



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 February 2014

**13681/2/13
REV 2**

**GENVAL 57
EUROJUST 70**

DECLASSIFICATION

of document:	ST 13681/1/13 REV 1 RESTREINT UE/EU RESTRICTED
dated:	8 January 2014
new status:	Public
Subject:	Evaluation report on the sixth round of mutual evaluations: "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." Report on The Netherlands

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The text of this document is identical to the previous version.



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REV 1**

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Evaluation report on the sixth round of mutual evaluations:

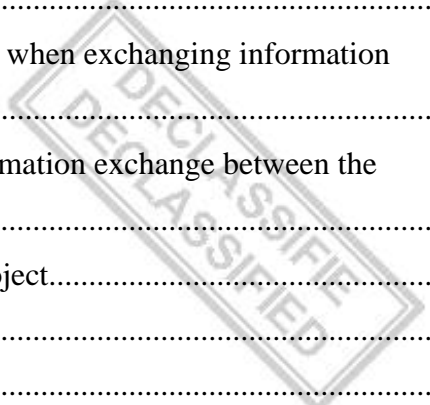
"The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters."

Report on The Netherlands

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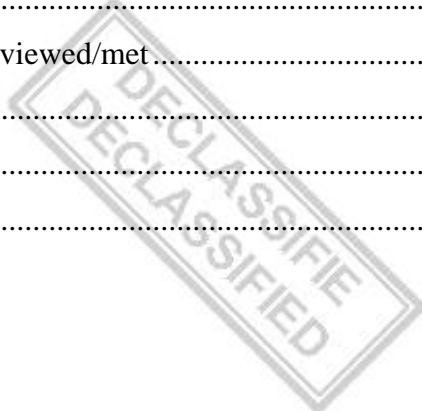
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1. EXECUTIVE SUMMARY

The general assessment of the quality and efficiency of the support received from Eurojust by central and local authorities is very positive. The added value of Eurojust is appreciated throughout the country.

The Dutch desk at Eurojust is seen and described as a partner with which contacts are frequent, fruitful and informal. Eurojust as an institution also enjoys a very good reputation. The location of Eurojust in the Netherlands facilitates close links and personal contacts between the members of the national desk at Eurojust and the Dutch authorities.

Eurojust is well known to the authorities in the Netherlands which frequently deal with requests for mutual legal assistance, especially within the International Legal Assistance Centres. In 2003, the Netherlands set up specialised International Legal Assistance Centres (Internationale Rechtshulpcentra/IRC) as part of the prosecution service. The Public Prosecution Service (Openbaar Ministerie) is the institution responsible for mutual legal assistance. The establishment of the six centres for international legal assistance (IRCs) within the Public Prosecution Service has significantly improved the efficiency of daily work on MLA requests and asset recovery (ARO) in the Netherlands. A national IRC (LIRC) exists within the National Prosecution Office. The main task of the IRC is to register and execute incoming and outgoing MLA requests in criminal cases.

With 60,000 requests per year (including about 20,000 letters rogatory; 15,415 received in 2012 and 3,712 sent; the Amsterdam IRC received 3,712 EAW orders and sent 1,179), the IRCs are congested. For that reason, execution of all MLA requests has remained a major issue. A proposal has been made to address this problem: each police unit (regional and national) should have its own IRC. Every IRC is represented as an EJN contact point.

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The IRCs are competent to receive MLA requests directly from other EU Member States. Since the IRCs are staffed with prosecutors and police officers, simple requests can be executed by them directly. Others may be forwarded to the local competent authorities for execution. Regarding the timing and scope of the execution of complicated or staff-intensive requests, special steering committees (“assessment committees”) are competent to decide on priorities and allocate sufficient means to the executing authority. When deciding upon these matters, the EMPACT priorities as well as areas or topics of crime identified as national priorities are considered. The opportunity principle plays a key role in selecting and prioritising the execution of MLA requests. In general, IRCs execute MLA requests using the same criteria and parameters as for national cases. The steering committees decide on a case-by-case basis, taking into account the National Threat Assessment (NTA) containing policy-making priorities in the criminal field linked with SOCTA and COSI (EMPACT) priorities at EU level. As the opportunity principle is an internal procedural criterion extended to the field of international cooperation, “*de minimis*” standards should be detailed, merged with international commitments and disseminated in order to have advanced criteria for deciding which requests should take priority. The use of the opportunity principle could trigger reciprocity by those countries where the principle of legality is mandatory. After the start of the National Police, the goal is to have 80% of all incoming MLA requests executed by dedicated police capacity in the ten regional units and by the national unit. The remaining 20% of incoming MLA requests will be submitted to the so-called assessment and steering committees. The Dutch authorities have underlined that it is important to note that this is not done to examine if the MLA requests will be executed, because that constitutes a legal obligation, but how and when this could be done in the most efficient way, given the large volume of incoming requests and the limitations in resources they are facing. Although all MLA requests are processed, some of them are unclear and there may be (legal) barriers to actually execute them. At the moment, there are no specific criteria for the assessment and steering committees to weigh the incoming MLA requests.

The IRCs also function as information and expertise centres for assisting all prosecutors regarding questions on MLA, and are involved in outgoing MLA requests as well. All incoming and outgoing MLA requests are registered by the IRCs in a central database (LURIS) which enables them to monitor progress and identify possible duplication of work, e.g. if a request from another Member State has been sent to several local prosecution offices.

This system also makes it possible to have real, up-to-date statistics on incoming and outgoing MLA requests. Due to the concentration of work on MLA requests in the IRCs, Eurojust is mostly contacted by them. Examining judges, who can also be involved in incoming or outgoing MLA requests, e.g. concerning the hearing of witnesses, do not contact Eurojust directly as a rule, but address the competent local prosecutor or an IRC, which might then involve Eurojust.

Coordination meetings and the possibility of JIT funding are seen as two Eurojust tools with special value and importance.

At the time of the on-site visit, a reform of the organisation of the police force had just come into force (1 January 2013). A national police force was created to coordinate the ten new regional units, in place of the initial division into 25 units. By setting up a single national unit, the reform is mainly designed to cut down administrative costs, to create a more effective organisation and to concentrate expertise and general functions. At the same time, the structure of the judiciary system has changed in recent years from 19 to 10 Public Prosecution Offices and district courts, in accordance with the reorganisation of the police.

In the Netherlands, there was no legislative follow-up to implement Council Decision 2002/187/JHA setting up Eurojust or the EJM. As regards the latest Council Decision 2009/426/JHA on the strengthening of Eurojust, the Judicial Organisation Act, the Judicial Data and Criminal Records Act and the Police Data Act were amended to allow, on one hand, the national member to have enough powers to be able to fulfil his functions and, on the other hand, to provide Eurojust with police data and judicial and criminal records data as intended by Article 13 of the Decision.

2. INTRODUCTION

Following the adoption of 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 was 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 Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by Decisions 2003/659/JHA and 2009/426/JHA, and of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network, repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters.

The evaluation aims to be broad and interdisciplinary, focusing not solely on Eurojust and the EJM but on operational aspects in the Member States. It encompasses cooperation with prosecution services, but also, for instance, how police authorities cooperate with Eurojust national members, how the national units at 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 EJM. Thus, it will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experience 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 also provide useful input for Member States that may not have implemented all aspects of the new Decision.

The questionnaire¹ 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 questionnaire². The questionnaire for Eurojust was adopted by GENVAL on 12 April 2012. The answers to the questionnaire sent to Eurojust were given to the General Secretariat of the Council on 20 July 2012, and have been taken into account in drawing up the present report. The order of visits to the Member States was adopted by GENVAL on 31 October 2011.³ The Netherlands is the eleventh Member State to be evaluated during this round of evaluations.

In accordance with Article 3 of the Joint Action, a list of experts for 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 to delegations made by the Chairman of GENVAL on 15 July 2011.

The evaluation teams consist of three national experts, supported by two staff from the General Secretariat of 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 Ms Katarzyna Naszczyńska (Poland), Ms Sofie Vanden Borre (Belgium) and Ms Dagmar Fillova (Slovakia). Two observers were also present: Mr Francisco Jiménez-Villarejo and Ms Stephanie Bovensiepen (Eurojust) together with Mr Hans G. Nilsson and Ms Claudia Kientzler 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 the Netherlands between 18 March and 22 March 2013, and on the Dutch detailed replies to the evaluation questionnaire together with their detailed answers to subsequent follow-up questions.

¹ 12384/3/11 GENVAL 76 COPEN 176 EUROJUST 106 EJM 87.

² 5241/2/12 GENVAL 3 COPEN 6 EUROJUST 3 EJM 2.

³ 13040/2/11 GENVAL 82 COPEN 184 EUROJUST 111 EJM 91.

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 Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Decisions 2003/659/JHA and 2009/426/JHA ("the Eurojust Decision"), 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, repealing the Joint Action ("the EJM Decision").

The Netherlands Constitution contains no specific provision relating to the application of EU legislation in the Netherlands legal system.

According to preparatory legislative work by the Ministry and contained in records held by the Dutch Parliament⁴, the implementation of the Eurojust Decisions (the 2002 Decision was not implemented in Dutch law) could be divided into four parts:

- a) a part that must be implemented in Dutch law;
- b) a part already implemented in legislation or that is being implemented in Dutch law by means of pending legislative proposals;
- c) a part requiring actual implementation without the need for an amendment of Dutch law;
- d) a part which requires no implementation in Dutch law.

⁴ Tweede Kamer der Staten-Generaal, Vergaderjaar 2011-2012 33 036.

A transposition table annexed to the preparatory work clearly shows the Minister's view on what he considers is needed in terms of implementation in respect of each Article in the Decisions.

Pursuant to Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust it was decided by the Netherlands to amend the Judicial Organisation Act [*Wet op de rechterlijke organisatie*]. The amendment to the Judicial Organisation Act⁵ explicitly provides for the possibility of a (second) deputy chief public prosecutor at the National Public Prosecutor's Office (NPO) [*Landelijk Parket*] in order to perform the duties of the national member (NM). The amendment of Article 137 of the Judicial Organisation Act explicitly states that a second deputy chief prosecutor is to be active at the NPO for the purpose of performing the duties of NM. One of the reasons for assigning him as (second) deputy chief prosecutor to the NPO is that this will give him the powers of a chief public prosecutor, as provided for in Article 125a, paragraph 1 of the Judicial Organisation Act, and that it creates a direct and effective link with, and makes the NM an integral part of, the structure of the Public Prosecution Service. It is also stated in the law that one of the senior public prosecutors working at the NPO is to be the deputy NM.

As regards implementation of Articles 9a-d, it is noted in the Explanatory Memorandum that the NM, as a chief public prosecutor, already has the necessary powers to act, but that he will only exercise those powers in exceptional cases. The basic principle is that the competent national authority exercises the powers.

