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Report on Estonia

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Delegations will find attached the declassified version of the above document.

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Evaluation report on the sixth round of mutual evaluations:

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Report on Estonia

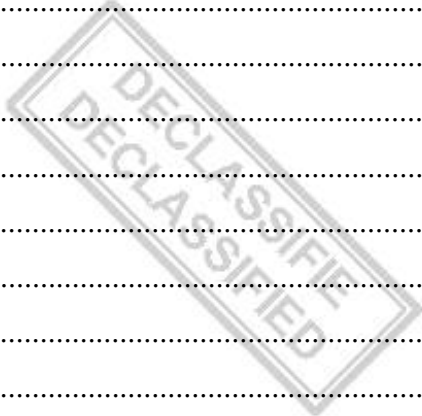
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**1. EXECUTIVE SUMMARY**

1. In line with Article 2 of the Joint Action 97/827/JHA of 5 December 1997, the Working Party on General Matters including Evaluations (GENVAL) decided at the Meeting on 22 June 2011 that the sixth round of mutual evaluations will be devoted to the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters.
2. Estonia is a small country with only few complex international cases that have required the involvement of Eurojust thus far. Taking into account its relatively limited resources, the Estonian system is well organised and it seems to work efficiently as regards the EJN and Eurojust.
3. The Estonian judicial cooperation system in criminal matters appears to be functioning in a good manner and it is largely effective. The Estonian authorities and the Office of the Prosecutor General have made significant efforts to put in place structures and mechanisms required by the implementation of the Decisions on Eurojust and the EJN. Cooperation with Eurojust is regulated mainly in Article 489<sup>1</sup> of the CCP, the statutes of the Prosecutor's Office, and in guidelines by the Prosecutor General and different internal documents, from which the most important is the scheme of division of tasks of the Office of the Prosecutor General. This seems to be a transparent and clear way to regulate cooperation with Eurojust.
4. The Estonian system is characterised by a high level of centralisation, and a relatively low number of cases where Eurojust has been thus far involved. The main bulk of mutual legal assistance requests is exchanged with the neighbouring countries, in particular with Finland, but also with Latvia and Lithuania. In practice this means that complex judicial cases involving several Member States, where the added value of Eurojust is the greatest according to the Estonian authorities, are very few, or, at least, they are not involving Eurojust. For example, the bilateral Crime Prevention agreement between Finland and Estonia is used for most types of cooperation, except for certain very specific activities such as hot pursuit (Schengen) or controlled deliveries (MLA Convention). Agreements with Latvia and Lithuania respectively ensure that bilateral or multilateral arrangements apply to the most important parts of cooperation with the other Member States.

5. The ENCS is established in line with Article 12 of the Eurojust Decision but it seems that it is not exploited to its full potential in Estonia. According to the answers, the ENCS is located at the Office of the Prosecutor General where two state prosecutors act as ENCS contact points. Thus in practice the Office of the Prosecutor General makes up the ENCS. During the evaluation mission the evaluation team asked the representatives of the police about the ENCS and the role of the police in it. According to the information provided, there is good cooperation between the police and the Office of the Prosecutor General, but no concrete cases were given on how this cooperation works in practice. It can be problematic from the point of view of effortless flow of information if the authorities responsible for conducting the criminal investigations are not effectively linked into the ENCS as directly as possible, but have to always deal via a specific office/authority or part thereof.
6. The degree of expertise in international matters is very high at the Prosecutor General's Office. It is however practically one person who has all the experience and who is carrying out international tasks. The situation is vulnerable, should the person in question be ill, on vacation or decide to leave the office. It seems that other responsible persons, according to the division of tasks at the Prosecutor General's Office, are in practice not much involved with this work.
7. The national member for Estonia, a former Prosecutor General, has all the powers allocated to a state prosecutor of Estonia, i.e. more powers than strictly required under the Eurojust decision including the power to initiate an investigation and to authorise and coordinate controlled deliveries. This approach makes it possible for Estonia to have concrete and effective cooperation with Eurojust, although it seems that in practice he has never had to use his powers.
8. The information exchange between Estonian authorities and Eurojust seems to be very informal and effective. The information is mainly exchanged between the Office of the General Prosecutor and the national member. The prosecutors-in-case, judges and law enforcement authorities do not seem to exchange that much information directly with the national member or the Estonian desk at Eurojust.

9. The exchange of information under Article 13 creates some problems in Estonia. Article 13 of the Eurojust decision is implemented in practice in Estonia, but even though information under Article 13 is provided to Eurojust, and can also be provided directly by regional levels, in practice the usefulness of this approach is questioned. Estonia is currently not submitting data in a structured way in line with the new templates provided by Eurojust.
10. In Estonia there is only one operational EJM contact point among the judicial authorities, namely the state prosecutor. No representation for instance of judges or district level prosecutors is currently foreseen. In view of the strong position of the prosecutor in a case, it would be recommendable for some of them to be included as contact points.
11. There are no specific rules or guidelines regarding the use of Eurojust, the EJM or Europol. Cases are usually referred to the EJM, especially in cooperation with neighbouring countries (Latvia and Lithuania). Eurojust is used either in very urgent cases, in cases where coordination of common actions among officials of two or several Member States is needed, or contacts with third countries should be established.
12. The positive role of Eurojust in supporting JITs was most widely recognised by the Estonian authorities. Estonia is a very enthusiastic user of the JIT possibilities, with more than 30 JITs established thus far. These are mostly formed with the neighbouring countries, but also with other Member States. In some cases, the procedure is now so streamlined that a JIT can be set up within hours. This can be regarded as a very efficient and progressive way to exploit this tool providing concrete operational benefits.
13. The involvement of Eurojust has been minimal in the controlled deliveries where Estonia has participated thus far. However, according to the Estonian authorities, certain problems that have become apparent in recent cases have clearly indicated that the involvement of Eurojust could bring added value and prevent or solve certain issues often incumbent on cross-border judicial measures such as controlled deliveries. The customs authorities have been involved in controlled deliveries where coordination centres have been established when simultaneous house searches have subsequently taken place. These coordination centres have been established between Eurojust and Europol. This has been defined as a good practice by the Estonian authorities.

14. The fact that in practice one person, namely the state prosecutor, provides training in international matters to prosecutors, judges and law enforcement agencies is good in the sense that the level of training is the same and adequate for all authorities. But as in previous conclusions, also here there is a problem regarding the vulnerability of the highly centralised system. For example, former seconded national experts to Eurojust would have excellent knowledge about legal assistance in the field of international judicial cooperation and their participation in providing the training could be considered.
15. Training is mainly provided by giving lectures. However, without the support of handbooks or other guidelines to be found on the Intranet between the training sessions, the results of the training might be short-lived and thus challenged. The Intranet of the prosecution services seems to contain more or less a list of conventions, agreements, etc. but there are no practical guidelines providing support regarding concrete cases.
16. All in all the Estonian system regarding international judicial cooperation seems to work well and efficiently. Nonetheless, it is highly centralised and almost all decisions and work, particularly regarding incoming requests, evolve around one state prosecutor. It would be appropriate if work could be distributed also to other prosecutors. Their responsibilities and competence regarding the execution of MLAs and contacts with Eurojust and OLAF, when necessary, should be expanded.



## 2. INTRODUCTION

Following the adoption of the Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime has been established.

In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to 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.

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust itself but rather on the operational aspects in the Member States. This is taken into account to encompass, for instance, how police authorities cooperate with Eurojust national members, how the National Units of Europol will cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities. The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJN. Thus, the evaluation will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experiences from all evaluations show that Member States will be in different positions regarding implementation of relevant legal instruments, and the current process of evaluation could provide useful input also to Member States that may not have implemented all aspects of the new Decision.

The questionnaire<sup>1</sup> for the sixth round of mutual evaluations was adopted by GENVAL on 31 October 2011. As agreed in GENVAL on 17 January 2012, Eurojust was also provided with a questionnaire<sup>2</sup>. The questionnaire to Eurojust was adopted by GENVAL on 12 April 2012.

The order of visits to the Member States was adopted by GENVAL on 31 October 2011.<sup>3</sup> Estonia was the third (3) Member State to be evaluated during this round of evaluations.

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<sup>1</sup> Doc. 12384/3/11 GENVAL 76 COPEN 176 EUROJUST 106 EJN 87.

<sup>2</sup> Doc. 5241/2/12 GENVAL 3 COPEN 6 EUROJUST 3 EJN 2.

<sup>3</sup> Doc. 13040/2/11 GENVAL 82 COPEN 184 EUROJUST 111 EJN 91.

