor and also with the judge of investigation through the French contact point. The representative of the German contact point was authorised to participate in the execution of the rogatory commission in France and there was an excellent collaboration. The seized exhibits (computer, computer media and documents) could immediately be brought to Germany by the representative of the contact point.

6. D- TCH. - Interrogation through videoconferencing

Through a contact point in the Czech Republic, it was possible to proceed to the interrogation of a witness in Prague through a videoconference that was broadcast to the audience in Germany. The court of Prague took the place of the local Czech court effectively competent to execute the rogatory commission since the technical demands only existed in Prague. The contact point also saw to it that the police picked up the witness at his home and transported him to Prague for his interrogation.

7. P-B-GR - Extradition

Certain countries like Portugal do not grant extradition when the alleged crime is liable to be punished with life sentence, unless the requesting state provides the guarantee that this punishment, if it is pronounced, will not be applied or that the convict will benefit from all the guarantees enabling him to benefit of an early conditional dismissal. The respective intervention of two Belgian and Greek contact points at a Portuguese contact point allowed the extradition of two persons from Portugal to be obtained, despite the initial reluctance of the requested state. Together they worked out the text supplying the necessary guarantees for the procedure.

8. D- Pol. - Armed attack

In the framework of a hearing before a German court of charges against a Polish defendant on account of armed attack, the latter argued that he had resided in Poland at the moment of the facts and cited witnesses to this effect. The court for summary jurisdiction asked a contact point to have the addresses of the witnesses in Poland checked, to determine the competent Polish court to notify the request for appearance and to ensure that the requests for appearance reached the witnesses within the granted period. The Polish contact points transmitted the complete addresses of the witnesses and the competent court within two days. Furthermore he guaranteed that the witnesses would be informed in time of the date of their interrogation in Germany.

9. D- UK - Traffic of cigarettes

In the framework of an investigation of a German Prosecution Office on account of a clandestine cigarette traffic at international level, and for which suspects were in

preventive detention, the police officers charged with the investigation had spoken several times to the English customs authorities to no avail and were not able to obtain the necessary documents to allow them to continue the investigation. With the help of the EJM contact point, it was noted in less than a week that the absence of reaction of the customs was due to the fact that the requests for mutual assistance had never reached them. A representative of the English customs then went to Germany to directly and rapidly deal with the request together with the German investigators.

10. F-I - Illegal immigration- co-operation with the liaison magistrate

Following the discovery on 3 occasions, during a period of three weeks, of foreigners originating from Kosovo and illegally residing in France, hidden in trucks, travelling from Italy to the United Kingdom, the existence of an organised network of clandestine immigration between these two countries, coming from Italy, was unveiled. Since the French procedure does not allow the possibility of legal proceedings in France, the case was shelved. However, the information gathered during these investigations, was of the kind to interest the Italian judicial authorities to whom they were transmitted. The problem was to know to which authority to refer to. The solution was found in co-ordination with the liaison magistrate in Italy.

11. P- UK - Exchanges of information

Portugal had sent a complex request for international judicial assistance to the English judicial authorities. The latter immediately contacted the competent Portuguese contact point in order to obtain more detailed information to be able to execute the request. Once in possession of this additional information the English authorities began with the execution of the missions and had constant contact with the Portuguese contact point which supplied them with details on the methods of execution. This direct contact also allowed the Portuguese to be informed in real time of the progress or the difficulties of the execution of their request and to examine the proofs as and when they were gathered.

12. B- D – Temporary transfer of prisoner – double murder

In the framework of a double murder, a German prosecution office had requested the temporary transfer of a prisoner, incarcerated in Belgium. He was a principal witness for the prosecution. Following the refusal of the Belgian judicial authority which was locally competent to give a favourable continuation to the German request due to an ongoing investigation in Belgium into this person, the intervention of a Belgian contact point was requested. Within a period of two hours, all the authorisations were obtained and the transfer of the prisoner could take place the next day, date of the hearing.