⁵ Act of 28 June 2012 amending the Judicial Organisation Act in connection with the implementation of Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, Bulletin of Acts and Decrees, 2012, 303. In accordance with the Decree of 11 August 2012, Bulletin of Acts and Decrees 2012, 372, the Act of 12 June 2012 entered into force as of 1 September 2012.

The provisions of the amending Decision that relate to the exchange of information between the Member States and Eurojust required implementation by means of legislation. The Police Data Act [*de Wet politiegegevens*] and Judicial Data and Criminal Records Act [*de Wet justitiële en strafvorderlijke gegevens*], and the orders in council based thereon, allow the exchange of information with Eurojust⁶. It is possible, by means of this legislative amendment, to provide police data and judicial and criminal records data to the competent authority of another EU Member State or to an agency of the European Union charged with supporting and strengthening the law enforcement agencies of the Member States in their work of preventing, combating, investigating and prosecuting serious crime.

Thus, Article 17 of the Police Data Act is amended as follows:

§2: "Police data may be provided to an international body or to an international criminal court to the extent such follows from a convention".

§4: "Police data may be provided or forwarded to the competent authority of another Member State of the European Union or to a body of the European Union charged with supporting or reinforcing the law enforcement agencies of the Member States in the prevention, fight against, investigation and prosecution of serious crimes and that has been designated by means of an order in council".

⁶ Act of 6 October 2011 amending the Police Data and Judicial Data and Criminal Records Act in connection with the implementation of the Framework Decision of the Council 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the context of police and judicial cooperation in criminal matters and the implementation of the Decision of the Council 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), Bulletin of Acts and Decrees 2011, 490. In accordance with the Decree of 23 March 2012 determining the entry into force of the Act of 6 October 2011, Bulletin of Acts and Decrees 2012, 129, the latter act entered into force as of 1 April 2012.

§5: "Police data are only provided or forwarded pursuant to the second or third paragraph if the receiving country or international body guarantees an adequate security level for the intended data processing. Whether the security level is adequate will be established taking into account all circumstances affecting the forwarding of data or affecting a group of data transfers. Particular consideration will be given to the nature of the data, the purpose and duration of the proposed processing operation, the country of origin and country of final destination, the rules of law, both general and sectorial, in force in the country or international body in question and the professional rules and security measures applicable in that country". (...)

Article 8 of the Judicial data and Criminal Records Act is amended as follows:

"Judicial data may be provided:

- §4: to an international body or to an international criminal court to the extent such follows from a convention.
- §5: to judicial officers or other competent authorities abroad, for the purpose of the administration of criminal justice.
- §6: or forwarded to the competent authority of another Member State of the European Union or to a body of the European Union charged with supporting and reinforcing the law enforcement agencies of the Member States in the prevention, fight against, investigation and prosecution of serious crime that has been designated by means of an order in council".(...)

The Netherlands was not obliged to introduce legal provisions or amendments in order to implement Joint Action 98/428/JHA or Decision 2008/976/JHA concerning the EJN.

It should be noted that at the time of the evaluation visit the Board of Procurators General was in the process of drafting an Instruction to the Prosecution Service related to the implementation of the amending decision on Eurojust. At the time of visit the draft was "90% ready". The experts were given an advance copy of the instruction and were able to take its provisions into account⁷. These types of internal instructions are approved by the Board of Procurators General. They are binding on the PPS and on the police but not on the courts. The Dutch authorities informed the evaluation team that they are of the opinion that these types of instructions would most certainly be taken into consideration when judging an individual case. The evaluation team remain unconvinced that this will always be the case.

In a supplementary answer to the experts' queries, the Dutch authorities have clarified the issue of the Instructions from the Board of Procurators General as follows:

"The Public Prosecution Service (PPS) in the Netherlands [*Openbaar Ministerie, OM*] has a duty to enforce criminal law (Article 124 of the Judicial Organisation Act, *Wet op de rechterlijke organisatie*). This duty is discharged by the exercise of the various powers assigned to the PPS, or to officials within the PPS, including those based on the Netherlands Code of Criminal Procedure (CCP, *Wetboek van Strafvordering*). Public prosecutors accordingly have the task of investigating criminal offences (Articles 141 and 148, CCP) and prosecuting them in the courts (Article 9, CCP).

The Code sometimes also confers duties and powers on the public prosecutor, such as the decision to prosecute (Articles 167 and 242, CCP) and enforcement of court decisions (Article 553, CCP). In such cases not only public prosecutors but also other members of the PPS may appear. The Board of Procurators General takes precedence over the public prosecutor's offices at district and appeals courts.

⁷ After the on-site visit the evaluation team was informed by the Dutch authorities that the Instruction had entered into force in the end of May 2013. The document was published on ZOOM - the PPS' Intranet - what has ensured a broad dissemination.

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According to Article 130, fourth paragraph, of the Judicial Organisation Act, the Board has the power to issue general and particular instructions regarding the discharge of the duties and powers of the PPS. By their nature the general instructions and guidelines for criminal procedure of the Board of Procurators General contain rules which are generally applicable and must be enforced. The general instructions and guidelines of the Board are equivalent to policy rules on the basis of Article 130, fourth paragraph, of the Judicial Organisation Act. Such policy rules are published in the Official Gazette (*Staatscourant*) and rights may accrue to third parties as a result of them. It may be inferred from the case law of the Supreme Court that specific guidelines on criminal procedure are also effectively viewed as "law" and that – depending on the nature and scope of a particular provision – the same may apply to other sections of the general instructions and directives.

Breach of an instruction should be regarded as a procedural infringement within the meaning of that rule and of Article 359 of the CCP. The provisions of internal instructions contained in the general instructions cannot be applied to a suspect in the same way as legal provisions. In accordance with the Instruction on policy rules currently in force, internal instructions and guidelines are written statements by the Board of Procurators General. They are intended for internal use and as such have no external effects". This also means that the effect of internal instructions cannot be challenged before the courts.

The Public Prosecution Service (PPS) employs more than 5,000 people, including some 800 public prosecutors. Its highest authority, the Board of Procurators General, lays down policy on investigations and prosecutions. The National Office (NPO) is a separate entity of the PPS which focuses on international forms of organised crime and the coordination of efforts to combat terrorism, people smuggling and similar offences. It is therefore concerned with serious crime that is not confined to the jurisdiction of a district court or appeal court. The National Unit of the National Police (former KLPD), whose task is to investigate such offences, falls under its authority.

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There is also a National Public Prosecutor's Office for serious fraud, environmental crime and food safety offences (*Functioneel Parket*) which is responsible for tackling fraud and environmental offences, and handles complex proceeds of crime cases. The investigations are handled by special investigative services.

There are ten district courts and four appeal courts. The PPS has offices in every district. Each of the prosecution offices is under the authority of a chief public prosecutor. The appeal court prosecution offices are headed by an advocate general.

At the time of the on-site visit, a reform of the organisation of the police forces had just come into force on 1 January 2013. This reform will have to be implemented in practice for at least 18 months. A national police force was created to coordinate the ten new regional units, corresponding to the district courts, in place of the initial division into 25 units. 63,000 staff (43,000 operational officers) are attached to the national police. There is also the National Unit of the National Police (former KLDP) containing specialised services. Several other investigation services exist with tasks relating e.g. to tax fraud, money laundering, environmental fraud and fraud involving the use of social benefits and labour exploitation. The LIRC and IRCs handle around 4-5,000 letters rogatory every year.

MLA requests are executed under the responsibility of the public prosecutor. If no coercive measures are needed, the police may execute the request. This applies e.g. to interviewing a witness or making a check on an address. For certain coercive measures the prosecutor obtains a warrant from an examining judge (*Rechter-Commissaris*).

All MLA cases (incoming and outgoing) are registered and executed in the six IRCs or in the national IRC (LIRC). Both police and prosecutors work in these centres, that were set up in 2003. The Ministry of Security and Justice (Office for International Legal Assistance in Criminal Matters - AIRS) also has an IRC function but it deals mostly with MLA outside the EU. It deals, through the IRCs, with approximately 2,500-3,000 cases per year including extradition, transfer of criminal proceedings and MLA (including confiscation orders). It also advises the Minister and national and international executive branches, makes policy and drafts legislation.

Some of the IRC centres execute MLA requests themselves, others execute simple requests and pass others to prosecution offices or the police for further action. The IRC Amsterdam has exclusive competence for incoming EAW cases. The execution of all incoming EAWs is reported to Eurojust every six months.

The IRCs assess the requests, register them in a computerised system called LURIS, coordinate execution and guarantee the execution. All incoming or outgoing requests are sent through the IRCs and registered there. LURIS prevents duplication and shows links with earlier and other requests as well as managing the progress of execution.

The national IRC (LIRC) has the same functions as an IRC when a location/link is not yet known, or several different IRCs are involved. It is also the IRC for special investigation services. In addition, it deals with certain specialised issues such as cross-border surveillance, infiltration, corruption and economic crime.

The IRCs may be restructured to fit in with the overall situation following the recent restructuring of the court system and the national police. Problems in the IRCs are related to the very large number of incoming requests, staffing and the system of priorities and management. It has been proposed that each prosecution district have its own IRC and offer dedicated capacity to execute MLA requests.

As regards the IRCs and the EJM, the Board of Procurators General has decided that every IRC should be represented as an EJM contact point.

The prosecutor supervises and has direct responsibility for criminal investigations carried out by the police. He can drop a case if there is insufficient evidence or for reasons of public interest (for instance if the case is minor, the offender has paid for the damage or an alternative sanction would be more effective).

A special feature of the Dutch system is that there are special "assessment groups and steering teams", consisting of senior prosecutors and police officers, that select which case will be dealt with when, in what way and by whom. The selection is made on the basis of certain criteria relating to the priorities which have been set. This way of dealing with cases may also have an impact on international cooperation. It is the chief public prosecutor who decides which case is to be handled, after advice from the assessment group. At the national level (I e LIRC), the criteria for selection are:

1. Does the case fit in with the priorities of the National Unit of the National Police (former KLPD),
2. Does the case fit in with the strategy decided upon,
3. Does the case fit the legal definition of organised crime,
4. Does the case have a national or international context.

Priority is given to EMPACT projects. If a case does not fit in with the priorities, the prosecutor has to ask the assessment group for more resources. Sometimes they "negotiate" with the requesting country. If, for instance, they have requested ten wiretaps, the prosecutor may propose two to begin with. The policy of the assessment teams has improved lately and they have been seeing the need to execute foreign requests more often, e.g. in the interests of reciprocity. The setting up of JITs has to be approved by the assessment team (and ultimately by the Board of Procurators General), after involvement of the national contact point of the Network for JITs. If the objective of the team is not among the priorities, it is very difficult to have it approved. It should be noted that at the local level, other criteria are applied.

Once every four years a National Threat Assessment (NTA) on organised crime is made, under the authority of the PPS. The Minister for Security and Justice sets the priorities on the basis of a proposal from the police and the PPS. The current framework runs from 13 March 2013 to 2017. The NTA in its turn implements priorities set at EU level (policy cycle and EMPACT projects).