In accordance with Article 3 of the Joint Action, a list of experts in the evaluations to be carried out has been drawn up by the Presidency. Experts with substantial practical knowledge in the field were nominated by Member States pursuant to a written request on 15 July 2011 to delegations made by the Chairman of GENVAL.

The evaluation teams will consist of three national experts, supported by two staff from the General Secretariat to the Council and observers. For the sixth round of mutual evaluations, GENVAL agreed with the proposal from the Presidency that the Commission, Eurojust and Europol should be invited as observers.

The experts charged with undertaking this evaluation were Tuuli Eerolainen (Finland), Jarlath Spellman (Ireland) and Dominic Micallef (Malta). Three observers were also present: Dick Heimans (DG Justice, Commission), Laima Čekelienė (Eurojust) and Steven Ryder (Europol), together with Mari Hämäläinen and Kristi Raba from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Estonia between 02 and 05 July 2012, and on Estonia's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. General information

For the evaluation, the Member States were requested to indicate all relevant legal or statutory provisions, if any, they had to introduce or amend in order to bring national law into conformity with the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and its amendments according to Decision 2009/426/JHA on the strengthening of Eurojust, or indicating intentions in this respect, and all relevant legal or statutory provisions, if any, which they had to introduce or amend in order to implement Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network as well as Council Decision 2008/976/JHA adopted on 16 December 2008 and repealing the Joint Action.

As regards Estonia, Eurojust related provisions have been included in the Code of Criminal Procedure (CCP). The most relevant legal provision is Article 489<sup>1</sup> of the CCP:

“Article 489<sup>1</sup>: Co-operation with Eurojust

- Co-operation with the EU Judicial Co-operation Unit Eurojust shall be carried out pursuant to this Code unless otherwise provided by legislation of the European Union.
- A prosecutor appointed Eurojust’s National Member for Estonia has all the rights and obligations of a public prosecutor pursuant to this Code in the scope of application of this Code.
- In cases of urgency, Eurojust’s National Member for Estonia may commence criminal proceedings with regard to a criminal matter the proceedings in which are to be conducted in Estonia and after performance of procedural acts send the materials of the criminal matter to the Public Prosecutor's Office who shall forward the materials pursuant to investigative jurisdiction.”

Some provisions concerning Eurojust are provided in the Statutes of the Prosecutor’s Office:

- Article 6 paragraph 4 – the tasks of the Prosecutor’s Office include participation in Eurojust work.
- Article 9 paragraph 4 – The Office of the Prosecutor General has the task on participation in Eurojust work.

The Statutes of the Ministry of Justice provides that the Ministry is competent to arrange the cooperation with Eurojust. According to the Statutes, the Minister of Justice designates the national member of Eurojust.

Additionally, many other aspects concerning Eurojust are regulated in the guidelines by the Prosecutor General and different internal documents, from which the most important is the *scheme of division of tasks of the Office of the Prosecutor General*<sup>4</sup>. The references to relevant provisions are presented in the text.

The regulations concerning EJM are covered by the general provisions of international cooperation in criminal matters.

### **3.2. Implementation of the Eurojust national coordination system (ENCS)**

With respect to the implementation of the Eurojust national coordination system (ENCS), in Estonia the ENCS is located in the Office of the Prosecutor General; where there are two state prosecutors performing the tasks of ENCS (one of them is at the same time the deputy member to Eurojust and one of the EJM contact points). The ENCS is set up by the scheme of division of tasks of the Office of Prosecutor General.

The national correspondent for Eurojust is a state prosecutor. Her main tasks are defined in the scheme of division of tasks between prosecutors of the Office of the Prosecutor General. Her tasks include the following: to exchange information, coordination, to decide upon and in some cases enforce requests for judicial assistance, to gather necessary information etc.

The ENCS is in one place in Estonia, operating in the Office of the Prosecutor General. From the point of view of the Estonian authorities, the location of ENCS within the Office of the Prosecutor General is a good solution that helps to manage effectively the flows of information.

In Estonia the ENCS is performing the usual tasks of the state prosecutor as well.

The cooperation with the Europol national unit and SIRENE bureau is very close and effective. The ENCS and the Europol national unit and other law enforcement authorities are in contact on a daily basis by telephone, e-mail; they use the same databases. Exchange of information takes place on a regular basis. The meetings take place if necessary, but at least once in quarter.

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<sup>4</sup> As laid down by the Directive nr RP-1-2/11/27 of the Prosecutor General from October 6, 2011 with amendments nr RP-1-1/12/6 from January 27, 2012.

Estonia has implemented Article 2(2)(b) and Article 12 of the Council Decision.

One of the Chief state prosecutors in the Office of the Prosecutor General is responsible for the functioning of the Eurojust national coordination system and at the same time is a national correspondent for Eurojust for terrorism matters.

One of the state prosecutors in the Office of the Prosecutor General is designated as the deputy of the national member of Estonia, as national correspondent for Eurojust and also as a national correspondent for EJM. One more national correspondent for EJM is designated from the Ministry of Justice. The basic functioning of the ENCS is guaranteed by the Eurojust national correspondent – state prosecutor. The tasks of Eurojust national correspondent (exchange of information, coordination, deciding upon and in some cases enforce requests for judicial assistance, to gather necessary information etc.) and other members of ENCS are respectively prescribed in the *scheme of division of tasks of the Office of the Prosecutor General*. This makes it easier to keep track of requests for assistance and answers thereto (provided that a record is kept, and possibly administrative support is provided).

According to the Estonian authorities, the ENCS, the Estonian desk at Eurojust and the Estonian liaison bureau at Europol work in practice as one team. The daily work is concentrated on concrete cases. Information exchange, communication and interaction work very well between the participants. All issues discussed have legal or procedural nature and are solved via mutual communication.

### **3.3. National desk at Eurojust**

Three officials are appointed to the Estonian national desk at Eurojust: the national member of Eurojust Mr Raivo Sepp, the deputy member Mrs Eve Olesk and seconded national expert Mr Robert Laid.

The national member and seconded national expert are selected through public competition. The criteria may vary, but usually the working experience of at least 3 years as a prosecutor is required as well as advanced (Master's) degree in law and very good knowledge of English and preferably other official languages of the EU. The member of Eurojust and seconded national expert are appointed by the Minister of Justice in accordance with proposal by Prosecutor General<sup>5</sup>.

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<sup>5</sup> Statutes of the Prosecutor's Office, Article 8 subparagraph 2.

The deputy member is appointed by the Prosecutor General. The deputy member is a person responsible for the main part of international cooperation in the Office of the Prosecutor General. The members and expert are independent in their work as prosecutors<sup>6</sup>, although their non-prosecutorial activities are supervised by the Office of Prosecutor General. The national member at Eurojust has an obligation to present an overview of his activities to the Prosecutor General 4 times a year (once in a quarter).

The national member and deputy maintain their status as a state prosecutor and therefore are entitled with all powers provided to the prosecutors by Estonian law<sup>7</sup>. It has not been necessary to grant further powers to them for the purposes of the new Eurojust decision.

The national member, his deputy and seconded national expert have full access to almost all national databases used by the prosecution (Criminal Procedure Register, Courts' Information System). Due to technical reasons currently the national member and national expert located in The Hague do not have access to police database KAIRI, but the solution for this problem is being sought and this obstacle is expected to be removed in the near future. The national member, his deputy and national expert are entitled with usual powers of prosecutors in Estonia and maintain their status as prosecutors in accordance with Estonian law so there are no restrictions for them to acquire the information directly from the databases or on request.

Regarding the Eurojust Case Management System (CMS), it is administered in accordance with Rules of procedure on the processing and protection of personal data at Eurojust as adopted by the College of Eurojust on 21 October 2004 and approved by the Council on 24 February 2005.

According to Article 18 of the Eurojust Decision, only national members, their assistants and the authorised personnel of Eurojust are granted the right to access the personal data processed at Eurojust. The National Member for Estonia at Eurojust may grant and grants access to the Estonian national part of the Case Management System by determining the period and the type (full or limited) of such access<sup>8</sup>.

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<sup>6</sup> Prosecutor's Office Act, Article 2 subparagraph 2.

<sup>7</sup> CCP Article 489<sup>1</sup> subparagraph 2.

<sup>8</sup> Article 26 of the Rules of procedure on the processing and protection of personal data at Eurojust as adopted by the College of Eurojust on 21 October 2004 and approved by the Council on 24 February 2005

All Estonian competent authorities have indirect access to the restricted part of the CMS through the national member for Estonia. According to the Estonian authorities, direct access by Estonian competent authorities to the CMS can be set up once Article 13 of the Eurojust Decision is implemented in the Member States and Eurojust. From a technical perspective, Estonia is ready for setting up the direct access to CMS in cooperation with Eurojust.

