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**COVER NOTE**

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from: Dr Sigrid Jacoby, Permanent Representation of the Federal Republic of Germany to the European Union

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to: Mr. Rafael Fernández-Pita y González, Deputy Director-General, Council of the European Union

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date of receipt : 13 November 2012

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Subject : Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime  
- Information about completed transposition and notifications pursuant to the Eurojust Decision

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Dear Sir,

I hereby have the honour of notifying you that the Federal Republic of Germany has fully transposed Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter: the Eurojust Decision) into national law.

The Act amending the Eurojust Act, through which the Eurojust Decision was transposed, insofar as legal amendments were necessary, came into force on 15 June 2012. The Act is complemented by the Regulation on the coordination of cooperation with Eurojust (hereinafter: the Eurojust Coordination Regulation), which came into force on 9 October 2012. A national coordination system was thereby set up in the Federal Republic of Germany pursuant to Article 12 of the Eurojust Decision. The consolidated text of the Eurojust Act and the text of the Eurojust Coordination Regulation are attached as annexes to this letter.

Pursuant to the provisions of the Eurojust Decision, the following **notifications** also need to be made regarding the Federal Republic of Germany:

**1. Article 9a(3) of the Eurojust Decision**

Ordinary powers pursuant to Article 9b of the Eurojust Decision have been granted to Germany's national member (see Article 3(1) sentence 3 points 1 and 2 of the Eurojust Act).

In view of constitutional rules and its federal structure, Germany has refrained from also granting the national member the extraordinary powers provided for in Articles 9c and 9d of the Eurojust Decision. Germany has thereby exercised the choice given to Member States by Article 9e(1)(a) and (b)(iii) of the Eurojust Decision. Pursuant to the stipulations of Article 9e(1) regarding extraordinary powers, the national member's right to submit proposals was established in the law, however (see Article (3)(1) sentence 3 point 3 of the Eurojust Act).

## **2. Article 16b(3) sentence 3 of the Eurojust Decision**

The Federal Republic of Germany has not yet made a final decision on the question of the extent of access to the index of the Eurojust Case Management System to be granted to persons referred to in Article 12(2) of the Eurojust Decision. To transpose Article 16b(3) of the Eurojust Decision, the powers to issue a statutory order has, however, been established in Article 4b(5) of the Eurojust Act. Accordingly, the Federal Ministry of Justice can decide, after consultation with the national member, whether and to what extent access to the index is granted not only to Eurojust correspondents within the meaning of Article 7 of the Eurojust Act, but also to other national authorities which are part of the national Eurojust coordination system within the meaning of Article 12(2) of the Eurojust Decision and are connected to the Eurojust Case Management System.

The power to issue a statutory order is of practical significance only for persons and contact points within the meaning of Article 12(2)(d) of the Eurojust Decision. All other contact points and persons mentioned in Article 12 already have access to the index in their capacity as Eurojust correspondents (see Articles 4b(1) and Article 7 of the Eurojust Act in conjunction with Article 1(1) of the Eurojust Regulation). It will be possible to answer the question as to whether persons and contact points within the meaning of Article 12(2)(d) of the Eurojust Decision should receive access to the index once it becomes clear how the Eurojust Decision functions in practice. The power to issue a statutory order creates the necessary preconditions for this.

### **3. Article 41(1) of the Eurojust Decision**

#### **(a) National member and assistants**

The Federal Republic of Germany has appointed Senior Public Prosecutor at the Federal Court of Justice, Dr Hans-Holger Herrnfeld, as the national member, with effect from 1 September 2010. The national member is assisted by Senior Public Prosecutor Benedikt Welfens (deputy) and Supervising Prosecutor Christian Lorenz (assistant). In addition, the national member is assisted by District Court Judge Michael Rothaermel, who is a seconded national expert to Eurojust.

All the aforementioned persons comply with the criteria laid down in Article 2(1) of the Eurojust Decision and have their regular place of work at Eurojust.

#### **(b) Contact points and persons referred to in Article 12(1) and (2) of the Eurojust Decision**

(1) The national Eurojust correspondents within the meaning of Article 12(1) of the Eurojust Decision are:

- the Federal Office for Justice,
- the Federal Prosecutor-General at the Federal Court of Justice and
- the contact points defined by the *Land* Governments pursuant to Article 14(2) of the Eurojust Act (which in practice tend to correspond to the German contact points of the European Judicial Network).

Of these Eurojust correspondents, the Federal Office for Justice is responsible for the functioning of the Eurojust national coordination system within the meaning of Article 12(4) of the Eurojust Decision (see Articles 1 and 4(2) sentence 2 of the Eurojust Coordination Regulation).

(2) The Federal Prosecutor-General at the Federal Court of Justice is the national correspondent for terrorism matters within the meaning of Article 12(2)(b) of the Eurojust Decision.

(3) A representative of the Munich public prosecutor's office and a representative of the Celle public prosecutor's office are currently performing the function of national correspondent for the European Judicial Network.

(4) The judicial contact points within the meaning of Article 12(2)(d) of the Eurojust Decision are:

(a) The Federal Office for Justice for:

- the network of national experts for joint investigation teams,
- the network within the meaning of Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes and
- the network within the meaning of Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime;

(b) The judicial authority nominated by the Federal Government for the network within the meaning of Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption (it is planned to nominate Celle public prosecutor's office, central office for organised crime and corruption, assisted by Munich public prosecutor's office).

(Complimentary close)

(s.) Dr Sigrid Jacoby

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