Current priorities are: Drugs (cocaine/heroin; synthetic drugs; cannabis), XTC and precursors, soft drugs, human trafficking, cybercrime, money laundering, child pornography, terrorism and serious fraud. There are also some areas, such as mobile organised crime groups or outlaw bikers, that are so-called areas for special attention. A request from the Eurojust national member is not considered as such to fall within a priority area of action.

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

3.2.1. Stage of implementation of the ENCS

With respect to the implementation of the Eurojust national coordination system, the Netherlands has designated its members in accordance with the Eurojust Decision. In addition, in an internal NPO memorandum dated 21 July 2012 it designated as members of the ENCS four national public prosecutors charged with specific topics (high-tech crime, human trafficking, child pornography and synthetic drugs). The ENCS has so far held meetings of an organisational and exploratory nature. The Dutch authorities noted that it has been set up in theory, but is not yet up and running in practice⁸.

3.2.2. National correspondents

The Netherlands has appointed one national correspondent, a NPO public prosecutor, who is also a member of the PPO (i.e. the NPO) of which most ENCS members are part. There is no description of his duties. These follow from the Eurojust Decision and from the internal PPS instruction concerning the application of Article 13 of the Eurojust Decision.

⁸ According to information provided by the Dutch authorities in November 2013, the internal memo on the ENCS was updated on 16 September 2013 and the members of the ENCS had a meeting on 11 October 2013.

3.2.3. Operation of the ENCS and connection to the CMS

There have not yet been any instances in which the ENCS could 'take action'. This is also due to the fact that the Netherlands has for some time had other channels, such as the IRCs and the NPO, which are already used to handle requests for investigation received from Eurojust.

3.2.4. Cooperation between the ENCS and the Europol national unit

This situation has not occurred yet. Incidentally, it is important to note that all international exchange of information takes place under the authority of the Public Prosecution Service (PPS) [*Openbaar Ministerie*].

3.3. National desk at Eurojust

3.3.1. Organisation

The Dutch desk at Eurojust (DD) is staffed by a NM, a deputy, three assistants and two administrative assistants. Currently the NM is temporarily posted at Aruba, at the request of the Minister of Security and Justice, for a maximum period of one year. To ensure continued service, an additional prosecutor (one of the three assistants) with broad international experience has been temporarily assigned to the desk.

The DD handled a total of 236 cases in 2012, 199 as a requested country and 37 as a requesting country. Since 2008 the trend (peaking at 105 requests) has been for the DD to request assistance from other national desks less frequently. On the other hand, the intensity of work has been relatively stable, with the DD being requested around 170-190 times over the past five years. In 2011-2012, there were 36 cases concerning MLA facilitation, 22 EAW cases and 40 complex cases that required coordination. The casework for the DD has increasingly become more complex over the last years. There is a programme of work, called the roadmap for 2013 where casework, networking and positioning the DD in Europe figure high on the list.

The DD and the Europol liaison office are drafting a cooperation agreement in order to increase pro-activity. All law enforcement agencies are represented at the Europol national desk.

3.3.2. Selection and appointment

The NM is selected by the Board of Procurators General. A recommendation for appointment of the new NM is subsequently submitted to the Minister of Security and Justice for formal approval. Article 137 of the Judicial Organisation Act states that an NM is to be appointed as the second deputy chief prosecutor of the NPO.⁹ In practice, this means that only a serving chief prosecutor is eligible for this post. The previous two NMs also held the post of chief prosecutor before being appointed to Eurojust. The deputy NM is, in accordance with Dutch national law, a senior prosecutor at the NPO, the National Prosecution Office. The assistants are prosecutors or assistant prosecutors originating from different regional units.

The NM meets with the Prosecutor General responsible for international affairs about six times per year to discuss cooperation between the PPS and Eurojust. Because of the location of the seat of Eurojust, *ad hoc* meetings are easy to organise with the NM.

⁹ The NPO in Rotterdam is not linked to a particular district court or a court of appeal, since it focuses on (international) organised crime.

One of its tasks is to develop new methods for investigating financial offences such as money-laundering. The NPO is also in charge of a national investigation team that specialises in offences of this kind. Another of its responsibilities is to coordinate efforts to combat terrorism, trafficking in persons and similar offences.

The Board of Procurators General has also tasked the NPO with the development of expertise in special investigation powers and cyber crime.

Furthermore, the NPO often participates in efforts to combat criminal activities in cooperation with other public prosecution offices, in the form of prosecution-related services in the fields of infiltration and witness protection, and in the coordination of the deployment of the National Information Organisation Service [*Dienst Landelijke Informatieorganisatie, DLIO*] of the National Police. The NPO is also the link between the PPS and the intelligence and security services.

3.3.3. Powers granted the national member

3.3.3.1. General powers

The NM, deputy and 2 assistants all hold the post of prosecutor or assistant prosecutor. Each of the prosecutors at the DD has all the powers that Dutch criminal procedure regularly attributes to the office of prosecutor. These extend far beyond the minimum requirements of the amended Eurojust Decision.

In the official instructions of the Board of Procurators General [*Aanwijzingen*], the exercise of certain exceptional investigative powers by prosecutors is made subject to prior permission or consultation of a more senior prosecutor or specialised prosecutor in international cases (e.g. controlled delivery).¹⁰ However, since the NM holds the rank of second deputy chief prosecutor of the NPO, he is competent for practically all possible decisions in matters of criminal investigation and prosecution. The NM can, if needed, authorise controlled delivery when nobody else is available. In principle, the special national prosecutor responsible for controlled deliveries and surveillance is always reachable.

At the same time, it must be noted in this context that neither the NM, nor any other of the assigned prosecutors, regularly exercises these powers under e.g. the Code of Criminal Procedure. The operational management of the cases to which the desk contributes remains entirely with the respective case prosecutors.

¹⁰ The relevant Instructions [*Aanwijzingen*] of the Board of Procurators General are:
- The Powers of Investigation Instruction [*Aanwijzing opsporingsbevoegdheden*] (2012A012) (Chapter 4), adopted on 27 March 2012.
- Requests for Mutual Legal Assistance for Cross-border Observation Instruction [*Aanwijzing rechtshulpverzoeken voor grensoverschrijdende observatie*] (2010A017), adopted on 2 August 2010.

3.3.3.2. Access to national databases

The access of the NM to police and judicial records is regulated in the relevant laws, i.e. for judicial data and criminal records in Article 8(6) and Article 39e(5) of the Judicial Data and Criminal Records Act and for police records in Article 17(4) of the Police Data Act.

At the Dutch desk (DD) at Eurojust, a connection to the national database for MLA (LURIS) is in place. All MLA requests are registered in this database and progress can be monitored. Access to all other databases is possible, since the DD has been provided with two laptops by the Board of Procurators General. Via these laptops it is possible to access the case management systems of the PPS (i.e. GPS and Compas), the criminal records database (JD-Online), all scanned MLA requests (Zylab) and several information systems such as Kluwer legal publications and Porta Iuris.

However, in practice, the need for direct access to other databases than LURIS is not felt. The desk functions in a continuous joint effort with the IRCs, which can – on request – directly provide the desk with all necessary information from the systems they operate. The IRCs are also responsible for the registration of all incoming and outgoing MLA requests in LURIS, including requests that are channelled through the DD at Eurojust.

Access to other official registers, such as the Municipal Personal Records Database [*Gemeenschappelijke Basisadministratie persoonsgegevens, GBA*], Chambers of Commerce [*Kamer van Koophandel*]¹¹, the Land Registry Office [*Kadaster*]¹² and the national authority

¹¹ The Dutch Chamber of Commerce keeps track of all companies and information concerning companies in the Trade Register [*Handelsregister*].

¹² The Dutch Land Registry Office is a semi-autonomous non-governmental organisation which registers all real estate in the Netherlands. The Land Registry Office data includes details of buildings and plots, the ownership (including details of the owner), the precise location, the dimensions, and the value of real estate (purchasing sum).

responsible for monitoring the safety and environmental aspects of vehicles [RDW]¹³ is (indirectly) available through the assistance of one of the IRCs.

3.3.4 Access by the national desk to the restricted part of the Case Management System

All the members of the desk have access to the CMS. However, the registration of cases and the changing or deletion of data is done exclusively by the administrative support of the desk. The CMS is used to register which member of the desk deals with the case. Every week the administrative assistants distribute a list of pending cases with the review deadlines to the members of the DD, so that all pending cases are regularly checked upon.

3.3.5. Access to the national part in the CMS by the competent authorities

There are plans to connect the ENCS contact points to the CMS, most probably beginning with those contact points that are located within the NPO. A secure line between the PPS and Eurojust has in fact been established, but it will not actually be operational until a technical solution has been implemented to establish a direct connection to the CMS. The connection was expected to be up and running in June 2013 but this has not yet come to fruition.

3.4. EJN contact points

3.4.1. Selection and appointment

The Ministry of Security and Justice (the Head of the AIRS and the tools correspondent) as well as the PPS (i.e. the Board of Procurators General) and the Council for the Judiciary [*Raad voor de Rechtspraak*] have designated one or more contact points (CPs). As regards the Ministry and the PPS, the persons concerned are all individuals who, in the course of their daily duties, are regularly

¹³ The RDW registers data pertaining to vehicles, ownership of vehicles and the corresponding documents issued, such as vehicle registration certificates and driving licences. In the vehicle licence plate register [*kentekenregister*], data is registered regarding vehicles (registration number of the vehicle, the make and model, colour, year of production, date of registration, weight, et cetera) and their owners (name, date of birth, address, et cetera).

involved in legal assistance and international criminal cooperation. For example, all public prosecutors affiliated with an IRC, including the coordinating prosecutor for the IRCs, have been designated as CPs by the PPS. The deputy NM of Eurojust is also a CP. So is a judge at an appeal court, which facilitates contacts with foreign courts. There are two national coordinating CPs.

3.4.2. Practical operation of the EJM contact point in the Netherlands

3.4.2.1. National correspondents

The Dutch EJM has currently two national correspondents (NCs) who coordinate their activities; one of them is involved in particular with the relationship to Eurojust as Deputy and acting NM, the other is mainly responsible for the operation of the Dutch part of the EJM and also coordinates the functioning of the IRCs. In general, the Dutch seek to channel bilateral issues to the EJM and, if the matter needs coordination, to Eurojust.

3.4.2.2. EJM contact points

A general division of duties exists, in the sense that requests received via the EJM that concern specific cases or requests for MLA are generally handled by the CP within whose IRC area the case is or should be handled. Requests for general information about legal assistance are handled by one of the NCs, and requests pertaining to legislation by a CP at the Ministry of Security and Justice.

Consultation meetings usually take place twice a year between all CPs and the tools correspondent. Various EJM matters, such as the instruments, the operation of the network, the impact of the Eurojust Decision, meetings, etc. are discussed during these meetings.