### **3.4. EJM contact points**

The national contact points are appointed in Estonia. The following criteria are taken into account for the appointment: working position of the person, language skills, and working experience in the field of mutual legal assistance and international cooperation. Currently there are five contact points:

- Mrs Imbi Markus, former JHA Counsellor in the Permanent Representation of Estonia to the EU, currently at the Ministry of Justice acting as the national correspondent;
- Mrs Eve Olesk, state prosecutor of the Office of the Prosecutor General;
- Mrs Astrid Laurendt-Hanioja, head of the International Judicial Cooperation Division of the Ministry of Justice;
- Mrs Kristiina Kask, Criminal Intelligence Bureau of the Central Criminal Police of the Police and Border Guard Board;
- Mr Olavi Kavald, Estonian Liaison Officer to Europol, acting as the national tool-correspondent.

The EJM contact points have various tasks to perform in the area of international judicial cooperation. They reply to different requests related to judicial cooperation and mutual legal assistance, give information concerning competent authorities in different matters, coordinate organization of meeting between EJM contact point from different Member States (for example a meeting with Latvian and Lithuanian EJM contact points took place on 7-8 July 2012). The contact points are consistently in close cooperation via e-mail and by phone, sharing information and exchanging opinions.

The information made available on the site of the EJM about Estonia is provided mainly by the Ministry of Justice. The Ministry collects the necessary information from different authorities and prepares it for uploading.

### 3.5. Conclusions

- The Estonian judicial cooperation system in criminal matters appears to be functioning in a good manner and it is considered largely effective. The Estonian authorities and the Office of the Prosecutor General have made significant efforts to put in place structures and mechanisms required by the implementation of the Decisions on Eurojust and the EJM. Cooperation with Eurojust is regulated mainly in Article 489<sup>1</sup> of the CCP, the statutes of the Prosecutor's Office, and in guidelines by the Prosecutor General and different internal documents, from which the most important is the scheme of division of tasks of the Office of the Prosecutor General. This seems to be a transparent and clear way to regulate cooperation with Eurojust.
- The Estonian system is characterised by a high level of centralisation, and a relatively low number of cases where Eurojust has been thus far involved. The main bulk of mutual legal assistance requests is exchanged with the neighbouring countries, in particular with Finland, but also with Latvia and Lithuania. In practice this means that complex judicial cases involving several Member States, where the added value of Eurojust is the greatest according to the Estonian authorities, are very few. For example, the bilateral Crime Prevention agreement between Finland and Estonia is used for most types of cooperation, except for certain very specific activities such as hot pursuit (Schengen) or controlled deliveries (MLA Convention). Agreements with Latvia and Lithuania respectively ensure that bilateral or trilateral arrangements apply to the most important parts of cooperation with the other Member States.
- Cases where the assistance of Eurojust was sought concern mainly cases where the execution of a bilateral MLA request met with difficulties. Through the direct contacts of the Estonian national member at Eurojust, these cases could in general be resolved much more quickly in this manner. Cases involving more than two Member States and cases where coordination meetings at Eurojust were requested are relatively rare – for example, in the first six months of 2012 Estonia requested three coordination meetings, and was also requested three times to participate in coordination meetings.



- The degree of expertise in international matters is very high at the Prosecutor General's Office. It is however practically one person who has all the experience and who is carrying out international tasks. The situation is vulnerable, should the person in question be ill, on vacation or decide to leave the office. It seems that other responsible persons, according to the division of tasks at the Prosecutor General's Office, are in practice not much involved with this work.
- The national member for Estonia has all the powers allocated to a state prosecutor of Estonia, i.e. more powers than strictly required under the Eurojust decision including the power to initiate an investigation and to authorise and coordinate controlled deliveries. This approach makes it possible for Estonia to have concrete and effective cooperation with Eurojust.
- The national member has only partial access to relevant national databases even though has no restrictions to acquire the information directly from the databases or on request. In order to fully exploit the possibilities offered by the position of a national member, full access to all relevant data in national databases would make the everyday work more efficient and create even more added value both in Estonia and towards the other Member States and Eurojust.
- The ENCS is established in line with Article 12 of Eurojust Decision but it seems that it is not exploited to its full potential in Estonia. According to the answers, the ENCS is located at the Office of the Prosecutor General where two state prosecutors act as ENCS contact points. Thus in practice the Office of the Prosecutor General makes up the ENCS. During the evaluation mission the evaluation team asked the representatives of the police about the ENCS and the role of the police in it. According to the information provided, there is good cooperation between the police and the Office of the Prosecutor General, but no concrete cases were given on how this cooperation works in practice. It can be problematic from the point of view of effortless flow of information if the authorities responsible for conducting the criminal investigations are not effectively linked into the ENCS, as directly as possible, but have to always deal via a specific office/authority or part thereof.
- According to the information provided by the Estonian authorities, the criteria for nominating a seconded national expert or an EJM contact point may vary, and it is difficult to assess what the objective requirements are.

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- According to the evaluation team, the EJM should also consist of operational judicial authorities. In Estonia however there is only one operational contact point among the judicial authorities, namely the state prosecutor. No representation for instance of judges or district level prosecutors is currently foreseen. In view of the strong position of the prosecutor in criminal cases, it would be recommendable for some of them to be included as contact points.
- Even though a representative of the Central Criminal Police is also listed as an EJM contact point, the police was not aware of this tasking. This seems to be mostly due to the fact that the police does not wish to duplicate activities as regards judicial cooperation but rather handles these issues via or with the Office of the General Prosecutor. It seems that direct participation by the law enforcement authorities in judicial cooperation is in practice always done via the state prosecutors.
- The EJM Atlas provides the Ministry of Justice as the Central Authority. This is more than understandable since the MLA requests should be sent to Estonia through the Ministry, even though this is contrary to the Schengen Convention and the 2000 MLA Convention. However, this way the requesting foreign judicial authority does not get the direct contact information of the competent authority that will actually execute the request and does not know who to turn to in order to get practical advice before sending the request.

#### 4. EXCHANGE OF INFORMATION

##### 4.1. Exchange of information from judicial and law enforcement authorities to Eurojust

Asked to describe the databases that may be relevant at national level for the exchange of information with Eurojust and on the occasion of coordination meetings, Estonia notes that the main database for information exchange is the Eurojust channel for classified information exchange (Eurojust webmail), which is accessed by limited number of persons (access is given by Eurojust). When the national member and seconded national expert will have access to the Estonian police database KAIRI, the exchange of information will be even more effective, even though according to the Estonian authorities there are currently no remarkable obstacles in sharing information.

The exchange of information is decentralised. All competent authorities have the right to send relevant information to Eurojust. Every competent authority and national member and seconded expert has an access to the Courts' Information System and Criminal Procedure Register. The Office of the Prosecutor General is always involved, receiving all the information exchanged. The Office keeps record of the information provided. There are no specific guidelines concerning information exchange.

The criminal cases concerning terrorism are in the mandate of the Estonian Security Police and the prosecution is led by the Office of the Prosecutor General. All the information is in the Office of the Prosecutor General and therefore according to the Estonian authorities there is no need for specific guidelines as the deputy member of Eurojust acts also as the state prosecutor.

The contact point under Article 2 of the Council Decision 2005/671/JHA<sup>9</sup> is the Office of the Prosecutor General. In practice, the same person who acts as the national contact point for Eurojust, is at the same time the contact point appointed under the Council Decision 2005/671/JHA (Scheme of Distribution of Tasks of the Office of Prosecutor General).

In general the information is transferred to Eurojust by fax, e-mail, the CMS and phone. Thus far the new templates developed by Eurojust have not been used. Currently information is not submitted in a structured way, as provided for in the Eurojust Decision.

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<sup>9</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences

Estonia provides all the information defined under Article 13 (5) to (7) of the Eurojust decision. This includes information regarding court decisions, JITs, relevant criminal procedures, and so forth.

There is no specific provision under Estonian law for the exception under Article 13(8), and thus this exception is not applied. Since the national member acts also as the state prosecutor in accordance with Estonian law, he has the right to receive all types of information, both classified and unclassified. Before providing the information, the relevant authority has an obligation to evaluate whether the receiving party has been granted the right to process the kind of information to be provided. The evaluation is performed on a case-by-case basis.

