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The Secretariat

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EUROPEAN JUDICIAL NETWORK

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COVER NOTE

From: European Judicial Network Secretariat

To: EJM Contact Points

Cc: General Secretariat of the Council, European Commission, Eurojust

Subject: Minutes of the 36th EJM Plenary Meeting, Budapest, 20-21 June 2011

Below you will find the minutes of the 36th EJM Plenary Meeting under the Hungarian Presidency.



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36th Plenary Meeting of the European Judicial

Budapest, 20-21 June, 2011.

Venue: Budapest Business School

The chair, Dr. Tünde FORMAN, Deputy Head of Department, Department of International Criminal Law of the Hungarian Ministry of Public Administration and Justice, welcomed the participants and introduced the first panel. Ms FORMAN thanked particularly the EJN Secretariat for supporting the organisation of the meeting and for all the work done through the Presidency.

The opening speech was delivered by Dr. Róbert RÉPÁSSY, Hungarian Minister of State for Justice. Dr. RÉPÁSSY thanked the participants for their presence, the organisation and the EJN Secretariat for the work done through the duration of the Presidency. Furthermore the Minister emphasised the important work that the EJN contact points do on a daily basis. He assured that this was not possible without the trust developed through the years. Hence he concluded that Mutual Trust, together with the EJN website, are a corner stone to foster better understanding of other legal systems.

Subsequently, Dr. Péter POLT, Hungarian Prosecutor General, also recognised the valuable activities of the EJN contact points that contribute to the further development of the existing forms of cooperation and to the improvement of legal instruments. The horizontal way of working of the EJN is key for direct mutual legal assistance and the appropriate application of the EU legal framework in this field.

The following point of the agenda was the EJN Business. Ms Maria Joao ALMEIDA GOMES, EJN Secretariat Coordinator and Ms Ianina Gabriela LIPARA, EJN Legal Assistant, presented the execution of the Work Programme of the first Semester 2011. Ms ALMEIDA GOMES detailed the progress of the projects and the budget engaged in each activity: The projects related to the website have all started during the first semester and will be finished by the end of the year. The projects related to the Language Training and those with awareness of the EJN and cooperation with partners have been started in part and most of them will be completed in the second semester.

In relation to the grant procedures, Ms LIPARA announced the award decisions on the organisation of National and Regional Meetings. Two applications for Regional meetings and three for National Meetings were received within the deadline. All applicants were awarded the EJN funds. To organise the language training for EJN Contact Points a future grant procedure will be launch and the course should take place at the end of the year.

In addition to this Mr Jakub PASTUSZEK, from the Ministry of Justice of the Czech Republic, presented their experience in the organisation of the Regional Meeting in 2010 and encouraged other Contact Points to profit of the funding opportunity.



Mr Florin Razvan RADU, Seconded National Expert, outlined the content of the EJN Biannual Report on the operation of the EJN, in accordance with Article 13 of the Council Decision 976/JHA of 16 December 2008. Mr RADU reminded the Contact Points the importance of obtaining statistics. This document, created by the EJN Secretariat with the contribution of the Contact Points, will be presented through the official channels to the European Commission, The European Parliament and the Council of the European Union.

Ms FORMAN, announced that Mr RADU that he will leave the Seconded National Expert position at the EJN Secretariat to return to a new challenging post in Romania where she wished he still remains being a Contact Point for the EJN.

The status and future developments of the EJN website was shown by Mr Remco NIGGEBRUGGE, Webmaster. He highlighted that most part of the design has been finalised but the content will be continuously updated. Mr NIGGEBRUGGE also pointed out that the upgraded and forthcoming tools will be easier to use and all the process to insert data will be simplified. The website, front and back office, have been greatly improved and the Secretariat will continue this hard work for the future.

On the subject of Mutual recognition of foreign judgements Judge Dr. Ágnes FRECH, Head of College, Metropolitan Court of Hungary presented the historical background on mutual legal assistance and the impact that it generated at present. Ms FRENCH continued explaining the challenges on the recognition of judgements. She stressed that the consequences of the recognitions should be reflected in the records since it is still not informed when the fulfilment of the sentence started or finished.

Furthermore, Judge FRENCH explained that it is not possible to have full equivalence and provided the participants with a practical example that occurred between Austria and Hungary. She also continued questioning other issues related to the recognition of judgements with regard to the in absentia sentences.

Dr. Mag. Johannes MARTETSCHLÄGER, Chief Prosecutor from the Austrian Federal Ministry of Justice presented the subject of Mutual Recognition of Foreign Criminal Judgements in Austria. Mr MARTETSCHLÄGER firstly made reference to the effects of the enforcement of the sentence and the insertion into Criminal Records. Subsequently he followed up with the issues related into taking account of foreign decisions in domestic proceedings and the Ne-bis-in-idem-principle. He included practical examples from Austria and contributed as well to a fruitful start of the day.

During the afternoon the workshops took place.

On the second day of the meeting Dr. Katalin SZÍJJÁRTÓ, Head of Unit, Department of EU Law, Hungarian Ministry of Public Administration and Justice provided a comprehensive lecture on the relevant decisions of the European Court of Justice on the principle of ne bis in idem. ECJ rulings show a valid assessment of a case (what constitute a valid ruling) and the concept of idem. Through the nine rulings presented, Ms SZÍJJÁRTÓ explained that ne bis in idem cases should be taken individually as there is no single solution for the application of this principle.



