

# Assessment of allocation of cases to Eurojust and to the European Judicial Network

*Joint report by Eurojust and the EJM*

5 November 2019

*Criminal justice across borders*



EUROPEAN JUDICIAL  
NETWORK (EJM)

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## CONTENTS

Executive summary .....	3
Methodology.....	4
Introduction.....	5
1. Joint assessment of the allocation of cases to Eurojust and the European Judicial Network . 6	
<b>1.1. Criteria for assessing which actor should deal with a request for assistance.....</b>	<b>6</b>
<b>1.2. Use of the updated 2018 Joint Paper on the European Judicial Network and Eurojust ‘What can we do for you?’ for redirecting cases.....</b>	<b>7</b>
<b>1.3. Steps taken upon receipt by Eurojust or the European Judicial Network of a request from national authorities that appears to be better suited to the other’s competence.....</b>	<b>7</b>
<b>1.4. Steps taken by a national desk upon receipt of a request from another national desk that appears to better fall under the European Judicial Network’s competence.....</b>	<b>8</b>
<b>1.5. Existence of national rules preventing the national desks from redirecting a case to the European Judicial Network once opened at Eurojust.....</b>	<b>8</b>
<b>1.6. Steps taken when aware that a request has been addressed both to a national desk and to a European Judicial Network contact point.....</b>	<b>9</b>
<b>1.7. Use of the Eurojust National Coordination System for case-distribution purposes .</b>	<b>9</b>
<b>1.8. Added value of the European Judicial Network–Eurojust double-hat function to the distribution of cases .....</b>	<b>9</b>
<b>1.9. Liaison between the national desks and European Judicial Network contact points with a view to reaching a common approach on complementarity .....</b>	<b>10</b>
<b>1.10. Promotional work and the use of the Joint Paper as promotional material .....</b>	<b>12</b>
<b>1.11. Documents or agreed practices within the national desk or by the European Judicial Network contact points .....</b>	<b>12</b>
<b>1.12. Guidelines or agreed practices developed by the Member State.....</b>	<b>12</b>
2. Best practices .....	13
3. Conclusions .....	15

## Executive summary

The aim of this report is to assist practitioners, Eurojust and the European Judicial Network (EJN) in determining whether a particular case should, in the interest of efficiency and prevention of duplication of work, be directed to Eurojust or the EJN. The report constitutes an assessment of the allocation of cases to Eurojust and the EJN, identifies recent experience, difficulties and best practices and makes proposals.

Concerning the **main criteria** used to ascertain whether a request should be dealt with by Eurojust or by the EJN, the report shows that both Eurojust and the EJN highlight the importance of **close contact** between the Eurojust national desks (NDs) and the EJN contact points (CPs), and that overall, the communication between Eurojust and the EJN goes smoothly and works very well. The difficulty, however, lies in the fact that practitioners sometimes have practical difficulties in determining which actor is best placed to assist in a specific case.

The report shows that the assessment of whether a request should be dealt with by Eurojust or the EJN should be made on a **case-by-case basis**, taking into account first the **complexity of the case**, followed by its **urgency**, as the main criteria. However, in practice, there are sometimes other reasons why cases are sent to Eurojust instead of the EJN, and vice versa. Some examples of such reasons are (i) Eurojust's 24/7 availability versus the EJN CPs' sometimes more limited availability (e.g. during weekends); (ii) personal contacts within the Eurojust NDs which cause Eurojust to be favoured over the EJN; and (iii) on the other hand, certain knowledge gained in the EJN sometimes favour the EJN over Eurojust. These matters, amongst others mentioned in the report, should be addressed to ensure the correct allocation of cases to Eurojust and the EJN, for example by considering whether EJN CPs should have greater — perhaps even 24/7 — availability.

In relation to cases which are opened by one Eurojust ND towards another ND, and the latter regards them as requests falling under EJN competence, the report shows that some Eurojust NDs / Liaison Prosecutors (LPs) respect the decision taken by the first ND and will, in principle, carry out the request addressed to them. This could be a sensitive matter, but further reflection might be useful.