The Estonian authorities maintain that in practice Article 13 has been implemented in Estonia, but that Estonia is also waiting for the other Member States to implement it. According to the Estonian authorities, a lot is being done regarding the development of the CMS but the system is, despite these efforts, still under-used, and the majority of the Member States is not submitting (all) the information defined under Article 13. Eurojust has, for example, started to organise regular meetings for Member State representatives, held at Eurojust. Problems and best practices have been discussed in these meetings. Currently these meetings are not taking place as often as previously. In general, the Estonian authorities feel that links with other investigations should be established either nationally or by Europol.

According to the Estonian authorities, the IT development strategy of Eurojust foresees that Member States or their competent authorities become connected also with the CMS. Those connections are built up through specific projects and cannot be established with all Member States simultaneously. Estonian IT systems are ready to be connected and further developments depend on Eurojust.

#### **4.2. Feedback by Eurojust**

In general the Estonian authorities evaluate the added value provided by Eurojust as highly positive. Eurojust provides information regularly and automatically without any specific request. The cooperation is deemed very close and fruitful. The information is very useful and is used by the competent authorities in practice.

There have been no reports of any practical or legal difficulties.

The standard of information exchange is considered very good and the high level should be maintained in the future.

However, the Estonian authorities also maintain that they have provided information to Eurojust according to Article 13 but so far there has been no specific feedback or results communicated. This is why it is also difficult for the Estonian authorities to evaluate which additional information and how much should be referred to Eurojust in order to get more results and better feedback.

#### **4.3. Conclusions**

- The information exchange between Estonian authorities and Eurojust seems to be very informal and effective. Information is mainly exchanged between the Office of the General Prosecutor and the national member. The prosecutors-in-case, judges and law enforcement authorities do not seem to exchange that much information directly with the national member or the Estonian desk at Eurojust.
- The exchange of information under Article 13 provides some problems in Estonia. Article 13 of the Eurojust decision is implemented in practice in Estonia, but even though information under Article 13 is provided to Eurojust, and can also be provided directly by regional levels, in practice the usefulness of this approach is questioned. Estonia is currently not submitting data in a structured way in line with the new templates provided by Eurojust.
- The information flow triggered by Article 13 is dealt with first at national level, passed on to the Eurojust national correspondent who conveys it to the national member at Eurojust. The Eurojust national correspondent has a very active role in transmitting information to Eurojust. However, the approved template is not used but rather a package or compilation of documents is sent to Eurojust. When one takes into consideration the fact that the national member would then have to manually include all this data in the CMS, this may not be the most efficient way to go about this.

## 5. OPERATIONAL ASPECTS

### 5.1. Practical experience in relation to Eurojust

The Estonian competent authorities keep statistics of the contacts with Eurojust. The national desk at Eurojust keeps as well their own statistics. For statistical purposes, a relevant case is open if a request for assistance is sent to Eurojust and all the information is included in the request. The relevant statistics of the last years are as follows:

- In 2010 Estonia contacted Eurojust in 28 cases and foreign states sent Estonia 27 requests;
- In 2011 Estonia contacted Eurojust in 28 cases and foreign states sent Estonia requests in 54 cases.

Complex and urgent cases are reported to Eurojust when its assistance is required. For example, in some cases the Estonian authorities have been waiting for a response to a judicial assistance request for several months, which is not ideal in case of urgent and important procedure. In these cases the assistance of Eurojust is requested to find a relevant and competent authority in another Member State or to bring different authorities together. The assistance of Eurojust is especially needed in cases where several Member States and different authorities are involved. Eurojust is normally contacted as soon as the need arises. The stage of the proceedings may greatly vary and depends on the case in which the assistance is requested.

### 5.2. Allocation of cases to Eurojust or the EJM or others

There are no national guidelines or instructions on whether to use Eurojust or the EJM. The decisions are made on case-by-case basis.

The requests are mainly sent to the EJM contact points when the information required is non-substantial and where there is a need to identify the competent authority of another Member State, who is authorised to execute the request for judicial assistance.

The assistance of Eurojust is requested in cases where substantial questions arise and a quick response is required. In practice with some Member States the only possibility to get required information quickly is through the assistance of Eurojust.

### 5.3. Experience of cases in relation to the competences attributed to Eurojust

The requests for judicial cooperation are registered in the Criminal Procedure Register. Otherwise the cooperation is quite similar to usual cooperation between different authorities on the national level and is mainly informal.

#### 5.3.1. Cases related to the tasks of Eurojust acting through its national members (Article 6)

As mentioned above, the national member remains as the state prosecutor under Estonian law and therefore general provisions of CCP concerning commencement or conduction or termination of the proceedings apply.

According to Article 30 of CCP, the Prosecutor's Office directs pre-trial proceedings and ensures the legality and efficiency thereof and represents the public prosecution in court. Article 433 subpar 3 of CCP provides that general rules of criminal procedure apply in international cooperation.

When the national member sends the request under the Article 6 of the Eurojust Decision, the national authorities must act in accordance with the rules of criminal proceedings applicable. For example, Article 198 of CCP requires the decision concerning commencement of the proceeding to be made within 10 days as of the receipt of a report of a criminal offence.

#### 5.3.2. Cases related to the tasks of Eurojust acting as a college (Article 7)

Estonia does not have practical experience in relation to Article 7. All cooperation so far is conducted under Article 6.

#### 5.3.3. Cases related to powers granted at national level (Article 9a)

The Estonian national member executes all the powers provided to the Estonian state prosecutors by the law, he remains the state prosecutor under Estonian law. According to Article 489<sup>1</sup> subparagraph 2 of the CCP, a prosecutor appointed Eurojust's national member for Estonia has all the rights and obligations of a public prosecutor pursuant to the CCP in the scope of application of the CCP.

The national member performs tasks set by Eurojust and provides all the necessary information to the Office of the Prosecutor General. According to the Estonian authorities, the powers granted to the national member are deemed sufficient, and there are no additional powers a state prosecutor in Estonia could be granted.

In relation to Article 9a (4) of the Eurojust decision, the national member has the full right to participate in international cooperation in accordance with the law. Article 435 subpar 2 of CCP states:

“(2) Courts, Prosecutors’ Offices, police authorities, the Security Police Board, the Tax and Customs Board, the Competition Board and the Military Police are the judicial authorities competent to engage in international co-operation in criminal procedure to the extent provided by law.”

Therefore as a public prosecutor the national member is competent to perform tasks related to international cooperation.

*5.3.4. Cases related to ordinary powers (Article 9b)*

Pursuant to the scheme of division of tasks of the state prosecutors of the Office of the Prosecutor General, the national member acting also as a state prosecutor solves the questions related to international cooperation and judicial assistance and exchanges the information in criminal procedures with the Member States.

*5.3.5. Cases related to powers exercised in agreement with a competent national authority (Article 9c)*

As stated above, the national member is competent to participate in international cooperation.<sup>10</sup> In addition, Article 464 subparagraph 6 of the CCP states that in cases of urgency, Eurojust’s national member for Estonia may prepare a request for assistance in a criminal offence the proceeding of which is to be conducted in Estonia and submit it to a foreign state.

Where the case is not an urgent one, all the decisions concerning the criminal case have to be made by the prosecutor appointed to direct the exact case.<sup>11</sup> In this case, the national member has the right to propose the appointed prosecutor to use investigative measures under Article 9e (1 b – i and 1 b - ii) of the Eurojust decision.

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<sup>10</sup> Art 435 subparagraph 2 of the CCP

<sup>11</sup> Pursuant to Article 30 subparagraph 2 of the CCP and Article 2 subparagraph 2 of the Prosecutor’s Office Act, a prosecutor is completely independent in his/her actions while directing the case.



Where the request for assistance by a foreign state is submitted through Eurojust, the national member shall verify, whether the request for assistance meets the requirements and whether compliance with the request for assistance is admissible and possible, and forward the request to the Estonian competent judicial authority for execution.<sup>12</sup>

Regarding controlled deliveries, the same principle mentioned above apply. All investigative measures, including controlled deliveries, have to be authorised by the prosecutor appointed to the specific case. Depending on the type of the investigative measure, a court approval may be required as well. In cases where the national member is the appointed prosecutor, or where the controlled delivery is requested by a foreign state in request for judicial assistance, the national member may execute the powers mentioned above.<sup>13</sup>

It is an important principle of Estonian criminal law that a prosecutor appointed to the case is independent in his/her actions regarding a specific case and no other prosecutor may take any investigative actions. However, the national member has the right to propose using specific investigative measures to the appointed prosecutor.

