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Subject : Draft Council Decision on the European Judicial Network

On 7 January, 2008 Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal submitted a proposal for a Council Decision on the European Judicial Network.

By a letter of 15 February 2008 the European Parliament has been invited to deliver its opinion on the proposal during the plenary session from 16-19 June 2008. The opinion has not yet been delivered.

The Working Party on Cooperation in Criminal Matters examined the proposal at its meetings on 10-11 March 2008, 25 April and 11 June 2008.

The Presidency had decided to postpone the discussions on Article 11 at a later stage, depending on the outcome of the negotiations of the corresponding provisions of the draft Eurojust Decision.

At its meeting on 23 June 2008, the Article 36 Committee endorsed the text of the proposal as set out in the Annex of 10221/1/08 COPEN 112 EUROJUST 55 EJM 41 with the exception of Article 11.

At the meeting of the Working Party on Cooperation in Criminal Matters on 1 - 2 July 2008, Article 25 a of the Eurojust Decision was discussed and the division of provisions between Article 25 a and Article 11 of the EJM Decision was agreed by the delegations. The Presidency has included the agreed text of Article 11 in the EJM Decision as set out in the Annex to this note.

The Commission has expressed concerns in relation to the budgetary implications of the implementation of this instrument and has therefore entered a scrutiny reservation on Articles 5 and 10. However, the following statement of the Commission will be included in the minutes of the Council upon the adoption of this instrument: "It is understood that the implementation of Article 10 (1a) is without prejudice to regular budgetary procedures".

The proposal was further examined during the meeting of JHA Counsellors on 14 of July. The revised text resulting from these discussions is set out in the Annex to this note.

Coreper is invited to endorse the text of the proposal and transmit the file to the Council for approval of a general approach.

COUNCIL DECISION
of
on the European Judicial Network

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(c) thereof,
Having regard to the initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Kingdom of Spain, the Kingdom of Belgium, the Republic of Poland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Slovak Republic, the Republic of Estonia, the Republic of Austria and the Portuguese Republic,
Having regard to the Opinion of the European Parliament,

Whereas:

- 1) Set up by Joint Action 98/428/JHA of 29 June 1998¹, the European Judicial Network has demonstrated its usefulness in the facilitation of judicial cooperation in criminal matters.
- 2) In accordance with Article 6 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, mutual legal assistance takes place through direct contacts between competent judicial authorities. This decentralisation of mutual legal assistance is now widely implemented.
- 3) The principle of mutual recognition of judicial decisions in criminal matters is implemented gradually. It not only confirms the principle of direct contacts between competent judicial authorities; it also accelerates the procedures and makes them entirely judicial.

¹ OJ L 191, 7.7.1998, p. 4.

- 4) The impact of these changes to judicial cooperation was further increased by the enlargement of the European Union in 2004 and 2007. Because of this evolution, the European Judicial Network is even more necessary than at the time of its creation and must therefore be strengthened.
- 5) Eurojust was set up by Decision 2002/187/JHA¹ to improve coordination and cooperation between competent authorities of the Member States. Decision 2002/187/JHA provides that Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity.
- 6) Five years of coexistence of Eurojust and the European Judicial Network have demonstrated both the need to maintain the two structures and the need to clarify their relationship.
 - 6a) Nothing in this Decision shall be so interpreted as to affect the independence that contact points may have under national law.
- 7) It is necessary to strengthen judicial cooperation between the Member States of the European Union and to allow contact points of the European Judicial Network and Eurojust for this purpose to communicate whenever needed, directly and more efficiently through a secure telecommunications connection,

HAS ADOPTED THIS DECISION:

Article 1
Creation

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

¹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1) as amended by Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44).

Article 2
Composition

1. The European Judicial Network shall be made up, taking into account the constitutional rules, legal traditions and internal structure of each Member State, of the central authorities responsible for international judicial cooperation and the judicial or other competent authorities with specific responsibilities within the context of international cooperation.
2. One or more contact points of each Member State shall be established in accordance with its internal rules and internal division of responsibilities, care being taken to ensure effective coverage of the whole of its territory.
3. Each Member State shall appoint, among the contact points, a national correspondent for the European Judicial Network .
- 3a. An European Judicial Network Tool Correspondent shall also be appointed.
4. Each Member State shall ensure that its contact points have functions in relation to judicial cooperation in criminal matters and 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.
5. Where the liaison magistrates referred to in Joint Action 96/277/JHA¹ have been appointed in a Member State and have duties analogous to those assigned by Article 4 to the contact points, they shall be linked to the European Judicial Network and to the secure telecommunications connection pursuant to Article 10 by the Member State appointing the liaison magistrate in each case, in accordance with the procedures to be laid down by that State.

¹ OJ L 105, 27.4.1996, p. 1.

6. The Commission shall designate a contact point for those areas falling within its sphere of competence.
7. The European Judicial Network shall have a Secretariat which shall be responsible for the administration of the network.

Article 3

Manner of operation of the network

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

- (a) it shall facilitate the establishment of appropriate contacts between the contact points in the various Member States in order to carry out the functions laid down in Article 4;
- (b) it shall organise periodic meetings of the Member States' representatives in accordance with the procedures laid down in Articles 5, 6 and 7;
- (c) it shall constantly provide a certain amount of up-to-date background information, in particular by means of an appropriate telecommunications network, under the procedures laid down in Articles 8, 9 and 10.