It is furthermore important to note that one of the Dutch CPs is also deputy NM at Eurojust and vice-chairman of the Eurojust-EJM Joint Task Force, which, according to the Dutch experience, provides collateral benefits and thus leads to more synergy between the various roles.

The Dutch authorities consider that frequent changes of EJN contact points in other Member States cause problems for networking. A more stable organisation would be better for cooperation within the EJN.

3.4.2.3. Updating of the EJN website

The tools correspondent is responsible for updating the information on the website.

3.5. Conclusions

- The Netherlands has chosen to implement only certain parts of the Eurojust Decision by law, and other parts by instructions from the Board of Procurators General (another instruction is due to be issued soon). Other parts have been implemented "in practice" or through an internal memorandum from the National Prosecutor's Office of 21 July 2012, which is only binding internally as it is not a public document. The impending revision of the memorandum, announced during the on-site visit, will not, as far as the experts know, change the scope of its effects. This method of implementation, chosen by the PPS, may lead to gaps and lack of clarity which could lead to some problems in practice, which would have to be worked out between the different players. Examining judges (who play a role in the execution of letters rogatory regarding coercive measures such as house searches or wiretaps) are not bound by any internal instruction from the Board of Procurators General.
- The implementation of the EJN Decision has not brought about any legislative or other formal change. There are therefore, for instance, no provisions to regulate relations between the EJN and the Dutch judicial authorities.

- The absence of the national member, who has been posted to Aruba for one year, does not seem compatible with the requirement of Article 2(2)(a) that "the national member shall be required to have his regular place of work at the seat of Eurojust". The deputy currently acts as the national member, but seemingly without any legal basis. It should also be noted that the Dutch desk does not currently have a deputy national member (as required by Article 2(2)(b)) since the deputy is acting NM. It should however be noted that in practice the situation has been partly remedied by seconding an experienced prosecutor to the national desk. The fact that the situation has been notified to the General Secretariat of the Council cannot however remedy what seems to be a breach of a binding European Decision. According to recital 4 of the Eurojust Decision, the requirement in Article 2(2)(a) was aimed at ensuring a "continuous and effective contribution from the Member States to the achievement by Eurojust of its objectives."¹⁴
- The national member is selected by the Board of Procurators General. After selection, the national member is formally appointed by the Board after the approval of the Minister of Security and Justice. In accordance with Article 137 of the Judicial Organisation Act, the post of national member is linked to the position of deputy chief prosecutor of the National Prosecution Office. Therefore, in general, only a serving chief prosecutor is eligible for this post.
- The deputy national member who is now acting as the national member is also an EJM contact point and a Vice-Chair of the EJM-Eurojust Task Force. The accumulation of several duties may be seen as positive, since coordination and information gathering will no doubt be easier. The experts are however concerned that the risk of potential work overload could occur even where assistance is given by the Dutch desk. The Dutch desk is one of the busiest at Eurojust and requested in a number of cases, in particular regarding serious drugs trafficking. In this light, the complementary role of the IRCs is considered to be very helpful.

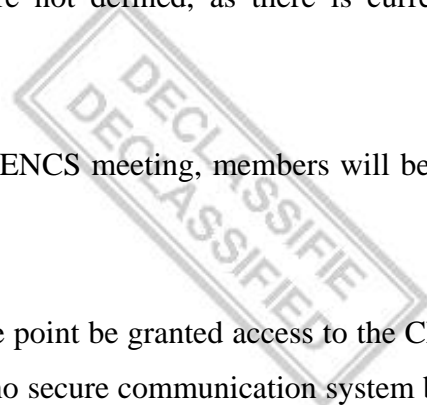
¹⁴ The evaluation team was informed after the on-site visit that the appointment of a new National Member will take place before 1 December 2013.

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- The members of the Dutch desk at Eurojust have direct access to the national database for MLA, called LURIS. All MLA requests are registered in this system and their progress can be monitored.
- Other databases available to national prosecutors, including the national case management system, the criminal records database and several information systems such as Kluwer legal publications can be accessed by the members of the national desk via two laptops provided by the Board of Procurators General. The national member has no direct access to the police, municipality or the RDW (see p. 22, footnote 3) databases , but can ask for information from them.
- The EJM contact points are embedded in a number of authorities all concerned with judicial cooperation. The fact that a senior judge is part of the EJM CPs is positive.
- The information on the EJM website concerning EJM CPs is out of date and should be updated¹⁵.
- The ENCS has not been implemented by any formal act in the Dutch legal system. The internal NPO memorandum of 21 July 2012 gives some guidance, but nothing more. It is embedded in the structure of the NPO. It seems positive that membership of the ENCS has been extended to certain senior key prosecutors specialised in issues such as cybercrime and trafficking, who were clearly enthusiastic about their tasks. This will no doubt enrich the exchange of experience that will no doubt be held within the ENCS. The memorandum does not include any detailed provisions relating to the tasks of the national correspondent of Eurojust and his/her interaction with, for instance, the national Europol unit. It was noted during the on-site visit that the authorities' intention was for the ENCS to meet to discuss operational cases.

¹⁵ After the evaluation visit the Dutch authorities informed that the information had been updated.

- The Netherlands will include all EJM contact points in the ENCS.
- The Netherlands has appointed one NPO public prosecutor as a national correspondent who is also a member of the ENCS but his/her duties are not defined, as there is currently no description of the function in any law or instruction.
- In future, rather than inviting all members to every ENCS meeting, members will be invited depending on the subject for discussion.
- It is planned that members of the ENCS will at some point be granted access to the CMS, but this has not been established yet. Currently there is no secure communication system between the ENCS and the CMS. Communications are channelled via the IRCs, as the structures through which requests for investigation received from Eurojust are usually handled.
- Consideration should be given to finding ways and means of promoting greater awareness of the work of Eurojust among examining judges, encouraging them to use Eurojust more. Courts in general should also be aware of the obligations mentioned in Article 13 of the Eurojust Decision.



4. EXCHANGE OF INFORMATION

In June 2011, Eurojust developed an electronic form to assist national authorities with their obligation to transmit information to Eurojust pursuant to Article 13(5) to (7) of the Eurojust Decision in a structured manner, which has recently been released as version 2.0. In the period May 2011 to April 2012 inclusive, a total of 72 notifications from all Member States under Article 13 were registered in the CMS. A majority of notifications (25) are registered under "Article 13(6)(a) (serious crimes)", followed by "Article 13(5) (JIT)" and "Article 13(6)(b) (involvement of criminal organisation)".

According to statistics provided by Eurojust on 18 July 2012, no notification had been made under Article 13(7) by the Netherlands. Since then 7 JITs have been notified by them.

4.1. Exchange of information between judicial and law enforcement authorities and Eurojust

4.1.1. Databases relevant for information exchange with Eurojust

Both the LURIS system, in which MLA cases are registered, and the PPS case system (currently still COMPAS, increasingly GPS), can play a role, because both contain overviews and further information that could be relevant.

4.1.2. Obligation to exchange information under Article 13(5) to (7)

Various actions are being developed at the same time. An *instruction* has been prepared at the initiative of the Board of Procurators General in which it is emphasised that the requirement to provide information is an obligation and a *manual* is also being created, which attempts to explain in a user-friendly manner how the information should be provided via the Eurojust template. The DD also organises awareness sessions concerning the background and aims of this requirement in the Eurojust Decision and the working method for compliance.

The nearness of Eurojust - established in The Hague - means that there has been frequent contact between the DD of Eurojust and the case prosecutors and/or the IRCs, which also means that the exchange of information – in the cases in which this provides added value – has been a matter of course for a long time. According to the Dutch authorities, it should be noted here that the structural implementation of the requirement to exchange information via the Eurojust template is nevertheless a labour-intensive process. The difference between this system and the registration systems used in the Netherlands means that the details required have to be entered manually in the template, which has a major impact on administrative capacity. The added value of this increase in administrative work is not evident to all those involved. During the evaluation visit it became clear that a number of authorities were sceptical as to the obligation to provide information and could not see its added value. In addition, the question of overlap with the Europol Information System was raised several times.

If the EPOC IV project and EPOC V were to be implemented, this would significantly simplify the provision of information from the Netherlands to Eurojust (see above at point 3.3.5., and also below at point 4.1.4).

The public prosecutor in charge of the investigation is responsible for informing Eurojust. The NC of the ENCS, who is seconded to the NPO, will monitor correct implementation of the notification requirement and contact the relevant (criminal investigation) prosecutor if necessary.

In the draft internal instruction which has been prepared, there are provisions relating to the obligation to exchange information with Eurojust and the use of the Eurojust template. The Dutch are still working on the procedure for establishing at what point in the investigation information should be sent to Eurojust¹⁶.

¹⁶ It should be noted that the evaluation team was informed after the on-site visit that such Internal Instruction entered into force in May 2013 (see footnote nr 7).

It should be noted that internal instructions are formally binding on prosecution and police officers only, and have to be approved by the Board of Procurators General. As internal instructions are not published, they are consequently not externally binding. According to the Dutch authorities, there is no explicit obligation at the level of the Dutch legal system for national implementation of Article 13.

Furthermore, in some further written replies, the Netherlands pointed out that they do not interpret the obligation laid down in Article 13 as involving the courts, including the Rechter-Commissaris (examining judges). According to the Dutch authorities this is due to the specific role the examining judges have in the Dutch legal system.

So far, only seven JITs have been notified to Eurojust under Article 13. All of these notifications seem to have been made after July 2012. Nevertheless, according to the statistics requested by the evaluation team during the on-site visit at Eurojust, 15 JITs were set up at the request of the Netherlands between 2010 and 2013. The DD has participated in approximately 30 JITs that the Netherlands has been involved in. 15 JITs with Dutch participation received funding of EUR 981,987,30. The NL signed seven JIT agreements at Eurojust in 2012. According to statistics provided by the Case Analysis Unit of Eurojust in the margins of the evaluation visit, the number of new JITs involving the Dutch desk in 2012 was five. There were nine in 2011. JITs financed per Member State between 25 October 2010-20 March 2013 totalled 15 out of a total of 90 JITS. The Netherlands submitted 62 applications out of 265 in the period, and was thus one of the top three requesting countries.

In the margins of a visit to Eurojust, it was noted that 123 Temporary Work Files regarding Article 13 were created in 2011 and 2012 (the reason for these TWFs was that it had to be established that the cases followed the criteria laid down by Article 13). 35 were entered in 2011 and 88 in 2012. Three of these came from the Netherlands.

4.1.3. Implementation of the obligation to exchange information under Article 2 of Council Decision 2005/671/JHA

The obligation to transmit information to Eurojust in accordance with Article 2, par. 2, 3 and 5 of Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences has not been transposed into Dutch law. At the time of the on-site visit, the Decision 2003/48/JAI of 19 December 2002 was implemented by means of internal instructions, favouring a pragmatic approach.