*5.3.6. Cases related to powers exercised in urgent cases (Article 9d (b))*

In cases of urgency, Eurojust's national member for Estonia may prepare a request for assistance in a criminal offence the proceeding of which is to be conducted in Estonia and submit it to a foreign state.<sup>14</sup>

As above, where the request for assistance by a foreign state is submitted through Eurojust, the national member shall verify whether the request for assistance meets the requirements and whether compliance with the request for assistance is admissible and possible and forward the request to the Estonian competent judicial authority for execution.<sup>15</sup>

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<sup>12</sup> Art 462 subparagraph 4 of the CCP

<sup>13</sup> Under the Article 462 subparagraph 2 of the CCP and Article 30 subparagraph 2 of the CCP

<sup>14</sup> Art 464 subparagraph 6 of the CCP

<sup>15</sup> Art 462 subparagraph 4 of the CCP

The national member and his deputy are competent to execute the request for legal assistance also themselves when necessary, including to authorise and coordinate the deliveries subject to inspection. At the same time, in order to authorise a delivery which is subject to inspection, surveillance permission has to be issued that cannot be done by using a remote desktop from the Eurojust national desk in The Hague. However, a corresponding permission can be issued by a deputy or a public prosecutor who is on call.

In cases of urgency, Eurojust's national member for Estonia may commence criminal proceedings with regard to a criminal matter the proceedings in which are to be conducted in Estonia and after performance of procedural acts send the materials of the criminal matter to the Office of the Prosecutor General who shall forward the materials pursuant to investigative jurisdiction.<sup>16</sup>

*5.3.7. Derogatory arrangements, if applicable (Article 9e);*

The national member has the right to propose the use of certain investigative measures to the prosecutor appointed to the case. All the proposals made by the national member are handled immediately, as required by the general rule of law – the task of the prosecutor is to ensure the legality and efficiency of the criminal proceedings<sup>17</sup>, and delays could jeopardise this task.

**5.4. Practical experience related to coordination meetings**

According to the Estonian experience, coordination meetings organised under the auspices of Eurojust are highly positive. The meetings are deemed very well organised and they are of high value for gathering information from the other Member States. The possibility to meet representatives from other Member States is an important tool in criminal proceedings where several Member States are involved. In the context of these meetings, it is possible to exchange information very quickly and at the same time provide important information received during the meeting further to Estonia's competent authorities without delay.

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<sup>16</sup> Art 489<sup>1</sup> subparagraph 3 of the CCP

<sup>17</sup> Art 30 subparagraph 1 of the CCP

The follow-up of the meetings greatly depends on the Member States involved and on the case or necessity for the follow-up. For example, the Estonian authorities have had a case where the forming of a JIT was discussed in a coordination meeting. After the meeting, no further follow-up was provided. Estonia sent a request for information to the Member State involved two months after the meeting and did not receive any answer. Afterward it appeared the JIT was formed in a completely different Member State.

The ENCS decides who should participate in specific meetings. Depending on the case, one of the ENCS contact points may participate in the meeting, if appropriate. If the contact point is not the right person to take part in the meeting, the information is submitted to the relevant authorities.

#### **5.5. Use of the On-call coordination (OCC)**

The entry into force of the on-call coordination has not led to any changes in the organisation of the national desk or the relevant national authorities in Estonia. The mandatory 24/7 availability has been available from the beginning.

To inform the national authorities of the on-call coordination, a circular letter was sent from the Office of the Prosecutor General to all the authorities. Information about the on-call coordination was also shared during the seminars and training meetings.

#### **5.6. Experience of cases relating to the cooperation between the ENCS and the Europol national unit**

In Estonia, the ENCS and the Europol national unit cooperate very closely. The cooperation between ENCS and the Europol national unit is very efficient and takes place on a daily basis. The two exchange information constantly, address questions regarding specific cases, etc. The communication is conducted mainly by e-mail and phone and in an informal way.

#### **5.7. Conclusions**

- It seems that the on-call coordination has not been adopted quite as foreseen since all calls to the Estonian desk at Eurojust are directed to the national member at all times, including during his leave. In order not to overly burden the national member, the on-call coordination could include additional resources, for instance the former and/or current seconded national expert.

- As regards cooperation with other Member States, there seems to be no alternative to contacting the national member or his deputy. This might prove challenging for situations of urgency when the competent judicial authority cannot be reached.
- According to all persons interviewed during the evaluation mission, Eurojust is very efficient in assisting cooperation with third countries such as Russia, Peru, Egypt, etc. Coordination meetings were stressed as a main added value of Eurojust in cases where a legal assistance request has not progressed through the relevant national system.
- Distribution of cases between Eurojust and the EJM is decided by the prosecutor, without clear guidelines on when to use what cooperation structure. During the evaluation mission, it appeared that in practice the EJM is used mainly for finding appropriate contact points in cases where bilateral contacts have not yet been established, or to ask for clarifications on national legal issues.
- The Office of the Prosecutor General has the main responsibility for dealing with MLA requests, as well as cooperation with Eurojust, and the requests are executed in practice by only one prosecutor, who is also the deputy national member for Eurojust as well as the EJM contact point. Although the substitution of this person in case of absences is assured, this represents a clear vulnerability of the current system, particularly considering that no detailed guidelines have been produced for dealing with MLA requests, cases when the EJM is to be used, or cooperation with Eurojust.
- The small number of cases also means that very few prosecutors at the district level have experience with contacting Eurojust, and although direct information channels are open, in practice the Office of the Prosecutor General is always contacted for advice and co-operation. This is also the case when a decision needs to be reached on whether or not to request a coordination meeting at Eurojust – this is decided between the Office, the national member and the investigating prosecutor. Such meetings are attended by the national member, the Office of the Prosecutor General and the investigating prosecutor or police authority.

## 6. COOPERATION

### 6.1. Relation with law enforcement authorities (Europol national unit, Sirene, ...)

According to the information provided by the Estonian authorities during the evaluation mission, there is in practice no direct cooperation between Eurojust itself and the Estonian Central Criminal Police. Instead there is good practical cooperation between the state prosecutor and the ENU/SIRENE. As regards international cases, the police for example consults the Office of the Prosecutor General.

JUSTLIST is a permanent operational working group between the authorities, which is used for the organisation and follow-up on concrete cases. It includes representatives of the Ministry of Justice, Office of the Prosecutor General and Central Criminal Police. Usually there are about 10 persons presented during the meetings. The main value of JUSTLIST is a common mailing-list, which enables to exchange all kinds of important information very operatively (for example, who was detained where, information on EAWs etc). In addition to exchange of information via the mailing-list, the meetings of JUSTLIST members take place on last Friday of every month. During these meetings relevant issues are discussed. JUSTLIST was initially created about 10 years ago as an initiative to facilitate and improve information exchange between authorities.

### 6.2. Participation of national members in joint investigation teams (JITs) (Article 9f)

Based on the answers of Eurojust to the questionnaire submitted to them, Eurojust can support practitioners in the area of joint investigation teams (JITs) in the drafting, amending and extending JIT agreements. Furthermore, Eurojust has developed expertise that allows it to advise on potential legal obstacles and help prevent other difficulties. Eurojust national members, deputies and assistants have participated either as competent national authorities or on behalf of Eurojust in 29 JITs during 2011, 20 JITs during 2010, and 7 JITs during 2009.

The role of Eurojust in assisting Member States has been recognised in Article 13(5) of the Eurojust Decision which provides that Member States have to inform Eurojust of the setting up of JITs, established either under the 2000 MLA Convention or the Framework Decision 2002/465/JHA, and of the results of the work of such teams. Eight notifications were received at Eurojust under this provision in 2011, 11 in 2010, and 10 in 2009.

In addition to its practical advice, Eurojust supports JITs financially and logistically via its JIT Funding Project in order to ensure that financial limitations are not an obstacle to the use of JITs. In line with this, Eurojust has supported 34 JITs in 2011, 22 in 2010, and 5 in 2009.

As regards Estonia, it has thus far used JITs several times, as a matter of fact there have thus far been 25 JITs. JITs are considered to be a very effective and useful tool and the popularity of their use is directly linked to their concrete and direct operational value. 14 out of the 25 JITs have been funded by Eurojust. The funding has been directly linked to the activities of the JITs and also to set up the initial coordination meetings. All JITs are set up according to the Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and the Council Framework Decision of 13 June 2002 on Joint Investigation Teams.

The coordination of the setting up of the JITs by Eurojust has been very effective and provided added value. The possibility to fund the JITs provided by Eurojust has proven extremely important. According to the Estonian authorities there is no need for Eurojust to assist the Member States in relation to the proceedings or activities performed by the JITs.