With regard to the **possibility of redirecting a request for assistance**, the report shows that the majority of Eurojust NDs/LPs and EJN CPs do have, and use, this option. To a lesser extent, Eurojust and the EJN will still deal with a request even when of the view that it better falls under the remit of the other on the basis of, for example, the urgency or the special importance of the particular case, a certain level of service they wish to maintain, or simply because the support requested can be provided in a quick and easy reply. The report also shows that, to a certain extent, Eurojust NDs and EJN CPs **inform each other on a case-by-case basis** of cases they consider the other to be in a better position to deal with. Thus, communication is crucial.

In relation to the **use of the updated 2018 Joint Paper on the EJN and Eurojust 'What can we do for you?'** for redirecting cases, most Eurojust NDs and EJN CPs make the paper available in their country and use it — in addition to the use of national guidelines — which could assist those countries who do not use/have either of the above in assessing the allocation of cases to Eurojust or the EJN.

Some **best practices** identified in the report include (i) **regular close and informal communication** between NDs/LPs and EJM CPs; (ii) the **possibility of redirecting** cases that have been addressed to the wrong entity; (iii) use of the **double-hat function** to avoid duplication of work (however, the distinction between the roles of the two would have to remain clear to avoid confusion); (iv) when contacting Eurojust or the EJM, **clearly indicating which, if any, other enquiries have been made / routes have been used**, to avoid duplication; (v) separation of the roles of EJM and Eurojust to avoid blurring the distinction between Eurojust and the EJM; and (vi) the development of a document or agreed practices by some Eurojust NDs and EJM CPs which helps them decide whether to provide the assistance requested or to redirect the request. While the report identifies various best practices and proposals, the structure of the judiciary and law enforcement authorities, the specific legislation in each country and the different organisational layers may mean that not all best practices or proposals could be implemented in other countries.

## Methodology

This report is based on the analyses of the replies from Eurojust NDs/LPs and the EJM to two separate, almost identical, questionnaires sent out in parallel by Eurojust and the EJM Secretariat in 2018.

The questionnaires constituted an updated/adapted version of the one put to the Eurojust NDs/LPs and EJM CPs within the framework of the 46th plenary meeting of the EJM on 8 and 9 June 2016, under the Dutch Presidency of the Council of the European Union. Additionally, an operational workshop involving the EJM and Eurojust took place at Eurojust to discuss 'Consultation and Complementarity in Practice'. In 2018, the Eurojust NDs/LPs and the EJM CPs were asked to review their joint replies to the 2016 questionnaire and update them, if necessary, and to reply to the additional questions put to them in 2018 within the framework of the preparation of this report. The new issues covered by the 2018 questionnaire are identified in blue.

With regard to the EJM, the CPs in the following countries provided replies: Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and Norway.

With regard to Eurojust, the NDs/LPs in the following countries provided replies: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Greece, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom Norway, Switzerland and US. The Belgian Bulgarian, Czech, Danish and Estonian NDs indicated that their replies were joint Eurojust–EJM replies.

## Introduction

Cooperation between Eurojust and the EJM translates to privileged relations based on consultation and cooperation. Structural cooperation between Eurojust and the EJM is ensured via, inter alia, regular meetings between the Secretary to the EJM and the representative for the EJM to the Eurojust Board of Relations with Partners. With regard to the allocation of cases to Eurojust or the EJM, the final report of the sixth round of mutual evaluations states that Eurojust should be contacted in complex or very urgent cases, requiring coordination of investigations, and prosecutions, while the EJM, being a network of Contact Points and having a more flexible structure, should be contacted to facilitate direct contacts between practitioners when dealing with less complex cases.

Despite their distinct, albeit related, roles, experience has shown that there are practical difficulties involved in determining whether a particular case should be directed to the EJM or to Eurojust and that the competent national authorities often simply use the entity they know best and have had good experiences with <sup>(1)</sup>.

In an effort to address these difficulties, Eurojust and the EJM prepared the Joint Paper *‘Assistance in International Cooperation in Criminal Matters for Practitioners — What can we do for you?’* explaining the difference between the two entities and their respective roles in providing mutual legal assistance <sup>(2)</sup>. One of the recommendations resulting from the sixth round of mutual evaluations is that this Paper should be ‘formalised’, adopted, translated into all languages and used as a basis to develop national guidelines for determining whether cases should be addressed to the EJM or Eurojust. Furthermore, both Eurojust and the EJM should collect national practices and should seek to publicise and promote their use at the European level <sup>(3)</sup>.