Decision 2003/48/JAI of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP, but not Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences which replaces this Decision, has been implemented in practice by the policy letter of 16 April 2006 of the Board of the Procurators General to the Heads of the Public Prosecutor's Offices.¹⁷ The policy letter, in general, deals with all terrorism cases, not only those referred to in the Eurojust decision. It also contains provisions relating to the obligation to exchange information with Eurojust and the use of the Eurojust template. The specialised anti-terrorism public prosecutors within the National Public Prosecutor's Office (Landelijk Parket) are responsible for the coordination of the reporting to Eurojust.

The evaluation team is not aware of if policy letters of the College of the Procurators General to the Heads of the Public Prosecutor's Offices have a binding character.

In practice, cases concerning terrorism have been reported to Eurojust in other formats than the Terrorism template prepared by Eurojust because of the sensitive nature of the cases and the necessity to respect the legal obligation to foresee an airtight division between the investigations of the intelligence services, i.e. the General Intelligence and Security Service, which usually provide such information and criminal investigations.

¹⁷ The Dutch authorities stated after the on-site visit that the letter to the Heads of the PPO's mentioned here deals with all terrorism cases, not those just referred to in the 2003 Decision and that in other words the 2005 Decision is de facto covered by this letter.

In cases involving terrorism, the point at which the decision is made to prosecute the case is often related to information obtained by the intelligence services, i.e. the General Intelligence and Security Service [*Algemene Inlichtingen en Veiligheidsdienst, AIVD*] and the Military Intelligence and Security Service [*Militaire Inlichtingen en Veiligheidsdienst, MIVD*]. In the Netherlands, there is a strict separation between the investigations performed by the intelligence services and criminal investigations. This division is partly the result of the difference between the working methods of the intelligence service (aimed at future developments) and of the investigative services (reconstruction of the past).

Moreover, the division between the two organisations prevents information obtained on the basis of the powers of the intelligence service from becoming mixed up with the criminal investigation. Information from the intelligence services often cannot be verified or can only be verified to a limited extent, as a consequence of the far-reaching source protection that the intelligence services have to maintain. This separation is moreover relevant in connection with the responsibility of the PPS to make all acts and steps taken within the context of a criminal investigation transparent, and to render account of them in court during the hearing. The possibilities for cooperation between the AIVD, the PPS and the police are broadly described in the Intelligence and Security Services Act [*Wet op de inlichtingen- en veiligheidsdiensten*]. The CT infobox (counterterrorism information box) can also be used to share information.

The main legal framework within which the PPS currently operates is the Terrorist Offences Act [*Wet terroristische misdrijven*]. This extensive amendment to the Dutch Criminal Code entered into effect on 10 August 2004 and is based on the Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA). It is important to emphasise, in relation to Eurojust, that in view of the sensitive nature of the information, any information about cases involving terrorism is generally shared within the closed circle of a criminal investigation and, as the case may be, within the context of a coordination meeting (CM).

4.1.4. Channel for information transfer to Eurojust

The Dutch PPS has been involved as a partner in the EPOC IV project from the start. EPOC IV was a research project in which the possibilities for so-called interoperability between the various national computer systems, both between systems and with the Eurojust CMS, were examined.

Participation by the Dutch PPS focused mainly on shaping the requirement to provide information to Eurojust in accordance with Article 13 of the Eurojust Decision. In that connection, the Netherlands had a leading role within the project in the development of several IT instruments for the (international) exchange of information (with Eurojust). An application was developed within the EPOC IV project to convert relevant information from the PPS system GPS into an "electronic package" that can be sent to Eurojust. As the commissioning of GPS has been postponed for the time being owing to current financial constraints, and the technical alignment with the CMS will not be operational, information now has to be entered manually and sent to the Eurojust DD. This currently takes place via a designated email address. In this context it should be underlined that communication with both the PPS and the Ministry of Security and Justice by e-mail is done via a secure line.

4.1.5. Actual content in practice of the information provided to the national member under Article 13(5) to (7)

In practice, an attempt is being made, in such cases, to complete the data that are requested in the template, in accordance with Article 13 of the Eurojust Decision. As these data are stored differently in the Dutch national system and in various data files, this demands a considerable additional effort from the public prosecutors and from administrative staff. To date, templates on seven JITs have been submitted to the DD.

In practice though, the NM gets all the information needed relating to mutual legal assistance requests from LURIS.

So far, there have been no cases in which reliance on Article 13(8) of the Eurojust Decision had to be considered.

4.2. Feedback from Eurojust

4.2.1 *The Netherlands' experience regarding the obligation to inform under Article 13a of the 2009 Eurojust Decision*

In practice, feedback to the public prosecutor who is handling the case is always provided by the Dutch NM or Eurojust. The lines of communication with the Eurojust DD are short, inter alia as a result of physical proximity, and the feedback is often delivered smoothly and informally. The Dutch authorities hope that this situation will not change now, when the feedback from Eurojust has become a formal requirement under Article 13a of the Eurojust Decision.

Eurojust is therefore expected to provide operational and strategic information based on data collected and stored in the Eurojust CMS. If the public prosecutor handling the case indicates in his form that he is requesting Eurojust assistance, consultations will take place between the NM and the public prosecutor, in which the international dimension of the investigation can be discussed at an early stage. Questions about involving Europol, the added value of a JIT, the added value of proactive coordination via Eurojust and the compatibility of local or national priorities with the European investigation agenda EMPACT, for example, can be discussed during these meetings. In line with current working arrangements, the NM always does this in close cooperation with the IRC responsible.

Where the (intended) formation of a JIT is reported, the financial and operational support of the JIT is also discussed. Eurojust shares these reports with the national CP for JITs located at the NPO. Thus, in opinion of the Dutch authorities, such an obligation imposed on Eurojust is already implemented in practice in this manner.

4.2.2. Qualitative perception of the information flows between Eurojust and the Netherlands

According to the Dutch authorities, the information to be provided by Eurojust and the consultation pursuant to the report should help the public prosecutor to keep control of the cross-border dimension of the case. This could also allow Eurojust to coordinate cases at the European level effectively. However, in the opinion of the Dutch authorities, the complex formal implementation of Article 13 of the Eurojust Decision means that it cannot be concluded at this time in a representative manner, that the intended feedback has been improved by the mandatory exchange of information pursuant to this provision.

4.2.3. Practical or legal difficulties encountered when exchanging information with Eurojust

Practical problems: According to the Dutch authorities: this is a manual and therefore very labour-intensive process that creates additional work, whereby the added value is not immediately clear to all those involved, especially in relation to the existing obligation to exchange information with Europol.

According to the Dutch authorities, there are no legal problems, as Dutch legislation provides a legal basis for exchanging police information, judicial data and criminal records with Eurojust. The power to provide data, to both Eurojust as an organisation and to the Dutch NM, has been laid down in Article 17(4) of the Police Data Act and in Article 8(6) and Article 39e(5) of the Judicial Data and Criminal Records Act and further elaborated in Article 5:8 of the Police Data Decree and Article 41 of the Judicial Data and Criminal Records Decree¹⁸.

¹⁸ Decree of 23 March 2012 amending the Police Data Decree and the Judicial Data and Criminal Records Decree in connection with the implementation of the Framework Decision of the Council of the European Union 2008/977/JHA of 27 November 2008 on the protection of personal data processed within the context of police and judicial cooperation in criminal matters and the implementation of the Decision of the Council 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), Bulletin of Acts and Decrees, 2012, 130. According to Article III of this Decree it entered into force on the same date as the Act of 6 October 2011 mentioned in footnote 2.

4.2.4. Suggestions for improvement of the information exchange between the Netherlands and Eurojust

In the opinion of the Dutch authorities, it would be preferable for the exchange of information to take place by means of automated processing, such as is already partly the case in EPOC IV, and should ideally be further developed on the basis of EPOC V.

4.2.5. Perception with respect to the E-POC project

The Dutch authorities confirm that their experience of this project was positive. The Dutch PPS played a very active role during this project. It has always been very much in favour of exchanging information under Article 13 of the Eurojust Decision in an automated manner rather than manually. Unfortunately, however, the follow-up project EPOC V has had to be put on hold after the European Commission decided in September 2012 not to grant any further funding to Eurojust for the EPOC project (requested under JUST/2011 -2012/JPEN/AG/4000002982). The reason for this decision was that Eurojust, as an EU agency, is fully financed from the EU budget, and therefore - like other agencies – not eligible to receive EU funding from funding programmes or be involved in funding outside its normal operating subsidy.

4.3. Conclusions

- Not all the Dutch authorities are enthusiastic about the obligation to provide information under Article 13 of the Eurojust Decision, some of them have demonstrated a very sceptical attitude towards its provisions. Since July 2012, only seven notifications have been submitted regarding JITs. The authorities argue that it entails duplication with the provision of information to Europol and they cannot see the added value compared to the increased administrative burden. Nevertheless, this is binding European law, and all Member States and all authorities are under an obligation to implement the Decision until repealed or amended.

The experts are of the opinion that the Netherlands should implement the obligations mentioned in art. 13 of the Eurojust decision, in such a manner as to ensure that they are applied by all stakeholders effectively, while taking account of the fact that the obligations under art. 13 imply transmission of personal data. In this respect the instruction by the Board of Procurators General may not be sufficient.

- Besides, it is worth remembering that the obligation to provide information to Eurojust included in Article 13 does not always overlap with the obligation to exchange information with Europol. Indeed, paragraphs 6 and 7 of Article 13 refer to judicial data only. The character of several of the situations described in Article 13(5)-(7) is specific and will not be discovered in the police investigation phase but at a later stage of enquiries.
- Nevertheless, the Dutch authorities know that practitioners need to fulfil their obligations under Article 13 and to that end, the DD now organises special training sessions on this issue. However, raising the awareness of practitioners on this issue must be continued; in particular, special attention must be paid to the requirement of Article 13(11) (structured transmission of information, preferably using the Eurojust template).
- It seems however to the experts that the structure of the template and the current necessity to insert all data manually have a negative impact on the Dutch authorities' assessment of the obligation imposed by Article 13.
- At interviews with some specialised prosecutors it was revealed that there was no knowledge about Article 13 obligations or the Eurojust template. Presumably, this situation will be improved when the new instruction from the Board of Procurators General is applied in practice.

- The Netherlands was deeply involved in the EPOC IV project, where the participation of the Dutch PPS focused mainly on shaping the requirement to provide information to Eurojust in accordance with Article 13. The Dutch authorities were always in favour of exchanging information under Article 13 in an automated manner rather than manually. The follow-up project EPOC V was put on hold after the European Commission decided in September 2012 not to grant any further funding to Eurojust for the EPOC V project.
- It seems clear to the experts that the European Commission's arguments in relation to the EPOC V project, as described by the Dutch authorities, do not properly reflect the real situation. Eurojust is not an agency of the Union, but a body with a quasi-judicial character set up under the former third pillar of the Amsterdam Treaty. It is partly financed by the Union budget but also by Member States, which pay the salaries and emoluments of national members, deputies and assistants. The European Commission should be recommended to rethink its approach to the EPOC V project, which would obviously facilitate implementation of Article 13 of the Eurojust Decision by allowing automatic data transmission. Having said that, there is of course no link between the obligation to provide information under Article 13 and the financing of EPOC V.
- Feedback on all information received by Eurojust is always provided by the Dutch desk to the prosecutor in charge of the case. Due to the close contacts with the Dutch national authorities, this process is not formalised at the moment. The Dutch authorities do not foresee any changes in connection with Article 13a of the 2009 Eurojust Decision.
- A connection to the Dutch desk was expected to be made in June 2013 and in principle it should be the contact points at the NPO that will be the first to be connected. This is however not yet achieved.