13. B- NL-D - Islamic terrorism

A Belgian judge of investigation had, in the framework of an investigation concerning Islamic terrorism, proceeded to the arrest of several persons who planned attacks with explosives. The intervention of the contact point was requested to assist a co-ordination meeting between the various countries and to transmit certain rogatory commissions and see to their execution.

F. Encountered problems

The national contact points were also asked to set out the problems they encountered during the execution of their mission. The objective of this was to analyse the causes and to propose, as far as possible, certain improvements.

Even if the functioning of the network is unanimously appreciated and judged as efficient as a whole, certain contact points mentioned voids which will be mentioned hereafter. These less satisfying experiences concern problems of legal nature, the use of instruments of the Network, the lack of means the contact points have available to face their mission and finally the linguistic knowledge of the contact points.

1. Problems of a legal nature

The well known divergences between the different national legislations are felt by numerous contact point as being a restraint on international judicial co-operation. These legislative obstacles have made the supporting work supplied by certain contact points difficult, even impossible sometimes.

Contact points particularly mentioned in this connection, cross-border operations to which participated police officers acting under cover (operations authorised in certain countries and forbidden in others), the diverging legislation concerning the seizure of products of a crime, the installation of phone tapping at cross-border level, etc...

2. Gaps in the instruments

From the answers to the questionnaire it appears that the contact points regularly consult the "fiches belges". Even if the instrument is appreciated as such, certain contact points think that they are no longer updated on certain points and that they are incomplete on others.

Where the "fiches belges" explain the national procedure for numerous fields, certain contact points have expressed the wish to incorporate the legislative texts themselves, in all the languages of the European Union.

3. Lack of means

Most of the contact points carry on their mission for the EJM in addition to their usual tasks. This increase of work load has, most of the times, not given rise to an increase in means such as human resources or material.

Sometimes the result is long waiting periods to answer a request especially when the contact point is overloaded with national tasks, even a problem of availability of the contact point when he is at an hearing, at a mission abroad, etc...

4. *Insufficient linguistic knowledge*

The key to the success of the EJM lies in the networking and the ease of communication between the contact points. Even if every contact point is supposed to be able to express himself/herself in English or in French, certain members have related having been in contact with colleagues whose level of linguistic knowledge did not allow them to discuss judicial problems, which made the supporting function very difficult.

§ 2. Special missions

As experts in the field of international co-operation the contact points of the network are regularly appealed to for advice. They are brought in, on request of their national authorities, to legislative work, they also execute expert missions for the European Union and the Council of Europe and participate in an active manner in numerous international conferences.

The examples below illustrate this particular role:

A. Expertise at national level :

The answers given to the questionnaire show that in almost every country, the contact points are frequently appealed to by their national authorities in order to participate in work and/or give an advice on:

- the working out of bilateral treaties (like for example, the treaty between Spain and Portugal concerning the accelerated extradition procedure; the treaty of judicial mutual assistance between Portugal and the Federation of Russia, between France and Switzerland, etc...);
- the preparation and the ratification of multilateral treaties (such as the EU convention on mutual assistance in criminal matters of 29 May 2000, the UNO convention defining the Statute of the International Penal Court of 17 July 1998, the UNO convention against transnational crime of 15 November 2000, etc...)
- the adoption and modification of existing international conventions (like the modification of the Convention Applying the Schengen Agreement aiming at enlarging the scope of the article 40 dedicated to the cross-border observations, etc...)
- (...)

B. Expertise at international level :

Several contact points have participated to expert missions of the European Commission and the Council of Europe, in the framework namely of the PHARE, OCTOPUS, PACO, GROTIUS, TAIEX, FALCONE, TACIS programmes. For example:

- the expert missions for the Council of Europe in the framework of training programmes concerning the battle against organised crime and corruption, OCTOPUS and PACO programme (missions in Albania, in Slovakia, in Bulgaria, etc...)

- numerous expert missions in the framework of the joint action of 5 December 1997 of the Council of the UE "establishing a mechanism of appraisal for the application at a national level of the international commitments concerning the fight against organised crime";
- the participation of the contact points as international experts for the European Commission in the framework of the appraisal missions Justice and Internal Affairs (missions in Slovakia, in Lithuania, in Hungary, in Slovenia, etc...);
- (...)