Very recently, in its conclusions on ‘Synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters’, the Council stated that it ‘considers that ... the privileged partnership between Eurojust and the EJM ... should be reflected both at operational and strategic level, including by continuing to contribute to an appropriate allocation of cases between these two actors of judicial cooperation’ <sup>(4)</sup>.

This report is divided into three sections:

Section 1 — Joint assessment of the allocation of cases to Eurojust and the European Judicial Network,

Section 2 — Best practices,

Section 3 — Conclusions.

This report constitutes a joint assessment by Eurojust and the EJM of the allocation of cases to one or the other, identifies recent experience, difficulties and best practices and offers possible points for reflection.

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<sup>(1)</sup> General Secretariat of the Council, ‘Final report on the 6th round of mutual evaluations on “The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters”’ (Council document 14536/2/14), section 5.3, Operational aspects: Allocation of cases to Eurojust, the EJM or others (p. 40).

<sup>(2)</sup> Council document 11233/14. This paper also covers the Eurojust National Coordination System (ENCS). It was distributed to the Council Working Party on Cooperation in Criminal Matters (COPEN) in June 2014 in connection with the discussion on Article 39 and accompanying recital (24) of the draft regulation on Eurojust.

<sup>(3)</sup> Recommendation 14 of the Final report of the 6th round of mutual evaluations (p. 43).

<sup>(4)</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.C\\_.2019.207.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.C_.2019.207.01.0001.01.ENG) (p. 2).

# 1. Joint assessment of the allocation of cases to Eurojust and the European Judicial Network

## 1.1. Criteria for assessing which actor should deal with a request for assistance

With regard to the **criteria** used to ascertain whether a request should be dealt with by Eurojust or by EJM CPs, both Eurojust and the EJM have identified the **complexity of the case**, followed by its **urgency**, as the most-used criteria. Possible indicators of a complex case — which Eurojust is best equipped to handle — were suggested: (i) the need for coordination of investigations/prosecutions, and not merely ad hoc cooperation; (ii) coordinated simultaneous execution of multi-jurisdictional measures; (iii) the existence of parallel investigations in several Member States; (iv) the nature of the legal/practical issue at stake (e.g. Eurojust is used for issues related to conflicts of jurisdiction or to joint investigation teams and for complex issues concerning European arrest warrants (EAWs) (including multiple EAWs as laid down in Article 16 of the Framework Decision on EAWs<sup>5</sup>); and (v) extensive planning at the procedural level.

The EJM is used both for providing **guidance in specific cases** (e.g. where to send a request/order, requirements for the request/order, assistance with videoconferences or establishing direct contacts) and for answering **general questions** related to, for example, mutual legal assistance / European Investigation Orders (EIOs) or EAWs, or applicable legislation (e.g. on its status of implementation or ratification) or information about the legal system in a Member State. The EJM CPs, as active intermediaries, enable direct contacts between competent judicial authorities, expediting the handling of cases.

Similarly, both Eurojust and the EJM identified the **type/nature of the crime** as a relevant criterion. They both also highlighted that the assessment of which entity should deal with a request is made on a **case-by-case basis**, and emphasised the **importance of direct contact and preliminary discussions** between Eurojust and the EJM CPs. Moreover, both Eurojust and the EJM referred to the use of national guidelines and to the **use of the Joint Paper on the EJM and Eurojust 'What can we do for you?' for redirecting cases**.

Eurojust and the EJM also mentioned the issue of the more limited **availability** (e.g. during weekends or holidays) **of the EJM CPs** as a possible criterion. Eurojust also identified, though to a lesser extent, other possible criteria: queries related to **the organisation of the judicial system and/or the EJM system in the Member State in question**, issues related to **recurrent difficulties and delays in the execution of mutual legal assistance requests or mutual recognition instruments**, and **ongoing operational matters** (dealt with by the LP) versus **non-case-related legal questions** (referred on by the LP to EJM CPs).

Eurojust also noted that, at times, it is brought in when there have been **difficulties** with the assistance from the EJM CPs, and that **personal contacts**, along with the fact that the NDs do not want to convey the impression that they are reluctant to serve the practitioner, also play a role.