5. OPERATIONAL ASPECTS

The main objectives of Eurojust under Article 3 of the Eurojust Decision are to stimulate and improve the coordination of investigations and prosecutions in the Member States, to improve cooperation between the competent authorities of the Member States as well as to otherwise support the competent authorities of the Member States in order to render investigations and prosecutions more effective.

5.1. Statistics

Eurojust as such provides, through its annual reports, various statistical data on, among other things, requesting and requested Member States and the numbers of coordination meetings.

According to statistics provided by Eurojust, the Netherlands registered 102 cases in the CMS in 2011-2012. They were requested 380 times during that period. In EAW cases, they registered 20 cases but were requested 38 times. 28 coordination meetings were requested by the Netherlands and 90 were requested from them (only Germany had more, with 104 requests). Of the total of 78 JITs signed in the framework of Eurojust, the Netherlands participated in 19.

The case administration by the DD does contain, in each case, a thorough overview of contacts with the national authorities. However, acknowledging the lack of precise data, the DD has taken up the task of analysing its entire caseload. The national MLA registration system LURIS processes all MLA requests that are sent and received, including those to/from the DD at Eurojust. Statistics can be generated from this system. However, it is currently not possible to deduce specific statistics from the system on cases in which Eurojust was involved.

5.2. Practical experience in relation to Eurojust

According to the Dutch authorities, the cases that are referred to Eurojust by Dutch national authorities are diverse in nature. Over the period January 2011 - January 2013 a total of 96 cases were referred to Eurojust by the Dutch authorities. The following conclusions can be drawn concerning the types of cases in which the assistance of Eurojust was sought:

- There were 35 requests just for facilitation of one or more MLA requests, and the DD was asked to intervene in EAW procedures 21 times.
- More complex cases were referred to the DD 40 times. In these more complex cases cooperation through a JIT was explicitly sought 10 times. In relation to the more complex cases, it is noteworthy that in most of these investigations the DD was approached at an early stage of the investigation. This coincides with the programmatic approach of the Dutch police towards serious organised crime, in which the possibilities for cooperation are assessed in the planning phase.

5.3. Allocation of cases to Eurojust or the EJN or others

Instructions of the Board of Procurators General stipulate that all MLA must be routed through one of the IRCs. For instance, Instruction 2008A024¹⁹ opens with this guideline, and this concept forms the starting point for all further working procedures in international cooperation. In practice, the IRCs are also tasked by the courts with processing MLA requests from the judiciary. The IRCs handle incoming as well as outgoing requests.

The IRCs work under the authority of and in close cooperation with a prosecutor who is specialised in international cooperation. The IRCs have all been nominated as EJN CP. Therefore, the EJN and access thereto are well integrated in the work of the PPS. At the same time, Eurojust is closely connected to the NPO and its national IRC (LIRC). The mandate of the NPO – this being serious international crime – makes it a natural counterpart for the DD at Eurojust.

¹⁹ Instruction concerning the exchange of information within the context of mutual assistance in criminal matters [*Aanwijzing inzake de informatie-uitwisseling in het kader van de wederzijdse rechtshulp in strafzaken*] (Article 552i, Dutch Code of Criminal Procedure), (2008A024), adopted on 17 November 2008.

According to the Dutch authorities, the well-functioning system of IRCs and their access to the EJN, as well as the natural focus of Eurojust on serious organised crime, may sometimes cause the option of referring a case to Eurojust to be overlooked by the regional IRCs or considered to be unnecessary. The deputy NM is one of the two national correspondents for the EJN, which further integrates the work of the EJN and Eurojust in the Netherlands.

There are so far no specific documents in the Netherlands pertaining to the choice between the EJN and Eurojust. There are some criteria for decisions pertaining to Eurojust and the EJN (generally: bilateral matters are referred to the EJN, matters involving more than two countries are in principle referred to Eurojust). This will be elaborated in more detail shortly within the EJN. For the time being, the degree of familiarity – or lack of familiarity – and/or experience with these agencies will play a role in the choice for specific cases. A type of indicative manual or guideline from Eurojust and the EJN may be able to clarify matters, according to the Dutch authorities. Sound agreements between the CPs and the DD concerning outgoing MLA through the IRCs are crucial. Also important in this connection are the awareness sessions in which the DD actively participates by visiting local public prosecutor's offices, the National Training Institute for the Judiciary [SSR], the courses and the formal training provided to heads of public prosecutor's offices, public prosecutors dealing with serious crime, criminal investigation prosecutors and intelligence prosecutors.

5.4. Experience of cases in relation to Eurojust competences

5.4.1. Tasks of national members in relation to operational cases

New incoming cases are distributed amongst the members of the DD by one assistant. Each member of the desk is therefore responsible for his or her own cases. In close cooperation with the case prosecutor or IRC responsible, the member of the DD monitors the progress of the case, assesses possible extensions and next steps, and takes care of communication with the other Member States involved. Internally, the cases are discussed frequently as to substance and progress, so as to ensure a consistent approach.

5.4.2. Procedures laid down in national law in respect of cooperation between national authorities and Eurojust

There are no specific national instructions on communication between the DD and the national authorities, or the disclosure of specific Eurojust documents.

Binding instructions of the Board of Procurators General stipulate that all MLA must be routed through one of the IRCs where MLA requests are registered in the central database LURIS. For that reason, the DD also forwards all incoming MLA requests to one of the IRCs, where registration takes place.

There are no specific legal requirements for contacting the DD. Any law enforcement authority in the Netherlands is free to contact the DD.

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

The DD does not make formal requests under this Article. All of the tasks listed are frequently carried out in cooperation with national counterparts. Upon request, the necessary information is provided to enable the DD to have a proper understanding of the investigation. At the start of a case, this information will often be provided by the (L)IRC or national desk at Europol. While cases develop, the DD usually maintains direct contact with the case prosecutor and the police officers involved.

5.4.4. Cases related to the tasks of Eurojust acting as a College (Article 7)

There is no recent experience in the Netherlands with the exercise of competences under Article 7 of the Eurojust Decision. The few cases that were adopted as College cases at Eurojust in the past were not dealt with in a different manner than described above.

Moreover, there are no conflicts of jurisdiction in relation to the Netherlands known to the DD in which Eurojust issued a non-binding decision. With respect to the rules on this type of situation in the Netherlands, mention may be made of the Instruction of the Board of Procurators General implementing Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.²⁰

So far, no requests for a non-binding decision have been made to the College by the DD.

5.4.5. Power granted at national level to national members (Article 9)

In their written replies, the Dutch authorities have highlighted that even though the Dutch NM has all the powers listed in the amended Eurojust Decision at his disposal, in practice these powers are not exercised by him. Because of the close cooperation with the case prosecutor or IRC responsible there is no need for members of the DD to exercise formal powers.

Under the powers granted to him, the national member frequently receives, transmits, facilitates, follows up and provides additional information in relation to MLA. It is not only the NM who fulfils these tasks, but the other members of the desk as well. All these tasks are exercised in close cooperation with the case prosecutor or IRC responsible.

To date, the NM has not issued or completed (a) or executed (b) any MLA requests. Neither have any orders been made as to investigative measures (c) or controlled deliveries (d). Whilst in theory these powers can be exercised by the NM, due to his position as deputy chief prosecutor of the NPO, the need to do so is not felt in practice, given the structure that is in place at present.

²⁰ Instruction on jurisdiction disputes during criminal proceedings [*Aanwijzing rechtsmachtgeschillen bij strafprocedures*] (2012A013), adopted on 5 June 2012.

As laid down in Article 9e of the Eurojust Decision, the powers under this article will only be exercised "in so far as it is not possible to identify or to contact the competent national authority in a timely matter". This situation has not yet occurred, and is unlikely to ever occur in the Netherlands. In urgent cases, the members of the DD can rely on a well-functioning system of on-call prosecutors at both the national and regional level. In urgent cases, including those outside working hours, the DD has always managed to reach the competent on-call prosecutor without delay.

By way of illustration, it could be mentioned in this context that wire-taps were put in place on a Saturday evening by the on-call prosecutor of the NPO, at the request of a member of the DD.

Where controlled deliveries are concerned, it should be mentioned that the long-standing cooperation mechanism under Article 40 Schengen (CISA) functions very well in the Netherlands. A separate 24/7 telephone number of the National Coordination Point for Cross-border Observation [*Landelijk Coördinatiepunt Grensoverschrijdende Observatie*, LCGO], is known to the foreign counterparts, and a designated prosecutor will authorize and oversee the controlled delivery. Whenever the DD at Eurojust is approached with a request of this nature, the request is forwarded to that specific mechanism. To date, the DD at Eurojust has not been informed of any case in which this mechanism did not work properly.

5.5. Practical experience related to coordination meetings

5.5.1 Qualitative perception

The organisation of CMs is generally perceived as good and meaningful. The Eurojust location is also very suitable in view of the facilities on offer, such as interpreters. Consultations with the persons involved in the various Member States often take place quickly in this manner.

It is important to note that so far, the ENCS has not played any role in respect of these meetings.

5.5.2. Perceived disadvantages

According to the Dutch authorities, several issues concerning coordination meetings still remain:

- The planning of such meetings (at the request of other Member States) is not always very sound: a date for a CM is often scheduled in the short term and without consultation with (potential) Dutch participants concerning their availability, which means that it is not always possible for the right person (in particular the public prosecutor responsible) to participate in the CM.
- The aim of the CM is not always clearly indicated (for example performance of legal assistance, information), which means that the right persons do not always participate in the CM, thus delaying subsequent implementation.
- CMs are sometimes held unnecessarily, particularly on bilateral issues, in situations in which Eurojust could have sufficed by bringing the parties involved into contact with each other or by organising a bilateral meeting.

5.5.3. Suggestions

In order to make coordination meetings more efficient and effective, the Netherlands have made some suggestions:

- Delays in implementation of decisions made at CMs can be prevented by providing more clarity about the aim of the CM during a level-2 meeting prior to the CM (this now seems to have been implemented at Eurojust).
- Eurojust should adopt a more critical attitude concerning the types of issues it should be involved with, or which require CMs. Incidentally, the DD is extra alert as regards this issue.