The role of Europol is minimal from the Estonian point of view. Thus far the JITs that have been formed have not been based on data originating from Europol. Since there are several Member States as members of any individual JIT, it might not be so easy to agree on the involvement of Europol. Europol does not need to be a member of the JIT, it should in any case receive the data originating from the JIT and be informed of the relevant activities. Thus far even if Europol is not a member, data has been submitted to the relevant Europol Analysis Work Files. This way they can also support the JIT.

### **6.3. Cooperation with other EU agencies**

OLAF carries out administrative investigations of crimes affecting the financial interests of the EU and transmits relevant information to Eurojust when it appears that a case directly involves judicial cooperation between the competent national authorities of two or more Member States, or where the case concerns a Member State and the EU. OLAF and Eurojust cooperate on an institutional and operational level.

Europol is an important partner in Eurojust's work. Alongside continuous strategic cooperation, Eurojust has also developed intensive operational cooperation with Europol. Casework cooperation with Europol is increasing steadily. In 2011, Europol was represented at 89 of Eurojust's coordination meetings (nearly half of the total number of Eurojust coordination meetings), compared with 41 in 2010. Moreover, the exchange of operational information between Europol and Eurojust has improved throughout the years. Messages sent through the secure communication link between Eurojust and Europol increased by 35 per cent in 2011.

In addition, by the start of 2012 Eurojust was associated with 17 out of 23 Analysis Work Files (AWFs). Eurojust representatives are appointed for each AWF and participate in the respective meetings and support the work of the AWF by contributing with feedback on cases or trends from a judicial viewpoint.

Negotiations between Eurojust and Frontex with a view to concluding a Memorandum of Understanding in accordance with Article 26(1) of the Eurojust Decision are on-going.

In relation to the cooperation with other EU agencies, the Member States were asked to describe their policy, if any, with respect to the involvement of Eurojust in cases involving OLAF or other EU agencies such as Europol and Frontex. As regards Estonia, there is no specific policy in relation to the involvement of Eurojust in cases involving OLAF or other EU agencies. The decisions are made on case-by-case basis.

According to information provided by the Estonian authorities, the closest operational cooperation partners for Eurojust are Europol and OLAF. Daily information exchange between Eurojust and Europol takes place. For example, Europol representatives participate in Eurojust coordination meetings. Furthermore, several common operations for house searches and arrests have been conducted together with Eurojust, Europol, Estonian prosecution and police services. All operational problems have been solved between these authorities in close contact via e-mails and phone.

#### **6.4. Cooperation with third states**

According to the Estonian authorities there have been several cases where the involvement of Eurojust has played a crucially important role in cases related to third states. For example, there has been a drug-related case where the request for judicial assistance was sent to Peru. The request was executed only after Eurojust had been involved. Eurojust has also organised coordination meetings together with Russian authorities, and facilitated Estonian investigations and prosecutions in relation to third countries such as Switzerland, Norway and Syria.

#### **6.5. Practical experience of the EJM**

The Estonian authorities have used the national contact points of the EJM several times. The EJM is used regularly and it has proven efficient in most cases. The EJM has a very important role where the competent authority needs to be identified and contacted in another Member State.

In addition to the usual tools, access to all relevant databases has been provided to the national EJM contact points. This allows the contact points to acquire information very quickly and without any delay. The contact points are allowed to contact all relevant authorities and exchange the relevant information.

The contacts made and requests sent through the EJM are not recorded in Estonia. It can be estimated that the average response time is about 2-3 days. The use of EJM is usually fruitful and effective. Thus far there have been only few negative experiences or problems.

##### *6.5.1. The EJM Website*

Reporting on the EJM Website and its tools (such as the Atlas, EAW Wizard and Library), Estonia believes that the EJM website is a very useful tool of international cooperation in criminal matters. The practical information and different handbooks provided on the EJM website are very much appreciated by the authorities. However, the tools could be even more effective. The information on the website is sometimes out of date and is rarely reviewed or updated by the Member States. According to the Estonian authorities, the Member States should be more proactive regarding their obligation to update and review the information on the EJM website.

The Atlas is not very practical since it can be complicated and sometimes outdated.

The information concerning the state of the implementation of the Framework Decisions provided in the Library is sometimes outdated or sometimes not provided at all.



## 6.6. Conclusions

- Estonia has established an efficient and well-functioning unofficial cooperation mechanism between the Ministry of Justice, Office of the Prosecutor General and Central Criminal Police in the context of JUSTLIST. This forum is used to discuss important cases including international judicial cooperation files such as information on EAWs. This seems to be a very good way to ensure that information and experiences on operational cases is regularly exchanged between the relevant authorities and the Ministry.
- Estonia has had a fruitful cooperation with Eurojust especially in connection with funding the establishment of JITs. According to the Estonian authorities, the main added value of JITs is the fact that the JIT agreement normally covers procedures in both/all participating Member States, including house searches and interrogations, without the need for mutual legal assistance requests. Additionally, being able to forego translation is also a great benefit since translation is very expensive. Main thing is however that evidence collection becomes much easier with a JIT. JITs are a perfect example of a concrete way in which Member States can overcome challenges in cross-border judicial cooperation and facilitate cases that might otherwise be very difficult to coordinate in different Member States. The way in which Estonia has used this tool in a targeted, positive and efficient way to precipitate and strengthen cross-border cooperation is exemplary and commendable.
- The positive role of Eurojust in supporting JITs was most widely recognised by the Estonian authorities. Estonia is a very enthusiastic user of the JIT possibilities, with approximately 30 JITs established thus far. These are mostly formed with the neighbouring countries, but also with other Member States. In some cases, the procedure is now so streamlined that a JIT can be set up within hours. This can be regarded as a very efficient and progressive way to exploit this tool providing concrete operational benefits.

- The use of the EJM website seems to be restricted to the Office of the Prosecutor General, since the password, even though it can be provided to those prosecutors that need it, is in practice not in general knowledge among the prosecutors in the field. It seems that due to the fact that the EJM and the benefits of its use are not known widely enough in the field, the prosecutors are also not looking into using it.
- According to the evaluation team, there were very few indications of the operational functioning of the EJM as such. As in many other Member States, contacts seemed to refer more to legal questions or to the identification of contact points rather than on operational activities.
- Cooperation between Europol and Eurojust was considered essential by all Estonian authorities. The national member confirmed regular contacts with the liaison officer(s) at Europol and places a lot of emphasis on exploiting the analytical capabilities of Europol instead of creating a duplication of these efforts between the agencies..
- There are no specific rules or guidelines regarding the use of Eurojust, the EJM or Europol. Cases are usually referred to the EJM, especially in cooperation with neighbouring countries (Latvia and Lithuania). Eurojust is used either in very urgent cases, in cases where coordination of common actions among officials of two or several Member States is needed, or contacts with third countries should be established.
- When asked about problems regarding international judicial cooperation, the police replied that even though exchange of information is at a good level in the EU, there are problems concerning legislation regarding intelligence exchange. This is due to the fact that criminal intelligence is not specifically defined in many Member States and consequently different understandings apply to its use. Additionally, practice on JITs is quite different. For example, with Finland JITs are easy to establish and execute so that a JIT can be established in the time frame of a couple of hours and there is plenty of practical experience of them whilst they are more cumbersome a tool to use with for example Lithuania.

## 7. SPECIAL INVESTIGATIVE TECHNIQUES

### 7.1. Controlled deliveries (Article 9d (a))

Controlled deliveries are authorised by the prosecutor, in some cases the authorisation of a court is also required, for example when surveillance of telephone communications is used. They are coordinated by the competent investigative authorities (police, tax and customs board, etc).

The Estonian authorities are accustomed to the use of controlled deliveries. The prosecutor authorises their use and compiles a request for judicial assistance to the other Member State(s). The request is sent via the SIENA information exchange channel or via Interpol. Coordination and negotiations with the Member State is conducted by the competent investigative authority.

In the controlled deliveries organised thus far, there has been no involvement of Eurojust. Controlled deliveries have been authorised and coordinated on the basis of multilateral cooperation with other Member States.

According to the Estonian authorities, controlled deliveries are regarded as a good tool and the involvement of Eurojust will be considered in the future.

### 7.2. Other special investigative techniques (SITs)

Estonian authorities have experience from the use of special investigative techniques (SITs) (cross-border observation, use of undercover agent); however Eurojust has not been involved in these activities. The decision to use a SIT is made on a case-by-case basis and strictly by the Office of the Prosecutor General.

### 7.3. Conclusions

- Under the Estonian law, there are no specific regulations on controlled deliveries. They can be carried out in combination with surveillance measures. In line with this, some procedures require the authorisation of a court. According to the information provided by the Estonian authorities, the approach of the relevant authorities regarding controlled deliveries is very pragmatic and flexible, and they are conducted relatively effortlessly and efficiently, especially when requested by Finland where the authorities and procedures are familiar.