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<sup>5</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

It is worth noting that **personal contacts and efficiency** also play an important role in the reasons why the EJM is contacted.

## **1.2. Use of the updated 2018 Joint Paper on the European Judicial Network and Eurojust ‘What can we do for you?’ for redirecting cases**

Most Eurojust NDs/LPs and EJM CPs **use** the updated **Joint Paper**. The remainder of the NDs/LPs and EJM CPs **do not use it**, and some have noted that (i) they have **national guidelines** which are rather similar to the Joint Paper or contain all the same information as the joint paper; (ii) EJM CPs are experienced and assess the cases using that experience and, likewise, the national member at Eurojust can easily identify whether cases are more suitable for EJM intervention. Some EJM CPs nevertheless expressed their intention to make use of the Joint Paper. One ND indicated that it requires all practitioners of its Member State to complete an ND briefing note in order to determine whether a request should be dealt with by Eurojust.

### **Making the Joint Paper available to practitioners in their country**

The vast majority of the NDs/LPs and some EJM CPs replied that the Joint Paper **is made available to practitioners** in their country. The Joint Paper is, for example, (i) **published** on the intranet of the Prosecutor’s Office or the extranet, or circulated via email to practitioners; (ii) **presented** to practitioners during training sessions, presentations, domestic workshops or regular meetings with prosecutors; or (iii) **disseminated** within the Eurojust National Coordination System (ENCS) by their national correspondents (NCs) and contact points. A small minority of NDs/LPs replied that the Joint Paper **is not made available to practitioners** in their country, but will consider making it available to practitioners.

## **1.3. Steps taken upon receipt by Eurojust or the European Judicial Network of a request from national authorities that appears to be better suited to the other’s competence**

With regard to how Eurojust NDs/LPs and EJM CPs proceed when they believe that a request for assistance sent to them by their national authorities falls under the other’s competence, the majority of the NDs/LPs and EJM CPs have the **possibility of redirecting the request**. Some NDs mentioned that (i) the ND and EJM CPs **discuss** the case **and agree** on who is going to deal with it (and in some countries this consultation is an obligation under national law or a national order issued by the Prosecutor General); (ii) the ND **redirects** the request **straight** to the EJM CP, or vice versa, (iii) the **requesting authority is contacted directly** and it is explained that the request would be better dealt with by the EJM and that a template has been developed for this purpose; (iv) the ND **recommends** that the public prosecutors contact the EJM; and (v) after redirecting the case, the ND checks that the case has been **followed up on** properly.

Both Eurojust and the EJM highlighted the importance of **close contact** between the Eurojust NDs and the EJM CPs.



A very small number of Eurojust NDs indicated that **Eurojust can/will carry out the request addressed to them**, or that the ND will deal with case **if** the enquiry sent to the EJN yielded **no results and is urgent**. A couple of Eurojust NDs indicated having never experienced such problems, and one indicated that this is a very rare situation. For both Eurojust and the EJN, **centralised offices** in the Member States **may help prevent** this issue. For Eurojust, the **double-hat function** may also help.

#### **1.4. Steps taken by a national desk upon receipt of a request from another national desk that appears to better fall under the European Judicial Network's competence**

Some Eurojust NDs/LPs indicated that **they respect the decision taken by the other ND and will, in principle, carry out the request addressed to them**. One ND indicated that **they may ask the other to redirect, but the assessment is made on a case-by-case basis**, as for reasons of efficiency or courtesy, Eurojust may deal with the case in the end. Some NDs mentioned **dialogue with the other ND**, and the **possibility of redirecting the request and following up** on the case in close cooperation and in a coordinated manner. One ND specifically mentioned that there **is no possibility, under their national law, of redirecting a request** sent to it by another ND <sup>(6)</sup>.