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 contact points shall provide the local judicial authorities in their own country, the contact points in the other countries and the local judicial authorities in the other countries with the legal and practical information necessary to enable them to prepare an effective request for judicial cooperation or to improve judicial cooperation in general.
3. At their respective level the contact points shall be involved in and promote the organisation of training sessions on judicial cooperation for the benefit of the competent authorities of their Member State, where appropriate in cooperation with the European Judicial Training Network.
4. The national correspondent, in addition to his or her tasks as a contact point referred to in paragraphs 1 to 3, shall in particular:
 - (a) be responsible, in his Member State, for issues related to the internal functioning of the network, including the coordination of requests for information and replies issued by the national competent authorities;
 - (b) be the main responsible for the contacts with the EJM Secretariat including the participation in the meetings referred to in Article 6;
 - (c) where requested, give an opinion concerning the appointment of new contact points.
5. The European Judicial Network Tool Correspondent, who may also be a contact point referred to in paragraphs 1 to 4, shall ensure that the information related to his Member State and referred to in Article 8 is provided and updated in accordance with Article 9.

Article 5

Purposes and venues of the plenary meetings of contact points

1. The purposes of the plenary meetings of the European Judicial Network, to which at least three contact points per Member State shall be invited, shall be as follows:
 - (a) to allow the contact points to get to know each other and exchange experience, particularly concerning the operation of the network;

- (b) to provide a forum for discussion of practical and legal problems encountered by the Member States in the context of judicial cooperation, in particular with regard to the implementation of measures adopted by the European Union.
2. The relevant experience acquired within the European Judicial Network shall be passed on to the Council and the Commission to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation.
 3. Meetings referred to in paragraph 1 shall be organised regularly and at least three times a year. Once a year the meeting may be held on the premises of the Council in Brussels (...) or on the premises of Eurojust in The Hague. Two contact points per Member States shall be invited to meetings organised in the premises of the Council and at Eurojust. Costs related to the organisation of the meetings in the premises of the Council shall be at the charge of the EU budget.¹
 4. Other meetings may be held in the Member States, to enable the contact points of all the Member States to meet authorities of the host 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. The contact points participate in these meetings at their own expenses.

¹ The addition is made in order to clarify the situation after the deletion of the sentence "in accordance with the provisions laid down in the Council's Rules of Procedure". Eleven delegations made a scrutiny reservation on this deletion.

Article 6

Meetings of the correspondents

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

2. The European Judicial Network Tool Correspondents shall meet periodically on an ad hoc basis, at least once a year and as its members feel the need at the invitation of the European Judicial Network Tool Correspondent of the Member State which holds the Presidency. The meetings shall deal with the issues referred to in Article 4, paragraph 5.

Article 7

(...)

Article 8

Content of the information disseminated within the European Judicial Network

The secretariat shall make the following information available to contact points and competent judicial authorities:

- 1) full details of the contact points in each Member State with, where necessary, an explanation of their responsibilities at national level;
- 2) an IT tool allowing the issuing authority of a Member State to identify the competent authority in another Member State to receive and execute its request for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition;
- 3) concise legal and practical information concerning the judicial and procedural systems in the 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 shall be constantly updated.
2. It shall be each Member State's individual responsibility to check the accuracy of the data contained in the system and to inform the Secretariat of the European Judicial Network immediately as soon as data on one of the four points referred to in Article 8 need to be amended.

Article 10

Telecommunication Tools

- 1) The European Judicial Network Secretariat shall ensure that the information provided under Article 8 is made available on a website which is constantly updated.
 - 1a) The secure telecommunications connection shall be set up for the operational work of the contact points of the European Judicial Network. The setting up of the secure telecommunications connection shall be at the charge of EU budget.

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

- 2) The secure telecommunications connection referred to in paragraph 1a may also be used for their operational work by the national correspondents for Eurojust, national correspondents for Eurojust for terrorist matters, the national members of Eurojust and liaison magistrates appointed by Eurojust. It may be linked to the Case Management System of Eurojust referred to in Article 16 of Decision 2002/187/JHA.
- 3) Nothing in this Article shall be understood as affecting direct contacts between competent judicial authorities as provided for in instruments on judicial cooperation, such as Article 6 of the Convention of 29 May 2000 on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union.

Article 11

Relationship between the European Judicial Network and Eurojust

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

- (a) The EJM shall make available to Eurojust the centralised information indicated in Article 8 of this Decision and the secure telecommunications connection set up under Article 10 of this Decision;
- (b) The contact points of the European Judicial Network shall, on a case-by-case basis, inform their own national Member of all cases which they deem Eurojust is in a better position to deal with;
- (c) the national members of Eurojust may attend meetings of the European Judicial Network at the invitation of the latter.

Article 12
Informing the Council and the Commission

[moved to article 15]

Article 13
Budget

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

Article 14
Territorial application

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

Article 15
Assessment of the operation of
the European Judicial Network

1. The European Judicial Network shall report to the Council, the Commission and the European Parliament in writing every second year on its activities and management.
2. The European Judicial Network may in the report referred to in paragraph 1 also indicate any criminal policy problems within the Union highlighted as a result of the European Judicial Network's activities and it may also make proposals for the improvement of judicial cooperation in criminal matters.
3. The European Judicial Network may also submit any report or any other information on the operation of the European Judicial Network which may be requested by the Council.

4. The Council shall, every four years, carry out an assessment of the operation of the European Judicial Network on the basis of a report drawn up by the Commission, in cooperation with the European Judicial Network.

Article 16

Repeal of Joint Action 98/428/JHA

Joint Action 98/428/JHA is hereby repealed.

Article 17

Entry into force

This Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at

For the Council

The President