C. *International conferences*

The members of the EJM are frequently invited as speaker, rapporteur or orator, to participate to international conferences.

- Most of the examples mentioned by the contact points concern conferences dedicated to judicial mutual assistance and to the mechanisms of international co-operation (like, for example, the seminars organised by the European Academy of Trier law relative to the European judicial area and the mechanisms of extradition or even, the seminar organised by the Institute of European Studies in Brussels dedicated to the penal judicial area after Tampere, etc...)
- The second category of conferences are international meetings dedicated to certain domains of organised crime (such as the organised conference in Vienna by Interpol on the traffic of women, the conferences proposed by the international migration organisation (IMO) in Rome and in Budapest on clandestine immigration, the conference organised by the European Judicial Network in Celle (D) on money laundering, etc)
- Certain have contact points also participated in more structural international meetings such as the annual conference of European General Prosecutors, Eurojustice or the general assembly of the International Union of magistrates.
- And finally, the contact points have sometimes had the occasion to present the activities of the EJM outside the European borders as it was the case during the world Congress of the Public Ministry in Sao Paulo, during the ASEM conference on the traffic and sexual abuse of children in Seoul,...

D. *Professional training*

One of the questions asked to the contact points was whether they were able to follow specialisation courses relating to judicial mutual assistance and if they had participated as trainers to such courses. They were also asked to cite the measures undertaken to make the Network known in the different countries.

1. Training on judicial mutual assistance – « passive » participation

A lot of members of the Network were already specialised in international co-operation before being appointed contact point. Moreover, it was this experience that often justified their appointment.

In certain countries, where a large number of contact points were appointed, specific training took place.

In Italy for example, where the training was provided by the Higher Judicial Council, the contact points were able to participate in a special way in the courses dedicated to judicial mutual assistance.

The same goes in France, where the contact points have attended to national training sessions in Paris under the aegis of the Ecole Nationale de la Magistrature on themes of international judicial assistance. Continuous decentralised training days in the Courts of Appeal have furthermore been organised by the Ministry of Justice.

Certain contact points have also participated in training abroad in the framework of specific conferences or, like in Germany, attended French or English language courses.

2. Training on judicial mutual assistance – « active » participation

Numerous contact points play an active role in training. This is the case in Belgium where the contact points give courses on international judicial co-operation to future magistrates or in Italy and in France where certain contact points are directly concerned in continuous training in this field.

The Portuguese contact points of the EJM took the initiative for a cycle of four regional training sessions intended for judges, magistrates of the Public Ministry, lawyers and civil servants. These conferences were dedicated to judicial mutual assistance in general (European Convention on mutual assistance in criminal matters of 2000, new Portuguese law on mutual assistance, good practices, Eurojust, etc...) and to the EJM in particular. To this end, two foreign contact points were invited to each of these conferences.

We also point out that in a lot of countries and in particular in Germany, the contact points have held conferences concerning the Network at prosecution offices, courts, police offices or even at the bar council.

Certain contact points have produced information brochures on the EJM destined for the users.

CONCLUSIONS – RECOMMENDATIONS

In this report, we wanted to account for the first three years of activity of the European Judicial Network. We have been able to demonstrate that it has become fully operational and that it is able to give, where its involvement is sought, real added value in the preparation and execution of requests for international judicial assistance.

By way of introduction, we should make clear that the objective of the report was not only to make an inventory but also to take a critical look into the functioning itself of the Network, to identify obstacles to its efficiency and to propose measures for improvement. In this last part, we wish to bring together the main points of the preceding chapters and to formulate certain recommendations.

We will follow the same structure as used in the report itself by dealing successively with the legal basis, the structure, the instruments, the periodic meetings and the operational activities.

A) The legal basis

The Joint Action of 19 June 1998 constitutes the legal basis of the European Judicial Network. All of its actions result from it. The part dedicated to the legal basis mentions, besides this initiative of the Council, all the other texts that assign particular missions to the contact points, like the Joint Action on good practice, the Action Plan for implementing the Treaty of Amsterdam, the Conclusions of Tampere, the Treaty of Nice, etc...