- Even though the Estonian national member has sufficient powers to for example authorise a controlled delivery, it seems that in practice this type of an activity is not channelled via Eurojust but rather by using bilateral or multilateral cooperation agreements and arrangements. It is difficult to evaluate whether the use of the Estonian national member at Eurojust would enhance and precipitate the use of these special investigative techniques in cross-border cooperation. It seems in any case that Estonian authorities are able to act quickly and efficiently in these situations in the current set-up.
- The involvement of Eurojust has been minimal in the controlled deliveries where Estonia has participated thus far. However, according to the Estonian authorities, certain problems that have become apparent in recent cases, have clearly indicated that the involvement of Eurojust could bring added value and prevent or solve certain issues often incumbent on cross-border judicial measures such as controlled deliveries. The customs authorities have been involved in controlled deliveries where coordination centres have been established in case of simultaneous house searches taking place in different Member States. These coordination centres have been established between Eurojust and Europol. This has been defined as a good practice by the Estonian authorities.

## **8. TRAINING AND AWARENESS RAISING**

### **8.1. Promotion of the use of Eurojust and the EJM**

In Estonia, according to the scheme of division of tasks of the Office of the Prosecutor General, the prosecutor responsible for international cooperation, who is at the same time the deputy national member and EJM contact point, has an obligation to train prosecutors and judges on the questions related to the international cooperation, EJM, Eurojust, etc. These trainings take place several times a year.

The information is exchanged informally and via circular letters. The information is also provided on the internal websites of the competent authorities. According to the Estonian authorities, in a small country such as Estonia all authorities concerned are aware of the right person to contact in case of questions related to international cooperation.

Additionally, meetings are organised and relevant information is provided to the competent authorities both formally and informally via e-mail, phone, etc. The information is shared in seminars and training and on the internal websites of the competent authorities.

### **8.2. Specific training for national members and EJM contact points**

The national member, his deputy and the seconded national expert and the EJM contact points take part in different seminars and trainings concerning international cooperation. Meetings with colleagues from other Member States are of great value as these meetings give the opportunity to exchange best practices and share the knowledge.

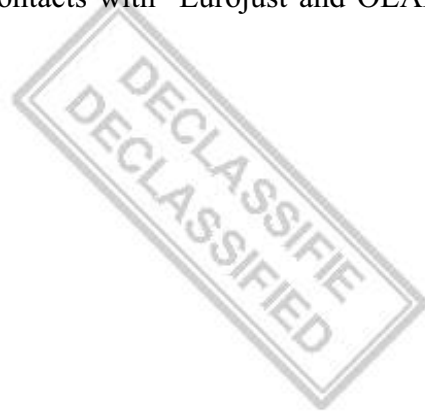
### **8.3. Conclusions**

- Eurojust and judicial cooperation are covered as topics in the induction training. There is also an annual training exercise for prosecutors and judges. In practice the relatively basic level of training does not seem to hinder the use of judicial cooperation tools and channels, since in cases of doubt, the expert at the Office of the Prosecutor General is contacted for further information.

- The fact that in practice one person, namely the state prosecutor, provides training in international matters to prosecutors, judges and law enforcement agencies is good in the sense that the level of training is the same and adequate for all authorities. But as in previous conclusions, also here there is a problem regarding the vulnerability of the highly centralised system. For example, former seconded national experts to Eurojust would have excellent knowledge about legal assistance in the field of international judicial cooperation and their participation in providing the training could be considered.
- Training is mainly provided by giving lectures. However, without the support of handbooks or other guidelines to be found on the Intranet between the training sessions the results of the training might be short-lived and thus challenged. The Intranet of the prosecution services seems to contain a list of conventions, agreements, etc., but there are no practical guidelines providing support regarding concrete cases.
- Practical guidelines could be prepared as to the operation of the MLA and mutual recognition instruments as well as other aspects of judicial co-operation in criminal matters which should include guidance on creating added value in relevant cases with Eurojust and the EJM, and with other EU agencies such as Europol and OLAF. This could be promoted within the stakeholders in Estonia and placed on the Office of the Prosecutor General's Intranet.
- Based on the information provided during the evaluation mission, the EJM website seems to be not very widely used at all levels, and instead of directly contacting a foreign judicial authority or trying to find out the information from the EJM website, the Estonian prosecutors and possibly also judges contact the state prosecutor. As a matter of principle, every actor knows that this is a good way to find necessary information. However, in order to expand the use of the EJM and ensure that it becomes a valuable tool in practical judicial work, it would be useful to guarantee that all prosecutors and judges know the system and also can effectively use it for their purposes, without needing to involve another domestic authority.
- Some targeted education visits to Eurojust, Europol and EJM Secretariat in The Hague could be facilitated for selected Estonian prosecutors and police to improve awareness and knowledge on how these organisations can provide support in complex judicial and police cooperation case work including JITs.

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- All in all the Estonian system regarding international judicial cooperation seems to work well and efficiently. Nonetheless, it is highly centralised and almost all decisions and work, particularly regarding incoming requests, evolve around one state prosecutor. It would be appropriate if work could be distributed also to other prosecutors. Their responsibilities and competence regarding the execution of MLAs and contacts with Eurojust and OLAF, when necessary, should be expanded.



**9. GENERAL OBSERVATIONS AND FINAL REMARKS**

Eurojust was set up by the Council Decision 2002/187/JHA of the European Union in February 2002 to stimulate and improve coordination of criminal investigations and prosecutions in the Member States and to enhance cooperation between the competent national authorities by facilitating mutual legal assistance with a view to reinforcing the fight against serious crime.

Subsequently, the Eurojust Decision was amended by the Council Decision 2009/426/JHA on the strengthening of Eurojust aiming to further enhance its operational effectiveness and to create a common minimum basis of powers of the national members. This Decision is currently being implemented in the national legislation of the Member States.

The European Judicial Network in criminal matters was created in 1998 to improve judicial cooperation by facilitating the implementation of the principle of direct contact between judicial authorities. Its legal status has been reinforced in December 2008 by the adoption of a new legal basis.

Their creation answers to the need to address fundamental challenges in the fight against serious crime and Terrorism across the European Union, as well as to build on the judicial dimension of the European area for freedom, security and Justice after the creation of Europol.

From the point of view of the Estonian authorities, Eurojust and the EJN are of great importance as through them the international cooperation between Member States is conducted more easily and with lesser effort. The information on competent authorities is more easily accessible and information is shared more effectively. The support provided by Eurojust in the form of funding and coordination of the setting up of JITs is extremely valuable and appreciated. The coordination meetings organised by Eurojust play an important role in gathering information from other Member States.



As for further suggestions in view to assist Eurojust and the EJM to meet the expectations placed on them, Estonia holds it that currently the information on the EJM website is sometimes incomplete, outdated and necessary translations are not provided. These aspects should be eliminated and the Member States should pay more attention to updating the site and providing as fresh information as possible since the EJM is an important tool in international cooperation and the information provided should be easily accessible, reliable, relevant and up-to-date.

### **9.1. Conclusions**

- The general assessment of the quality and efficiency of the support received from Eurojust by the Estonian authorities is very positive. The concrete support that Eurojust has been able to provide especially in complex cases involving several Member States, or cases where legal assistance requests have taken a long time to be executed, either in the EU or outside, have clearly shown the added value Eurojust can provide.
- Additionally, the authorities are in general very content with the coordination meetings that Eurojust has facilitated. They are regarded as a perfect example for areas where Eurojust can concretely support cases in the Member States and help with the coordination of complex cross-border prosecutions. However, Estonian authorities also criticised the Member States for a less than perfect follow-up to the coordination meetings and emphasised every Member State's responsibility in ensuring the operational outcomes and follow-up of the coordination meetings.
- As regards other specific requests by the Estonian authorities, the need to speed up the execution of requests was clearly mentioned. The competent authorities find it extremely frustrating that even simple requests are not handled and executed as quickly as an urgent request, for example, should be. Also in this respect the Estonian authorities would like to see more efforts by the Member States and look forward to Eurojust supporting in these cases also in the future.

## 10. RECOMMENDATIONS

As regards the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters, the expert team involved in the evaluation of Estonia has been able to satisfactorily review the system in place in the country, expertly supported by the helpfulness of their national hosts. Overall, the working principles and legal framework of the system is robust and functional and the various actors know their roles and responsibilities.