#### **1.5. Existence of national rules preventing the national desks from redirecting a case to the European Judicial Network once opened at Eurojust**

All Eurojust NDs/LPs that replied indicated that **no such rules exist**. The following information was given: (i) once a case is opened at Eurojust, it is dealt with at Eurojust; (ii) there would not be any apparent reason to redirect, because if a case is opened at Eurojust it is because there is an operational need signalled to it by prosecutors and investigators (e.g. a need for coordination of ongoing investigations, for facilitation of the execution of an Letter of Request/EIO or for coordination of several Letters of Request/EIOs, or a need to set up a coordination centre at Eurojust or to agree on an action day) and personal data in an ongoing investigation is being shared; and (iii) in one Eurojust ND the situation is regulated by the internal organisational plan adopted by the Eurojust ND and approved by the minister of justice of the respective Member State <sup>(7)</sup>.

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<sup>(6)</sup> This topic was not part of the EJN questionnaire.

<sup>(7)</sup> This topic was not part of the EJN questionnaire.

## **1.6. Steps taken when aware that a request has been addressed both to a national desk and to a European Judicial Network contact point**

With regard to how the Eurojust NDs/LPs and the EJM CPs proceed when they realise that a request for assistance has been addressed to both a Eurojust ND and an EJM CP, the vast majority of the NDs/LPs and EJM National Correspondents indicated that they **would contact and consult/negotiate with each other**. Some would, moreover, involve the **requesting authority** in such consultations, or **the ENCS coordinator**. Some NDs/LPs and some EJM CPs indicated that this scenario never happened or that, having not identified any such cases, they had **no experience of this scenario — at least not in a domestic case**. One ND replied that not only is this situation **seldom clear up front**, and therefore able to become a point of discussion, but also that it is mostly **only recognised in hindsight and mostly not appreciated**.

## **1.7. Use of the Eurojust National Coordination System for case-distribution purposes**

With regard to the experience of NDs and the EJM CPs on the use of the ENCS for case-distribution purposes, both Eurojust and the EJM replied to a similar extent that the ENCS had **not been used** for case-distribution purposes, including by indicating that the ENCS is more of a platform for sharing general knowledge, information and best practices. One ND indicated that the involvement of the ENCS could be **counterproductive**, as the Eurojust national member and the single EJM CP decide on a case-by-case basis, after consultation, which judicial cooperation mechanism suits the case best. In addition, one other ND and EJM NC replied that this is not a task for the ENCS, and nor should it be, and that using the ENCS would also probably take more time.

To a lesser extent, both Eurojust and the EJM also indicated **not having practical experience** in using the ENCS for case-distribution purposes. To an even lesser extent, Eurojust and the EJM indicated that (i) the ENCS **has been used for case-distribution purposes**; and (ii) that the **ENCS has not been established**.

## **1.8. Added value of the European Judicial Network–Eurojust double-hat function to the distribution of cases**

To a large extent, for both Eurojust and the EJM, the **EJM–Eurojust double-hat function brings added value to the distribution of cases**. Some have added that the double-hat function (i) contributes to **a very smooth and intense flow of information**; (ii) allows for a better general view of how a given case can be dealt with; (iii) **streamlines the process** of allocation and execution of cases; (iv) **contributes to swift, smooth decisions on what channels will be used in the specific case / on whether to redirect** cases from Eurojust to the EJM and vice versa, if needed; and (v) **fosters the principles of complementarity and consultation** which should characterise the relations between Eurojust and the EJM. Some NDs further highlighted the importance of **personal contacts and close cooperation between EJM CPs and Eurojust**, and

noted having **practical experience with the double-hat function** as their EJM CPs **also perform** functions at the Eurojust ND **at the same time** or **work** or **used to work** for Eurojust NDs.

To a limited extent, Eurojust and the EJM indicated **being unable to see the added value** of the double-hat function, and some NDs specifically indicated that (i) the EJM CPs and Eurojust have different functions and they should work together to add value, but **they should not need to be one and the same**; (ii) the double-hat function **could blur the distinction** between Eurojust and the EJM; and (iii) **it might even be misleading** for the national authorities if they send all requests to the NDs. To an even more limited extent, Eurojust and the EJM indicated having **no experience** with the double-hat function; however, it could bring added value to the distribution of cases.