The fact of mentioning the European Judicial Network in this multitude of texts widens the field of activity and the competence of the Network and shows the confidence of the European legislators with regard to the contact points.

If the active intervention of some contact points is requested very frequently, it is however paradoxical to see that the vast majority of them are rarely consulted with regard to the development of the different instruments relating to judicial co-operation within the European Union, which involve the Network at different levels, sometimes allocating it new functions⁴.

⁴ Currently, two documents in which the EJM may have an important role are being drawn up within the European Union; the first concerns the adoption of a proposal for a Council framework decision relating to the European arrest warrant and to the procedures of remission between member States (12102/01 COPEN

The existence of new instruments, even measures of execution resulting from it, is not always known by most of the contact points by lack of a central "informing" organ.

In their replies to the questionnaire, certain contact points indicated that they would welcome the European Judicial Network being the subject of a more formal judicial instrument, determining more specifically the competencies of the contact points. Some also suggested establishing a code of conduct to guide them in their daily work.

Recommendations:

- 1- As the General Secretariat of the Council is in the best position to provide updated and complete information, it should ensure the periodic distribution to the contact points of information concerning the Network.
- 2- To achieve this, it is first of all important to involve the contact points timeously in discussions preceding the adoption of new texts relating to the criminal judicial assistance within the European Union which directly or indirectly implicates the European Judicial Network.
- 3- Then, concerning the new legal initiatives relating to the Network, the General Secretariat will have to ensure effective distribution by specifying the concrete and operational steps expected from the contact points.
- 4- To this end, the internet site of the Judicial Network could host a new section called "Announcements" containing this type of information which would be distributed under the responsibility of the General Secretariat to whom the founding joint action allotted the charge of the telecommunications network.
- 5- On the other hand, discussions on the question as to whether the European Judicial Network should be granted a reinforced legal basis, an internal regulation or a code of conduct should begin.

B) The structure

As we can see in what was said previously (see Section 2 of the present report) the advantages of the flexible and pragmatic structure at the disposal of the European Judicial Network were underlined by contact points who have answered the questionnaire.

51). The second is a draft framework decision relating to the execution in the European Union of decisions to freeze assets/evidence (13044/01 COPEN 64).

The principle of the Network is simple. It is matter of linking the persons who, in the 15 countries of the European Union, hold in their respective way the keys to judicial mutual assistance. The result is a network of expertise which has proven itself by intervening numerous times to ensure the rapid transmission of international rogatory commission and/or to ensure their execution.

This horizontal approach explains why the practical implementation of the Network differs from one country to another.

The number of contact points varies according to the country from 2 to 38. Those who have been appointed are mainly prosecutors and to a lesser extent investigation judges and representatives of central authorities. The objective was to reconcile the legal necessities on the one hand with the need for proximity with the local magistrates on the other hand.

This variable structure, on the whole much appreciated by the users, has nonetheless been the subject of several critical comments from the contact points, who feel that it makes the functioning of the European Judicial Network particularly complex sometimes.

The first problem concerns the countries which have an high number of contact points which makes it difficult to identify the locally competent contact points in a non localised request. A second problem results from the fact that certain regional contact points, who are not often contacted, develop little expertise .

Conversely, where the central authority is designed as a contact point, some magistrates regret the absence of direct contact with the local judicial authorities.

In the remarks made by the contact points as an answer to the questionnaire, there were also some criticisms concerning the functioning of the General Secretariat as supporting office. It was indeed mentioned that the information on the European Judicial Network coming from the General Secretariat had become less pertinent than in the past.

Recommendations

- 6- Establishing and facilitating direct contacts between locally competent judicial authorities remains the first objective of the Network to realise through the contact points.
- 7- Countries that have contact points with limited geographic competencies should designate a central contact point, specifically for general or non specific geographic requests or requests which concern several distinct regions within the same country. We bear in mind that certain countries like France, Portugal and

Germany have already opened a national secretariat or appointed a co-ordinating contact point.