A discussion Panel followed up the presentation. Ms Mary WALDRON, representing the view from the UK, explained how this principle works in that jurisdiction. In principle nobody should be judged twice for the same crime. Next Ms WALDRON focused on the qualifying offences that would give place for a retrial such as serious offences and other reasons to namely: when there is new compelling evidence to open the case or in the interest of justice. As a result in the UK a procedure is followed when those elements exist.

Mr Francesco LO VOI, Italian National Member of EUROJUST, stated that the principle of ne bis in idem has been the first element of mutual recognition. Hence, Mr LO VOI quoted the ECJ case MANTELLO. Besides, he reminded the audience about the Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings and the upcoming new tasks for the EJM Contact Points on this matter.

The experience in the Czech Republic was introduced by Mr Jakub PASTUSZEK. He remarked that the ECJ jurisprudence has had a real impact for the practitioners. The principle of ne bis in idem is an autonomous area of case-law and is continuously in development. Thus, there are many questions to be resolved for instance to determine if there should be for certain cases only one way of rational interpretation.

Pierre BELLET, Director of International Cooperation in Criminal Matters at the French Ministry of Justice, discussed about the new light in the application of article 54 of the CISA. Subsequently, he referred to a French case where sentences were achieved in both MS, France and Bulgaria. This raised many interrogants on the interpretation of and application of articles 50 and 54 of CISA. Furthermore, Mr BELLET explained that with the application of the Lisbon treaty, which also features art 50 of CISA, the cases of ne bis in idem will probably not be managed in the same way as in the past. Mr Bellet also announced that in his future position he will be no longer EJM Contact Point.

The conclusions on the workshops were discussed.

Workshop I: The principle of ne bis in idem in practice

Chair: Balázs GARAMVÖLGYI (HU)

Rapporteur: Thomas LAMIROY (BE)

Through the discussion of practical cases it was determined by the participants that the definition of the ne bis in idem was not easy to achieve. It is a complex and changing concept (see Green paper on conflict of jurisdiction). Furthermore, the need for consultations between judicial authorities to prevent conflict of jurisdiction was identified. Looking at the future new practical cases should arrive, e.g. through the application of the European Investigation Order

Workshop II: Mutual recognition of foreign judgments

Chair: Eugenio SELVAGGI (IT)

Rapporteur: Joachim ETTENHOFER (DE)



Through a discussion paper presented by the presidency the participants debated several issues on the recognition of foreign judgements. The main element in the recognition was found to be the Mutual Trust in the other system. For instance, the UK found the solution to use a police statement for a case and if the system was not trusted this solution would not be possible. In the area of deprivation of liberty and the transfer of prisoners, the practitioners insisted that this should be done if it is materially possible and if the persons agreed.

Workshop III: Exchange of information extracted from criminal records /ECRIS Manual

Chair: Zuzana CERNECKA (CZ)

Rapporteur: Dávid ORAVECZ (HU)

On this subject several topics were discussed. First the issues arisen when a convicted person abandons a nationality and acquires a new nationality with a clean criminal record. The proposals to solve this were through a central index with convictions of all EU nationals or MS exchanging information on request. Besides on the topic of requests of information for any purpose other than that of criminal proceedings was raised. For this many questions related to the area of data protection were examined. Finally, the last part of the workshop was dedicated to the use of different means of identification by MS. The recommendation on this was to explore possibilities to use fingerprints for checking of identity and link databases where necessary.

Following these presentations, Mr Luis Francisco de JORGE MESAS, Head from the International Relations Department at the Spanish General Council for the Judiciary, gave a brief overview on the co-operation of Trio Presidencies. He explained that the TRIO working method has been positive since it allows developing a work vision for a longer period of time and the decisions are taking as a college. Mr de JORGE MESAS also welcomed the forthcoming Trio Presidency integrated by Poland, Denmark and Cyprus.

Mr Péter CSONKA, representing the Hungarian Presidency, presented the evaluation of the semester of the Hungarian Presidency in particular. Mr CSONKA numbered a large quantity of projects in which the Presidency was involved. For instance regarding the draft of legal instruments, the development of the European Investigation Order from articles from 1 to 18 and Y have been finished; the European Protection Order, launched under the Spanish initiative, was approved with a large scope by the EU Parliament and bilateral treaties with Japan and the USA were concluded. Many other achievements were listed and some projects will be continued during the Polish Presidency.

Ms Katarzyna KRYSIAK, Prosecutor at the Polish Department of International Cooperation at the Prosecutor General's Office, presented the program of the incoming Polish Presidency. The Plenary meeting will take place during 16 to 18 November 2011 in Gdansk, Poland. The main areas of discussion will be on citizen's rights, focusing on the protection offered by the existing tools on international cooperation in criminal matters and in particular a discussion about the protection of the persons involved on criminal procedures such as the victims, witnesses and defendants.



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The final conclusions were presented by Mr Ferenc ZOMBOR, Deputy State Secretary for EU and International Judicial Cooperation, Hungarian Ministry of Public Administration and Justice and Ms FORMAN closed the meeting thanking all participants, the EJNI Secretariat and the staff involved in the organisation of the meeting.