## **1.9. Liaison between the national desks and European Judicial Network contact points with a view to reaching a common approach on complementarity**

**Course of action taken if the national desk or the EJM contact point is of the view that the request of the practitioner falls more within the other's remit**

To a large extent, Eurojust and the EJM replied that NDs and EJM CPs **liaise** with each other with a view to reaching a common approach on complementarity, the vast majority of **communication** taking place either via **direct, informal means** such as by phone or email, followed by **meetings**, or within an **institutionalised framework** (e.g. ENCS meetings, biannual meetings between EJM CPs / Eurojust and national prosecutors and investigative judges, joint training sessions for national authorities). To a great extent, they liaise **regularly** and on a **case-by-case basis**. Eurojust and the EJM also noted that the relationship and flow of information **is very smooth, and that there are no hiccups**. One ND and EJM NC mentioned that they **have not seen the need to create a common approach** on the basis of internal national structure.

To a certain extent, Eurojust indicated that it **would redirect the request from a practitioner if it was of the view that the request fell more within the remit of the EJM**. One Eurojust ND indicated that a case would only be opened at Eurojust where there is a clear indication of the type of assistance needed and the added value of Eurojust. To a lesser extent, Eurojust and the EJM **would deal with the request nevertheless**. The reasons advanced were that (i) the case has already been opened and given a Eurojust case number by the requesting ND; (ii) the case is **urgent** or has **special importance** or some other circumstance justifies it being handled; (iii) the request originates from another ND at Eurojust and the ND **does not wish to refuse assistance to a colleague**, especially one they know and to whom assistance has already been provided before and/or for whom they wish to maintain a certain level of service; (iv) this is assessed **on a case-by-case basis**, if received from a practitioner; (v) the practitioner has previously contacted the EJM CP **but not seen results**; or (vi) if the support requested can be provided **in a quick and easy reply**.

Both Eurojust and the EJM expressly indicated that **quantitative results are not required** of the NDs/LPs and EJM CPs.

**Whether the national desk and the EJM contact point inform each other, on a case-by-case basis, of any cases they consider the other to be in a better position to deal with, as laid down in Article 25a(1)(a) of the Eurojust Decision<sup>8</sup> and Article 10(b) of the EJM Decision<sup>9</sup>, respectively**

The vast majority of the NDs/LPs and almost all EJM CPs **inform their EJM or Eurojust colleagues, on a case-by-case basis, of any cases they consider the other to be in a better position to deal with.** A smaller number do not, for different reasons: (i) these points are discussed at the annual meeting with the EJM CPs and ENCS; (ii) **the ND** simply redirects the cases if appropriate; (iii) not directly, since the ND simply tells the requesting prosecutor/judge to use the EJM; (iv) from the moment that the **EJM has a CP at the ND**, there is **no need** to contact another colleague; (v) they **do not see the need for such a mechanism**; and (vi) there **have not been any such cases so far.**

**Whether the EJM colleagues inform the national desk of all cases they deem Eurojust in a better position to deal with, as laid down in Article 10(b) of the EJM Decision**

**Whether the national desks inform the EJM contact points of all cases they deem the EJM in a better position to deal with, as laid down in Article 25a(1)(a) of the Eurojust decision**

To a certain extent, Eurojust NDs/LPs indicated that the EJM colleagues **inform** them of cases that they deem Eurojust to be in a better position to deal with, while the EJM indicated that Eurojust NDs/LPs inform the EJM CPs of cases that they deem the EJM to be in a better position to deal with. To a lesser extent, Eurojust NDs and EJM National Correspondents indicated that their counterpart **does not** inform them of cases that they deem them to be in a better position to deal with. Some Eurojust NDs added that (i) the ND discusses these points at the **annual meeting** with the EJM CPs / ENCS; (ii) as an alternative, the deputy national member meets with the EJM National Correspondent regularly and one of the topics is casework; (iii) if the EJM colleagues require the ND's assistance in a case, they contact the ND with a request; and (iv) given the **national institutional setting**, the need for such a mechanism has not arisen. Some have further added that, in the ND's experience, this has not arisen, it is done on a case-by-case basis, or in practice the EJM CP redirects the relevant prosecutor to the Eurojust ND, and that in this way the ND is informed.

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<sup>8</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by as amended by Council Decision 2003/659/JHA of 18 June 2003, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust.

<sup>9</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.