- 8- To have decentralised contact points presents the advantage of proximity towards the local judicial authorities. Nonetheless, it is important to ensure that these regional contact points have deep knowledge of judicial mutual assistance at their disposal in order to be able to bring a real added value where their support is requested.
- 9- Consideration has to be given to the improvement of the functioning of the Secretariat of the Network so that it can more adequately meet the expectations and the needs of the contact points.
- 10 One of the most important functions of the contact points stipulated in the Joint Action is to provide, in particular to the local judicial authorities of their country, a maximum of legal and practical information destined to improve the judicial co-operation in general. The member States should take charge of the distribution of this information through training sessions or explanatory brochures,...

C) The instruments

An important part of the activity report has been dedicated to the instruments that constitute the first tools of the contact points of the Network: list of the contact points, legal instruments, 'fiches belges', cover notes and European judicial Atlas.

These instruments are unanimously appreciated by their users even if some of them, like the 'fiches belges', obviously need an update.

If the list of contact points and the collection of instruments have been put into practice by the General Secretariat of the Council and are updated by the latter, it has to be noticed that the more ambitious achievements have only been realised thanks to the initiative of certain countries, who have furthermore borne their costs. However one positive note is that the EJN, with only three years of existence had the maturity to construct, with the help and support of all the countries, the most important instruments.

Finally we underline that the realisation of the VPN, since 1998, has known numerous delays due to budgetary problems and the absence of a real political will to realise it. Meanwhile, the pilot project has finally come into operation.

As we can see, the Network has developed, since its creation barely three years ago, an important number of instruments helpful not only for the contact points, but also

for the whole of the European judicial world, involved in international judicial co-operation.

In addition to current achievements, other projects are in planning as well as improvements to the existing instruments.

Recommendations:

- 11- Development of an updating system for the “fiches belges” following the model developed by Portugal for the Atlas, which would allow the correspondents of the EJN to do the updating work directly. This implies setting up a database for the “fiches belges”;
- 12- Improvement of the “fiches belges”, taking into account the law of the requesting State in accordance with the principle provided in article 4 of the MLA Convention, which allows the requested State to execute the rogatory commission according to the law of the requesting State;
- 13- Reflection about the use of the VPN for the transmission of the request for mutual judicial assistance: a digital signature system is possible; this is an electronic and secure way, more confidential than fax;
- 14- At a long distance, and by the fusion of the Atlas with the “fiches belges”, the development of an automatic system that would allow the preparation and transmission of a request for mutual judicial assistance to the competent authority;
- 15- The Creation of a computer translation programme, which would breach linguistic barriers;
- 16- The distribution of a « newsletter » should be considered to reinforce the communication between contact points and improve the content of the information put at their disposal.
- 17- The insertion of information about legal instruments in judicial cooperation and other relevant information on the web site of the EJN under a new item called “Announcements”.
- 18- Determination of the budget of the European Judicial Network in order to allow the contact points to determine on the occasion of the periodic meetings the priorities of its allocation.

These are projects that the EJN believes that would be of great importance for all – the practitioners, the every-day man – for they simplify a normally complicated

subject, helping to construct each day, a more solid area of freedom, security and justice.

D) The periodic meetings

According to the terms of the Joint Action, the objective of the periodic meetings of the European Judicial Network is to "*allow the contact points to meet and to exchange their experience, to offer a platform of discussions for the practical and legal problems encountered by the member States in the framework of the judicial co-operation (...).*"

The 9 meetings that have taken place up to now, have fully reached these objectives.

The collegial, even friendly, atmosphere that reigns during the plenary assemblies allows the creation of a climate of confidence between the contact points with favourable repercussions on the functioning itself of the Network.

The content of the periodic meetings has been informative, diversified and oriented towards judicial practice.

Often, these conferences have thus been the occasion to familiarise the contact points with the law on judicial mutual assistance of the host country (Recklinghausen, Sesimbra, ...). These information sessions have not only allowed the development of a better comprehension of foreign law but they have also initiated interesting discussions of comparative law.