5.6. Use of On-call coordination (OCC)

The members of the DD are all regularly entrusted with the OCC service. In practice, however, the number of calls received is very limited. According to statistics as at 21 March 2013 provided by Eurojust in the margins of the evaluation visit, the OCC received 193 calls in 2012. Of these, 170 were abandoned (the reasons are unknown) and 23 were dealt with. Four of those calls concerned the Netherlands in the third quarter of 2012. There is no information on the substantive reason for the calls.

To inform the national authorities of the on-call coordination service, its number is posted on the internal website of the PPS and its use is promoted in awareness sessions and formal training on Eurojust.

5.7. Experience of cases relating to cooperation between the ENCS and the Europol national unit

The Netherlands has had no experience of such cases so far.

5.8. Conclusions

- According to figures provided by Eurojust, the use of the OCC system is in general very limited (in total 23 calls handled and 170 abandoned). However it should be noted that the Netherlands had the highest number of successful calls, namely four. This shows that the service is working (even though nothing can be concluded about the substance of the calls).
- According to the interviews held during the on-site visit, there is a lack of awareness in the different IRCs of the existence of OCC. It may also be noted that one of the reasons for the low level of OCC contacts may be that most of the judicial players involved in an international criminal case already know who to contact at Eurojust, which is also due to its proximity.

- The fact that all prosecutors of the DD take part in the OCC has to be considered good practice.
- The fact that the EJM has several contact points in the Ministry of Security and Justice, the PPS, the IRCs and, additionally, one judge is exercising its function, seems to enrich the system. It appears that foreign judges prefer to contact the judge at the Court of Appeal instead of prosecutors or the Ministry. The experts also note the advantages of the EJM contact points network in the NL, which stem from the fact that the deputy national member of Eurojust and the prosecutors working at the IRC are involved in the EJM system. The efficient and close cooperation between the EJM itself and the NL is also appreciated by the experts.
- The allocation of cases to the EJM or Eurojust should be improved. There are no specific documents in the Netherlands pertaining to the choice between EJM or Eurojust. In general, bilateral matters are referred to the EJM and more complex, multilateral matters to Eurojust. In practice, the degree of familiarity and prior experience with the bodies play a role in the choice.
- The experts are aware of the lack of formal criteria for "dividing" cases between Eurojust and the EJM. At the same time, the experts got the impression during the evaluation visit that the position of Eurojust in the NL is more significant and appreciated by the practitioners than the role of the EJM. This may be understandable because of the nearness to the seat of Eurojust.
- Eurojust' s ability to offer facilities for meetings, secure channels for communication and mediating contacts are regarded as very positive.

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- As there are no reliable statistics to hand, it is difficult for the experts to assess whether the capacity of the EJM is being used to its full potential. It is not possible to know whether a contact point has been contacted in its EJM capacity or whether the contact point may in any case be known, for instance, because it is a prosecutor working in the IRC. See also 5.3 and 5.4.
- Cooperation between Eurojust and Europol is considered essential by the Dutch authorities and is given much attention. The Netherlands see an added value in Europol's assistance in the exchange of information and in handling specific questions concerning the analysis of information. Nevertheless there is a lack of agreement at EU level on Europol's role in the handling of MLA. The DD and the DD at Europol are currently working on an MoU to clarify when involvement of one of the desks is necessary and to lay down what police capacity will be necessary. This can be considered to be good practice. The Europol desk is always invited to coordination meetings organised by the DD.

6. COOPERATION

6.1. Cooperation with EU agencies and others

According to the information provided by the Dutch authorities in the questionnaire, no experience exists in practice as to the involvement in case work of OLAF or other EU agencies, other than Europol. Cooperation with the national Europol unit is sought continuously. The national Europol unit informs the DD at Eurojust frequently on cases in which coordination at a judicial level is needed, or concerning the facilitation of MLA requests. Vice versa, the DD at Eurojust recognises that Europol can play a crucial role in the preliminary stages of large investigations and the subsequent exchange of operational information. It is therefore arranged that both units meet regularly to discuss workflow and pending cases.

With respect to casework, the DD at Eurojust strongly promotes the policy of ensuring that the case prosecutor sees to it that information gathered in investigations is shared with Europol. In addition, it is standing policy for the DD at Eurojust always to invite Europol to the CMs organised by the DD.

Furthermore, both desks have a joint responsibility for organising the Europol-Eurojust training course that is offered by the *SSR* twice per year. Europol and Eurojust alternately host the group of participating magistrates, including prosecutors and both desks give presentations.

The Netherlands is implementing the EU policy cycle on organised crime, which started to be implemented in 2012, with a fully-fledged cycle for 2014-2018. Operational action plans (OAPs) are set up for each strategic goal and so called EMPACT projects are carried out. National implementation of the EU policy cycle also affects cooperation with Eurojust, which will contribute from the outset by providing expertise on legislation in the Member States, coordinating judicial processes and setting up JITs.

The Netherlands chose to focus on the use of EMPACT projects. Among these, synthetic drugs, trafficking in human beings and container shipment of goods were EMPACT projects organised by the Netherlands as co-driver. Concerning THB, strategic goals have been set prioritising the use of JITs, the increased use of joint investigations and prosecutions and finally the strengthening of a multidisciplinary intervention strategy combining immigration services, border control, social affairs and employment, tax services, communities, police forces and prosecutors. The multilateral approach of the Netherlands as far as EMPACT projects are concerned make it one of the pioneers in making EMPACT operational.

6.2. Cooperation with third states

6.2.1. Policy with respect to the involvement of Eurojust

The cases referred to Eurojust by the Dutch authorities relate almost exclusively to cooperation with authorities of other EU Member States. There are a few exceptions, formed by major fraud cases investigated by the specialised PPO for serious fraud and environmental crime [*Functioneel Parket*]. These cases clearly had a cross-border EU dimension, but it was also clear from the outset that coordination of action with non-EU Member States was essential.

In so far as the applicable legal framework does not allow for direct contact between practitioners (e.g. the 2nd Additional Protocol to the 1959 Convention), participation in the case takes place in consultation with the competent section of the Ministry of Security and Justice. To date, the Netherlands authorities have always been able to participate in cases involving non-EU Member States.

6.2.2. Added value of Eurojust involvement

Cooperation in cases involving non-EU Member States is much appreciated by the case prosecutors who work with Eurojust. There are three reasons for the acknowledged need to involve third states in the cases.

- Firstly, in fraud cases the suspects are frequently making use of off-shore bank accounts and legal entities to commit their crimes. The fact that cooperation agreements are in place with Switzerland and the US is therefore highly appreciated. In the major fraud cases referred to Eurojust by the Dutch authorities, these countries were also involved.
- Secondly, as a major transit country for illicit goods, the Netherlands is usually approached through Eurojust by destination countries of those illicit goods within the EU. For the Netherlands, however, cooperation with the source countries increases the impact of their joint law enforcement efforts. For instance, in the rare cases in which source countries in Latin America and North Africa were present at CMs, it was appreciated that it was possible to target an almost complete chain of supply of drugs, in coordinated actions.
- Thirdly, it has proved valuable that the EU Member States located at the EU border maintain good working arrangements with their neighbouring third countries. In particular, cases involving Italy-Albania and Austria-Serbia can be mentioned in this context.

Whereas the possibilities for cooperation with non-EU Member states at Eurojust need to be assessed on a case-by-case basis, in particular where no formal cooperation framework with Eurojust is in place, practice shows that in situations where third states do participate, there is considerable added value for the cases.

6.3. Practical experience of the EJM

6.3.1. Cooperation between the Dutch member and the EJM

In their replies to the questionnaire, the Dutch show that the personal union between the IRCs and the EJM CPs in the Netherlands, as described above, means that there is frequent contact between the NM and the EJM network. Discussions regularly take place on the question of whether a specific case should be dealt with bilaterally through the IRC or whether Eurojust should be involved.

In addition, the deputy NM is one of the two NCs for the EJM, which further integrates involvement in the work of the EJM and Eurojust in the Netherlands. As chair of the Eurojust team 'EJM & Liaison Magistrates', again close links have been established with the EJM Secretariat.

The involvement of EJM CPs in the work of the IRCs and of the DD at Eurojust means that it is difficult to say whether the contact with an EJM contact point or NC takes place in that particular EJM capacity, or otherwise. This level of integration is seen as a major advantage in practice, which prevents unnecessary referrals between authorities.

6.3.2. Resources of Dutch EJM contact points

No special resources are made available. Most CPs are able to perform their EJM duties on the basis of their position. It is, however, the case that meetings are facilitated centrally via the NC in charge, and that CPs are allowed to attend EJM meetings held in other Member States as much as possible.

6.3.3. Operational performance of EJM contact points

All IRCs have been nominated as the EJM CPs and have regular contact in that capacity. The contact points perform their tasks and are therefore able to exchange any information with other authorities automatically.

6.3.4. Perception of the EJM website and its tools

The EJM consists of practitioners. The design and adjustment of the website and the instruments are carried out on the basis of their experience and wishes as well as on the basis of the contributions of other agencies in the Member States. In other words, the Dutch perception of both is a positive one.

6.4. Conclusions

- Most of the time the EJM contact points in the Netherlands are involved in tasks related to Eurojust activities or in the handling of international criminal cases through IRCs. The EJM is considered to be useful as it is a network of and for practitioners. In fact all IRCs are the EJM contact points. The EJM is used frequently in simple and bilateral cases, e.g. reminders regarding the execution of MLA requests. The EJM therefore seems to function well in practice.
- The Dutch authorities would welcome follow-up on the paper dealing with the allocation of cases between Eurojust and the EJM drafted under the Danish Presidency. The Dutch authorities consider that in general too many small bilateral cases are referred to Eurojust and should be referred to the EJM instead.
- The Dutch desk at Eurojust cooperates regularly with the EJM. The deputy national member of the national desk is also the EJM contact point. All practitioners interviewed regarded the fact that they only had to call one number to reach both Eurojust and the EJM at the same time as an improvement which made their work simpler.
- Meetings of all contact points and the tools correspondent take place twice a year to discuss various EJM matters.
- The plenary meetings of the EJM are regarded as essential to establish personal contacts between contact points from all Member States.
- All the EJM tools are seen as positive by the Dutch authorities. The Atlas is the tool used most frequently. It is regarded as crucial that the Atlas is continually updated. This is the responsibility of the tools correspondent.
- More continuity regarding the EJM contact points in other Member States would be desirable from the point of view of the Dutch authorities. They change often, which makes stable personal contacts difficult. The Dutch authorities stressed the importance of choosing contact points according to their language skills and availability.

7. SPECIAL INVESTIGATIVE TECHNIQUES

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

Controlled delivery is a special investigative technique used to support certain infiltration operations, which in most Member States require judicial consent. They can cover transportation of goods or persons.

Article 126g of the Dutch Code of Criminal Procedure provides that the public prosecutor is authorised to issue an observation order. In practice, such an observation order is always issued together with an order for controlled delivery. An order for postponement of seizure (controlled delivery) is also issued by a public prosecutor pursuant to Article 126ff of the Dutch Code of Criminal Procedure. The Powers of Investigation Instruction and the Requests for Mutual Legal Assistance for Cross-border Observation Instruction provide a further framework for the application of both powers.