## **1.10. Promotional work and the use of the Joint Paper as promotional material**

Concerning the promotional work of both the EJM and Eurojust, and the use of the Joint Paper as promotional material, almost all Eurojust NDs and EJM CPs, in their respective capacities, **are promoting** the work of both EJM/Eurojust in their Member State through promotional activities such as **roadshows**, training sessions, **meetings, seminars, EJM national meetings** between EJM CPs, the ENCS and Eurojust, **joint sessions** promoting the work of Eurojust and the EJM, **coordinated presentations, EJM meetings and internal guidelines**.

A fair number of both NDs and EJM CPs find the **Joint Paper useful** as promotional material. For some it is mostly **useful as a starting point** and for others it is **very useful more generally**. It has been **translated** and is **available on the websites of both Eurojust and the EJM**. Others do not use it because the **national Prosecutor's General Order** contains all the same information as the Joint Paper, because **national guidelines** are used instead or because the practitioners are informed in detail about the EJM website and how to find information there.

## **1.11. Documents or agreed practices within the national desk or by the European Judicial Network contact points**

To a limited extent, both Eurojust NDs and the EJM CPs **have developed a document or agreed practices on the allocation of cases between Eurojust and the EJM** which help them decide whether to provide the assistance requested or to redirect the request, by **creating an internal document** for the distribution of work within the Eurojust ND which is considered useful or based on **good practices**. Some follow the **instruction of the Prosecutor General or national guidelines**, while others have developed **agreed practices based on criteria** such as the urgency or complexity of a case, whether a request is bilateral or multilateral and the availability of the EJM CPs.

## **1.12. Guidelines or agreed practices developed by the Member State**

Both Eurojust and the EJM indicated the **existence of guidelines or agreed practices on the allocation of cases between Eurojust and the EJM** that the Member States have developed and which assist them in deciding whether to provide the assistance requested or redirect the request, and that they have found **helpful**. Some **have guidelines to assist in deciding** whether a case should be handled by Eurojust or by the EJM, while others have **guidelines specifically for prosecutors**, but not for other authorities or courts.

However, Eurojust NDs, to a large extent, and to a lesser extent, the EJM CPs, indicated that Member States **do not have any such guidelines or agreed practices** but many **use the Joint Paper on the EJM and Eurojust for the purpose of allocating cases** and find this helpful.

## 2. Best practices

Both Eurojust and the EJM have, to a very large extent, identified best practices which could be applied to other Member States. To an equally large extent, the practices identified by each entity are similar. While the report identifies various best practices, the structure of the judiciary and law enforcement authorities, the specific legislation in each country and the different organisational layers may mean that not all best practices are suitable for all countries. The best practices are as follows.

### A. Communication

1. **Regular meetings and frequent contact** via email or phone between the EJM CPs and the Eurojust ND. **This reduces the risk of a request for assistance being dealt with twice**, and contributes to solving the question of whether Eurojust or the EJM should deal with the case.
2. **Regular close, personal, direct and informal cooperation and exchange of information** between Eurojust, the EJM CPs, central authorities and the EJM national correspondents.
3. Both Eurojust NDs and EJM CPs should have **a very good knowledge** of the roles, functioning and competences of Eurojust and the EJM, and **promote the use of both** by explaining the differences between their roles to practitioners.
4. Both Eurojust and the EJM participate in meetings organised by the other.

### B. Minimising the risk of duplication of work

5. Where the EJM and Eurojust are activated in parallel, informing each other is a matter **of key importance for avoiding duplication of work**.
6. Maintaining **permanent contact** between the EJM CPs and their respective Eurojust NDs — **this is the only way of handling a scenario where a request is addressed both to Eurojust and to the EJM**.
7. **Before officially approaching Eurojust or the EJM, practitioners contact one of them informally** to find the most suitable way to get assistance in their specific case.
8. As implemented by one Eurojust ND, requiring all practitioners of their Member State to complete a briefing note in order to **determine whether a request should be dealt with by Eurojust**. (The briefing note also **requires the practitioners in their Member State to confirm what other enquiries have been made / routes have been used**).
9. **Laying down clear internal guidance (e.g. guidelines, circulars, and instructions)** for practitioners.