Certain conferences have, more specifically, dealt with one particular domain, as was the case in Bordeaux where the experience of setting up economic and financial units was emphasised. The French example has thus shown once again that an efficient fight against organised crime needs a multidisciplinary and coordinated approach of the judicial and police world.

Other meetings were more oriented towards operational work, such as the meeting of Helsinki where several work groups looked into a case of clandestine immigration at international level. Also, in the meeting in Sesimbra, requests for judicial assistance where there had been considerable delay in execution were analysed in limited groups, and in the Stockholm meeting, workshops had been organised according to the main interests of the contact points.

These meetings were the subject of detailed conclusions allowing the identification of the main problems and suggesting concrete measures to remedy them.

Certain meetings were dedicated to the analysis of documents produced by the Council, as was the case of the conclusions relating to the Joint Action of the Council

of 5 December 1997 establishing an evaluating mechanism of the application at a national level of the international commitments concerning the fight against organised crime. The discussions were facilitated by the fact that certain contact points had themselves been able to participate in the evaluations as national experts.

Other meetings included in their program visits to national institutions active in the fight against organised crime (Stockholm).

Besides the meetings organised in the countries of the Presidency and those which traditionally take place the first semester in Brussels, the EJM has also initiated a cycle of informal meetings, more technical, having as main subject among others, the development and the construction of the instruments of the EJM.

The network also opened its activities to other bodies of international judicial co-operation such as liaison magistrates or the magistrates seconded to PRO-EUROJUST.

The future areas of co-operation with EUROJUST were the subject of numerous discussions in particular in Bordeaux and in Stockholm.

Since the French Presidency, the candidate countries have also been brought into the discussions. The reinforcement of this co-operation is one of the priorities of the Network.

Recommendations:

- 19- In the answers given to the questionnaire, the contact points stressed the importance of the operational character of plenary meetings. It is desirable, following the example of the meetings of Helsinki and Sesimbra, to dedicate more time to dealing with concrete cases of co-operation.
- 20- There are grounds for allowing the participation of the highest possible number of contact points to the plenary meetings. In fact, this participation is considered as being the condition sine qua non of motivating the contact points in the execution of the common objectives of the Network.
- 21- The European Judicial Network has the intention to involve as much as possible its privileged partners in the plenary meetings. Their participation should however be considered according to the subjects under discussion.
- 22- It is necessary to involve more often the candidate countries in the activities of the periodic meetings.

- 23- Visits to national institutions active in the fight against organised crime should be promoted.
- 24- The organisation of regional working meetings of the EJM in each country in order to improve its work in view of a decentralised logic to implement the effective collaboration with the local authorities.

E) The operational activities

The exploitation of the questionnaire sent to the contact points focus on the operational activities of the members of the Network.

It has been confirmed that requests for intervention addressed to the contact points mainly concerned assistance, during the preparation, execution and co-ordination of international rogatory commissions. The contact points have also been requested to provide information on foreign law; and they intervene, more exceptionally, in particular procedures such as extradition or the transfer of prisoners.

The areas for involvement of the contact point are wide and mainly concern international trafficking, but also concern terrorism or armed attacks... These areas exceed the hypotheses anticipated in the Joint Action of 1997.

The concrete cases referred to in section 5 sufficiently illustrate the complexity of the requested interventions and the concrete support provided by the contact points.

The "clients" of the contact points are above all the foreign contact points. Regular contacts also take place with local judicial authorities and external partners such as the liaison magistrates, the liaison officers, the members of PRO-EUROJUST or OLAF.

Several contact points have also mentioned the particular positive experiences in co-operation with the contact points of the candidate countries.

Few contact points have quantitative data concerning their interventions within the Network. On the basis of partial data, it is however possible to estimate the activity of all of the contact points to several hundred interventions per year.

Furthermore it was interesting to see that numerous contact points were asked to fulfil expert missions or to participate, as speakers, at international conferences dedicated to the fight against organised crime or to mechanisms of international co-operation.

Certain contact points have also mentioned their participation in training for the magistrates of their country.