Estonia is a small country with only a few complex international cases that have required the involvement of Eurojust thus far. Taking into account its relatively limited resources, the Estonian system is well organised and it seems to work efficiently as regards the EJM and Eurojust. Nevertheless, certain recommendations can still be made, to contribute to the further development of the system in Estonia. Furthermore, based on the various good and, without doubt, even best practices of Estonia, related recommendations to the EU, its institutions and agencies are also put forward.

Estonia should conduct a follow-up on the recommendations given in this report 18 months after the evaluation and report on the progress to the Working Party on General Affairs, including Evaluations (GENVAL). The results of this evaluation should also, at some point, be examined by the Working Party on Cooperation in Criminal Matters (COPEN).

### 10.1. Recommendations to Estonia

Estonia is recommended to:

1. Organise the knowledge and tasks in international legal cooperation so that expertise in this area is developed, dispersed and used effectively while at the same time maintaining effective coordination at the national level. The expertise and knowledge amassed by persons who have worked at/with Eurojust should be exploited to the fullest extent.
2. Maintain and enhance the permanent system of deputies for the state prosecutor enabling a core group of prosecutors having the know-how and practical experience to be operational in cases involving international elements, including the provision of necessary training and the allocation of specific tasks and responsibilities.

3. Prepare, regularly revise and update information available to the practitioners (such as interpretative guidelines, handbooks etc.) in order for them to be able to act independently and autonomously regarding international cooperation in their own areas of responsibility, including cooperation with the relevant EU agencies and third countries.
4. Further enhance the full application of Article 13 of the Eurojust Decision for example by providing, practical guidelines and organising targeted trainings, including submitting data in a structured way in line with the new templates provided by Eurojust.
5. Encourage the ENCS to define and determine whether a specific case should be dealt with the assistance of the EJM or Eurojust. Guidelines to this end should be available in order to make sure that practitioners can make an informed decision to this end in their everyday work.
6. Promote and encourage the use of the EJM website among practitioners and facilitate the provision of passwords to all relevant authorities and users.
7. Consider the possibilities for the national member and national expert located in The Hague to have direct access to the police database KAIRI.
8. Consider providing additional resources to on-call coordination, for instance the former and/or current seconded national expert.
9. Choose the EJM contacts in accordance with the allocated tasks and professional profiles. The participation of both prosecutors and judges should be considered. Guidelines could be drafted for the selection of function-based contact persons including the definition of their tasks and for determining participation in EJM meetings.

**10.2. Recommendations to the European Union, its institutions and agencies and the Member States**

1. Support and encourage simplified agreements and very fast establishment procedures regarding JITs in line with the approach in Estonia.
2. Promote and actively use JITs in cross-border cases when possible supported by the relevant EU agencies such as Eurojust and Europol.

3. Encourage setting up regional meetings of EJM contact points as a best practice.
4. Consider the establishment of cooperation mechanisms between the relevant national authorities and Ministries such as JUSTLIST.
5. Continue facilitating targeted education visits to Eurojust and Europol to improve awareness and knowledge on how these organisations can provide support in complex judicial and police cooperation case work.

### **10.3. Recommendations to Eurojust/EJM**

1. Eurojust should put in place a permanent system for monitoring and follow-up of coordination meetings, which is the core business of Eurojust. This should be done by dedicated staff of Eurojust and cannot only be carried out by national members who should be concentrated on case work.
2. Eurojust should continue with and further promote the funding of JIJs. The funding should be as flexible as possible with a view to facilitating operational work.
3. The Presidency (through the EJM Secretariat) should clarify roles and responsibilities of the Member States in the updating of the data available through the EJM tools and closely monitor the update by Member States.
4. Eurojust should collect and disseminate to all Eurojust National Correspondents the guidelines issued at national level on the implementation of Article 13, as well as support and encourage the adoption of such guidelines by national authorities of all Member States (best practices). Based on this, Eurojust should provide common guidelines to all Member States.
5. Eurojust (aided by the EJM) should collect and, where appropriate, translate and disseminate guidelines issued at national level regarding the referral of cases either to Eurojust or to the EJM. The definition and adoption of such guidelines should be promoted at national level.
6. Eurojust should consider the posting of Eurojust liaison magistrates to most relevant third states according to the needs expressed by Member States. In this context, Eurojust is recommended to study the possibilities of establishing such a liaison magistrate in the Russian Federation.

**ANNEX A: PROGRAMME FOR VISIT**

Monday, July 2

Arrival of experts

Tuesday, July 3

9.30 meeting at the Estonian Ministry of Justice; Tõnismägi 5a, Tallinn  
12.30 – 13.30 lunch  
14.00 – 15.00 meeting at the Central Criminal Police; Tööstuse 52 Tallinn  
15.30 – 16.30 visit to the Estonian Tax and Customs Board, Narva mnt 9, Tallinn  
  
19.00 Dinner offered by Estonian Ministry of Justice

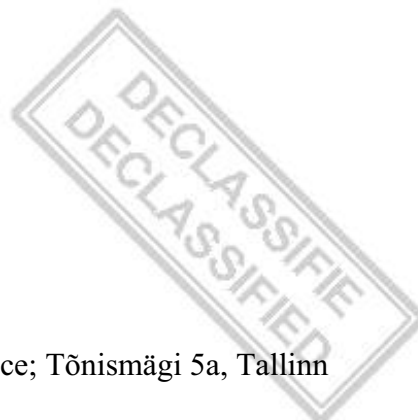
Wednesday, July 4

9.30 - 13.00 meeting at the Estonian Prosecutor General's Office; Wismari 7, Tallinn  
13.00 – 14.00 lunch  
14.00 – 15.00 visit to the Harju County Court; Liivalaia 24, Tallinn  
15.30 meeting at the Northern District Prosecutor's Office, Tatari 39, Tallinn

Thursday, July 5

9.30 meeting at the Ministry of Justice, discussion and conclusions

Departure



**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

1. Involved during the whole visit:

- Mrs Eve Olesk, State Prosecutor, Office of the Prosecutor General
- Ms Julia Antonova, then Ministry of Justice, adviser in the Criminal Policy Department, Penal Law and Procedure Division (now JHA Counsellor, Permanent Representation of Estonia to the EU)
- Ms Jekaterina Agu, Trainee, Ministry of Justice, Criminal Policy Department, Penal Law and Procedure Division

2. Meetings in the Ministry of Justice:

- Mrs Kati Maitse-Pärkna, Head of Unit, Ministry of Justice, Criminal Policy Department, Penal Law and Procedure Division
- Mrs Astrid Laurentt-Hanioja, Head of Unit, Ministry of Justice, Criminal Policy Department, International Judicial Co-operation Division.

3. Meeting in the Central Criminal Police, Criminal Intelligence Bureau and Investigation Bureau

- Mr Reijo Valgjärv
- Mr Kaupo Martihhin

4. Meeting at Estonian Tax and Customs Board

- Mr Neeme Rohtjärv, Investigation Department, International Co-operation Division

5. Meeting at the Office of the Prosecutor General

- Ms Laura Vaik, State Prosecutor

6. Meeting in the Harju County Court

- Judge Katre Poljakova

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7. Meeting at the Northern District Prosecutor's Office

- Ms Maria Sutt, District Prosecutor
- Mr Taavi Pern, District Prosecutor
- Ms Eneli Pau, Assistant Prosecutor
- Mr Vahur Verte, Assistant Prosecutor



**ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

| <b>ACRONYM<br/>ABBREVIATION<br/>TERM</b> | <b>ACRONYM IN THE<br/>ORIGINAL LANGUAGE</b> | <b>ENGLISH<br/>TRANSLATION/EXPLANATION</b>              |
|--|---|---|
| AWF                                      | -/-   | Europol's Analysis Work Files                           |
| COPEN                                    | -/-   | Working Party on Cooperation in Criminal Matters        |
| CCP                                      | -/-   | Code of criminal procedure                              |
| EAW                                      | -/-   | European Arrest Warrant                                 |
| CMS                                      | -/-   | Eurojust Case Management System                         |
| EJN                                      | -/-   | European Judicial Network                               |
| ENCS                                     | -/-   | Eurojust National Coordination System                   |
| EU                                       | -/-   | European Union  |
| GENVAL                                   | -/-   | Working Party on General Affairs, including Evaluations |
| JUSTLIST                                 | -/-   | Operational Working Group between authorities           |
| JIT                                      | -/-   | Joint Investigation Teams                               |
| MLA                                      | -/-   | Mutual Legal Assistance                                 |
| OCC                                      | -/-   | On call coordination system                             |
| OLAF                                     | Office européen de lutte anti-fraude        | European Anti-Fraud Office                              |
| SITs                                     | -/-   | Special Investigative techniques                        |
| SIENA                                    | -/-   | Europol secure network for the exchange of information  |