10. Notifying the central authority where EJM CPs work of cases registered at a Eurojust ND that involve the EJM. (A briefing form has been created for sending this notification.) Such a system **enables the coordination of the activities of Eurojust ND and EJM CPs in order to avoid duplication of work.**
11. The NDs that use an **internal document or agreed practices** or, where absent, the Joint Paper on the EJM and Eurojust, find this documentation very useful for deciding whether to provide assistance or to redirect the request to an EJM CP.

### C. Redirecting a request for assistance

12. As implemented by one Eurojust ND, development of a **template** for redirecting the case to an EJM CP and informing the requesting ND.
13. Sending cases to the **ENCS coordinator**, who **redirects** them to the best-placed EJM CP.

### D. Institutional/organisational choices

14. Placing an **EJM CP** at the Eurojust ND / Liaison Prosecutor's office.
15. Appointing members at the Eurojust ND who are **former EJM CPs and EJM CPs who were once members of the ND.**
16. Members of the ND are **members of the national judicial network** and thus interact with all judges and prosecutors dealing with judicial cooperation at the national level.
17. Placing an **EJM CP at the national appellate court of final instance** who can share all relevant decisions in the field of judicial cooperation issued by the court with the Eurojust ND.
18. **Appointing two former seconded national experts at the Eurojust ND as assistants to the national member and as EJM CPs. They are based in their Member State.** Requests from their national authorities addressed to the Eurojust ND, which the EJM might be better placed to deal with, are referred to one of these people **and they decide which channel to use.**

### 3. Conclusions

In this section, conclusions and proposals are both given, on the basis of the replies from the Eurojust NDs/LPs and the EJM CPs.

#### Conclusions

1. The criterion of whether a case is bilateral/multilateral plays a limited role in the allocation of cases to Eurojust and to the EJM, and the most commonly used criteria by far for making such an assessment is the complexity of the case, which can be assessed by taking into account a number of factors.
2. In the vast majority of issues/practices related to the allocation of cases, Eurojust and the EJM share the same views, and the interaction between NDs and the EJM CPs in this matter works rather smoothly for the most part.
3. Communication is key, whether direct communication between Eurojust NDs/LPs and EJM CPs or communication via other channels, such as the ENCS.
4. Systematic awareness by Eurojust and the EJM of each other's roles.

#### Proposals

To Eurojust

5. Consideration could be given to establishing a practice at Eurojust whereby NDs check, when appropriate, with their practitioners whether other enquiries have been made / routes (such as the EJM) have been used, to avoid duplication of work.
6. When approaching another Eurojust ND, a requesting Eurojust ND could explain whether the EJM route has been tried and if not, why.
7. It could be a positive step to also have the possibility of redirecting cases to the EJM in passive cases, i.e. those opened by other Eurojust NDs, in consultation with the ND concerned.
8. Eurojust and the EJM should continue working more closely together, through joint projects and training and promotional activities.
9. Some NDs could increase their level of awareness of the EJM.
10. Eurojust could consider creating a harmonised mechanism similar to the EJM's online reporting tool whereby the NDs would be invited to register the cases that are referred to them to which consideration was given as to whether to redirect the case to the EJM, and the decision that was made in the end. Consideration could also be given to the benefit of additionally inviting the ND to indicate its reasons for deciding to redirect the case to the EJM or deal with it at the ND. This would allow for the good practice of redirecting cases from Eurojust to the EJM being statistically reflected at Eurojust.



To the EJM

11. Awareness-raising within the EJM of the benefit of redirecting a case to Eurojust when it can be assumed that Eurojust would be in a better position to deal with it should be considered.
12. Eurojust and the EJM should work more closely together, through training and promotional activities.
13. Consideration should be given to whether EJM CPs should be more available (e.g. 24/7).
14. Some EJM CPs could increase their level of awareness of Eurojust.

To national authorities and Member States

15. National authorities are invited to avoid using the double channel of communication, i.e. directing a request both to Eurojust and to the EJM.
  16. National authorities are encouraged to make full use of the **Joint Paper on the EJM and Eurojust 'What can we do for you?'** or of equivalent national guidelines in order to ensure that Eurojust and the EJM are contacted for assistance in the cases they are most suited to deal with.
  17. Member States / national authorities should increase their efforts to raise awareness of the EJM and Eurojust.
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