The comments made by the contact points and certain criticisms uttered by them allow the formulation of the following recommendations:

Recommendations :

- 25- the collaboration with and the consultation of the other players in the field of international co-operation are considered essential. In order to avoid double use, it is from now on necessary to determine and to define the tasks of everyone.
- 26- the contact points of certain candidate countries maintain privileged relations with the contact points of the European Union. These relations have to be encouraged in order to promote a total integration of the contact points of the candidate countries in the Network.
- 27- in spite of a considerable increase of the number of interventions, the Network still seems little known. It is important to continue the information campaign with national judicial authorities with the help of appropriate documentation.
- 28- it is desirable that the contact points are more often involved, in their respective state, in the training of new magistrates. In this way they could make them aware of the necessities and possibilities of co-operation and present the possibilities of the European Judicial Network.
- 29- most of the contact points fulfil their mission for the Network as well as their usual tasks. The means available to the contact points should be increased in order to reinforce their efficiency and their availability.
- 30- linguistic training has to be organised, and if possible, should be combined with training courses abroad.
- 31- the contact points have to be encouraged to hold separate registers to record their involvement within the framework of the activities of the European Judicial Network. This should enable the compilation of statistics at national and international level.
- 32- the choice of the contact points has to be made according to the expertise of the candidates. Training has to be provided in order to maintain and reinforce this expertise.

ANNEXE

Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network
Official Journal L 191 , 07/07/1998 p. 0004 - 0007

Dates:

OF DOCUMENT: 29/06/1998
OF EFFECT: 07/08/1998; ENTRY INTO FORCE DAT.PUB + 1 MONTH
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Subject matter: *JUSTICE AND HOME AFFAIRS*

Directory classification code: 19000000

EUROVOC descriptor: communications systems ; information network ; joint action ; judicial cooperation ; legal system ; telecommunications

JOINT ACTION of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (98/428/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular K.3(2)(b) thereof,

Having regard to the initiative taken by the Kingdom of Belgium,

Having regard to the Action Plan to combat organised crime approved by the European Council in Amsterdam on 17 June 1997, and in particular Recommendation No 21 thereof,

Bearing in mind the need for coordination between this initiative and the implementation of Recommendation No 19 in that Action Plan,

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 organised by the Belgian Ministry of Justice within the framework of a programme partly financed by the European Union, and also of the proceedings of the European Parliament and the European Commission,

Bearing in mind 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 European Union (1),

Whereas it is necessary to make further improvements to judicial cooperation between the Member States of the European Union, particularly in combating forms of serious crime often perpetrated by actual, in most cases transnational,

organisations;

Whereas effective improvement of judicial cooperation between the Member States requires the adoption of structural measures at European Union level to enable the appropriate direct contacts to be set up between judicial authorities and other authorities responsible for judicial cooperation and judicial action against forms of serious crime, within Member States;

Whereas this Joint Action is without prejudice to existing conventions and agreements, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959,

HAS ADOPTED THIS JOINT ACTION:

TITLE I PRINCIPLES OF THE EUROPEAN JUDICIAL NETWORK

Article 1 Creation

A network of judicial contact points shall be set up between the Member States, hereinafter referred to as 'the European Judicial Network`.

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, both generally and for certain forms of serious crime, such as organised crime, corruption, drug-trafficking or terrorism.
2. One or more contact points of each Member State shall be established in accordance with its internal rules and internal division of responsibilities, taking care to ensure effective coverage of the whole of its territory and of all forms of serious crime.
3. Each Member State shall ensure that its contact point or points have an 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.
4. Where the liaison magistrates referred to in Joint Action 96/277/JHA have duties analogous to those assigned by Article 4 to the contact points, they may be linked to the European Judicial Network by the Member State appointing the liaison magistrate

in each case, in accordance with the procedures to be laid down by that State.

5. The Commission shall designate a contact point for those areas falling within its sphere of competence.

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, 6 and 7;
- (c) it shall constantly provide a certain amount of up-to-date background information, notably by means of an appropriate telecommunications network, under the procedures laid down in Articles 8, 9 and 10.

TITLE II

CONTACTS WITHIN THE NETWORK

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 action to combat forms of serious crime. They shall be available to enable local judicial authorities and other competent authorities in their own country, contact points in the other countries and local judicial and other competent authorities in the other countries 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 contract points shall provide the legal and practical information necessary to the local judicial authorities in their own country, to the contact points in the other countries and to the local judicial authorities in the other countries to enable them to prepare an effective request for judicial cooperation or to improve judicial cooperation in general.

3. They shall improve coordination of judicial cooperation in cases where a series of requests from the local judicial authorities in a Member State necessitates coordinated action in another Member State.

TITLE III

PERIODIC MEETINGS OF THE EUROPEAN JUDICIAL NETWORK

Article 5

Purpose of the periodic meetings

1. The aims of the periodic meetings of the European Judicial Network 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 competent European Union working parties to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation.

Article 6

Frequency of meetings

1. The European Judicial Network shall first meet within three months following the entry into force of this Joint Action.

2. The European Judicial Network shall thereafter meet periodically on an ad hoc basis, as its members feel the need, at the invitation of the Presidency of the Council, which shall also take account of the Member States' wishes for the Network to meet.

Article 7

Venue of meetings

1. Meetings shall in principle be held on the premises of the Council in Brussels, in accordance with the provisions laid down in the Council's Rules of Procedure.

2. However, alternative meetings in the Member States should be contemplated, to enable the contact points of all the Member States to meet authorities of the host State other than its contact points and visit specific bodies in that State with responsibilities in the context of international judicial cooperation or of combating certain forms of serious crime.

TITLE IV

INFORMATION AVAILABLE WITHIN THE EUROPEAN JUDICIAL NETWORK

Article 8

Content of the information disseminated within the European Judicial Network

The contact points must have permanent access to the following four types of information:

1. full details of the contact points in each Member State with, where necessary, an explanation of their responsibilities at national level;
2. a simplified list of the judicial authorities and a directory of the local authorities in each Member State;
3. concise legal and practical information concerning the judicial and procedural systems in the 15 Member States;
4. the texts of the relevant legal instruments and, for conventions currently in force, the texts of declarations and reservations.

Article 9

Updating of information

1. The information distributed within the European Judicial Network must without fail 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 Council immediately as soon as data on one of the four points referred to in Article 8 need to be amended.
3. The General Secretariat of the Council shall be responsible for the administration of the Network set up under this Joint Action. In particular, it shall be responsible for making the information referred to in Article 8 available to members of the European Judicial Network and for keeping the information required for the proper functioning of the Network constantly updated.

TITLE V TELECOMMUNICATIONS NETWORK

Article 10 Report concerning a telecommunications system

1. Within six months of the entry into force of this Joint Action, the Council shall examine, on the basis of a report from the Presidency, drawn up after consultation of the European Judicial Network, whether the Network should be linked by a telecommunications network.

2. The Council shall lay down the details of the configuration of the telecommunications system in a decision taken by a qualified majority, in accordance with Article K.3(2)(b) of the Treaty on European Union.

TITLE VI FINAL PROVISIONS

Article 11 Territorial application

As regards the United Kingdom, the provisions of this Joint Action shall apply to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

Article 12 Assessment of the operation of the European Judicial Network

The Council shall carry out an initial assessment of the operation of the European Judicial Network at the close of the start-up phase, which shall end one year after the entry into force of this Joint Action.

Thereafter the Council shall, every three years on the Presidency's initiative, carry out an assessment for the operation of the European Judicial Network on the basis of a report drawn up by the Network.

When the first triennial report is examined, the Council shall look at the position and role that the Network might fulfil vis-à-vis Europol, on the basis of experience of the operation of the network and of the development of Europol's powers.

Article 13 Entry into force

This Joint Action shall enter into force one month after the date of its publication in the Official Journal.

Article 14
Publication

The Joint Action shall be published in the Official Journal.

Done at Luxembourg, 29 June 1998.

For the Council

The President

R. COOK

(1) OJ L 105, 27. 4. 1996, p. 1.

ANNEX

COUNCIL DECLARATION

The Council declares that Article 11 of the Joint Action on the creation of a European Judicial Network is without prejudice to the territorial application of other instruments.