There has been no actual application by the national member of the power to authorise or coordinate controlled deliveries so far. In any given case, the rules as described above would apply. The same can be noted regarding the competent authorities that have not so far made any referral to Eurojust with a view to following a controlled delivery in another Member State.

7.2. Participation of national members in joint investigation teams (Article 9f)

7.2.1. Practical experience

Overview of Dutch participation in JITs and the involvement of Eurojust:

- Cases referred from the Netherlands to Eurojust in the period January 2011- December 2012, explicitly seeking cooperation through a JIT: ten. The first multilateral JIT was set up in 2012.
- Participation in a JIT through Eurojust in the period 2005-2012: 31.

Several experiences:

The NPO Zwolle launched JITs with the United Kingdom and Bulgaria in 2012 to fight organised international human trafficking. Funds were made available by Eurojust. Participation in four JITs – three in cooperation with Belgium and a fourth in cooperation with Belgium and Germany – has occurred in the Maastricht court district since 2006. No EU funds were allocated to these JITs, nor were funds applied for. The JIT is considered a very useful tool for cooperation.

Setting up a JIT can be a wide-ranging and time-consuming process, but in practice, after closure of earlier JITs, things turned out better than expected, partly as a result of the sound support provided by Eurojust. There are many advantages to the use of JITs:

- the ability to perform investigative actions directly, requesting the use of coercive measures and exchanging information within the JIT without having to issue separate requests for MLA.
- team members can be present when investigative actions, such as searches and interrogations, are performed in the other country.
- the JIT creates the opportunity to coordinate local investigative actions and to exchange specialist knowledge.
- the close contact between the participating countries (expanding the network).
- a JIT is a form of European cooperation that is partly made possible by a Eurojust subsidy. A JIT therefore offers a solution for countries with a smaller budget for large-scale investigations.

Finally, it should be noted in this context that the internal organisation of the PPS allows for speedy decision-making with regard to the setting up of a JIT, which has proved to be a major practical advantage.²¹

²¹ Instruction on International Joint Investigation Teams [*Aanwijzing internationale gemeenschappelijke onderzoeksteams*] (2008A007), adopted on 11 February 2008. The term of validity has since been extended to 31 August 2013.

However, some barriers remain and restricting the potential of this tool:

- Priorities in criminal matters are not the same for all the MS. In the Netherlands, the steering team decides in cooperation with the chief public prosecutor which case will be carried out, if as the case seems to need major resources. The case selection will be based on evolving practice and on several criteria as previously indicated in this report (3.1).

Then, some cases can be dropped by the Dutch authorities even if it could still be useful for the requesting MS to go further and start a JIT.

- The lack of information sharing and analysis between MS is also likely to prevent the setting up of JITs, as well as the misunderstandings flowing from the differences between the legal systems of MS.

The Netherlands also pointed out the need to maintain the funding of JITs. The increase in the amount of money awarded per year in order to fund JITs is massive²². For some MS, this help is crucial and the setting up of a JIT cannot be considered without it.

7.2.2. Added value

Europol and Eurojust can support an investigative team by, for example, offering facilities and financial compensation, making JIT documents digitally available, providing secure channels for the exchange of information, providing information about international cooperation and mediating in contacts between investigative agencies in various countries. Their role will be largely supportive, focusing in particular on the exchange of information and analysis. Eurojust participation can play an important facilitating role e.g. in obtaining EU funds to finance JITs, although the procedure still involves a considerable administrative burden, despite promises that it would be streamlined. The participation of an NM was included in one of the JITs set up in Maastricht in order to enable the EU to grant financial support.

²² EUR 265 161 in 2010 to EUR 815 886 in 2012.

7.2.3. *Participation in a JIT carried out partly in Dutch territory*

The participation of NM in a JIT carried out partly in Dutch territory was largely in line with expectations, in particular with respect to mediation in contacts between investigative agencies in the various Member States.

7.3. **Other special investigative techniques (SITs)**

The full range of investigative techniques is used in the cases of serious organised crime that fall within the competence of Eurojust. Amongst others, wire-tapping, covert operations, controlled deliveries and electronic surveillance are frequently employed by the police in the cases that are referred to Eurojust from the Netherlands. However, the Dutch authorities made it clear that neither the NM nor the other members of the DD are at any time involved in the authorisation, deployment or operational management of such techniques. This is the exclusive domain of the case prosecutor and the police force.

7.4. **Conclusions**

- The Dutch authorities are regularly involved in JITs. In the period 2005-2012, the Dutch authorities participated in 31 JITs, mainly bilateral, where Eurojust was involved.
- In the view of the Dutch authorities, the involvement of Eurojust in JITs provides substantial added value. Also Europol has a role to play as a participant in JITs as the exchange of information is really important for a successful JIT. A Memorandum of Understanding between the Dutch desk at Eurojust and Europol is being prepared.
- One practitioner mentioned the possibility of using JITs for the purpose of asset recovery.

- Practitioners met during the on-site evaluation generally referred to experience involving Eurojust, such as JITs and coordination meetings, as very positive. The JIT funding is perceived as being important and one of the reasons why they contact Eurojust. The application process for JIT funding is perceived as being heavy handed and too slow. Facilitation or simplification of this process would be welcomed.
- The possibility of funding for JITs is seen as a great advantage and enables the Dutch authorities to participate in JITs even if no national funding would be available.
- Discontinuing funding for JITs would, in the view of the Dutch authorities, lead to a significant decrease in the number of JITs in future.
- Regarding cross-border surveillance, there is a good coordination between the National Coordination Surveillance Centre (LCGO) and the Dutch desk at Eurojust via the competent public prosecutor.

8. TRAINING AND AWARENESS RAISING

8.1. Promotion of the use of Eurojust and the EJM

8.1.1. Training

When training to become a public prosecutor, a so-called licence vignette system is operated. This means, among other things, that all public prosecutors are required to attend three courses in the field of international cooperation, namely basic international cooperation, continuation of international cooperation, and international exchange of information. These courses are provided by the SSR. The value, operation and the website of the EJM are dealt with comprehensively during the latter two courses. These courses are also attended by judges, NPO legal experts and clerks. EJM contact points, IRC prosecutors and DD representatives are always present at the courses as teachers. In addition, the public prosecutors specialised in international legal assistance [*IR officieren*] are required, within the context of the vignette system, to follow additional training in the field of international cooperation and legal assistance. A course about and by EUROJUST/EUROPOL has to be attended, among others. There is a possibility of attending EJM training upon recommendation by the SSR. And finally, a two-day course on operational cooperation is organised annually together with the Belgian and German authorities.

8.1.2. Other measures

The Board of Procurators General hosts the internal website of the PPS, on which extensive practical and legal information is given on Eurojust and the DD. A leaflet on Eurojust is available on *ZoOM* on the PPS's internal website²³.

²³ "Eurojust, Embedding in & added value for the Public Prosecution Service" [*"Eurojust – Inbedding in & meerwaarde voor het Openbaar Ministerie"*].

Also, members of the desk participate in all the regular meetings of the specialised prosecutors for international affairs. Since it was acknowledged that continuous awareness sessions are required, the DD has set up a programme²⁴ to visit all the offices of the prosecution service (PPOs) in the Netherlands. In those meetings with senior serious crime prosecutors, the Dutch desk presents cases and discusses cooperation with that specific PPO.

Moreover, as Eurojust has its seat in the Netherlands, the Dutch desk receives numerous groups visiting the Eurojust premises. Last year alone they received the police academy, the Amsterdam police, the Fiscal Information and Investigation Service [*Fiscale Inlichtingen- en Opsporingsdienst, FIOD*] and ran two combined police-prosecution courses. Also, six joint international-Dutch seminars for practitioners were welcomed by the desk, organised by the SSR, the EJTN and the French Embassy.

There follows an overview of all visits/courses the DD arranged in 2012. The activities underlined were developed within the context of the SSR/the EJTN.

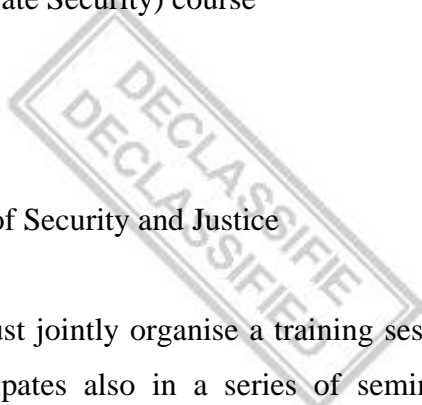
The number of six 'joint' courses is based on the following dates: 16/3, 29/5, 10/9, 5/10, 9/10 and 15/11 in 2012. The visit by the last group was ultimately arranged by the French national desk, at the request of the DD:

- 12/1 training by the SSR (at the Amsterdam PPO)
- 5/3 visit of group from NHL University of Applied Sciences
- 16/3 contribution to SSR course Comparative Law the Netherlands - Italy
- 29/3 contribution to SSR course *internationaal*
- 12/4 visit by group from police academy
- 19/4 visit by group from police academy
- 15/5 visit by group from Tilburg University
- 29/5 SSR course Europol-Eurojust
- 3/7 visit by group from police academy
- 10/9 SSR course Europol-Eurojust
- 5/10 contribution to SSR seminar NL/FR

²⁴ See Eurojust Road Show Programme and project description.

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- 9/10 visit by FIOD (Fiscal Intelligence and Investigation Service),
International Expert Group
- 9/10 visit by EJTN/SSR group PL/ES/NL
- 9/10 contribution to SSR course *internationaal*
- 18/10 EACS (European Academy for Corporate Security) course
- 15/11 training by SSR (Amsterdam)
- 15/11 visit by EJTN/SSR group FR/NL
- 15/11 visit by CEPOL - police group
- 31/10 visit by policy officers from Ministry of Security and Justice



As stated above, the national desks at Europol and Eurojust jointly organise a training session for magistrates twice per year. The DD at Eurojust participates also in a series of seminars for magistrates in the Euroregion Maastricht-Aachen-Liege in the course of 2013 (the so-called Phoenix project). The Dutch authorities state that the current justice and police arrangements in that region (BES and EPICC) are very effective, and therefore a careful assessment will be made as to how Eurojust can support those institutions in their casework.

The Office for International Legal Assistance in Criminal Matters (AIRS) of the Ministry of Security and Justice issues a weekly newsletter on developments in international cooperation in criminal matters, and this newsletter is received by all prosecutors and police who work at the IRCs. When relevant legal developments take place, they are usually announced through this newsletter.

The other main channel for sharing developments on Eurojust and the EJM are the regular meetings of specialised prosecutors in international affairs, in which the DD at Eurojust participates. Other news (invitations to seminars, outcomes of questionnaires, strategic products of Eurojust) is usually disseminated directly to the responsible prosecutor or a national EJM CP.

In addition, national EJM CPs meet on a regular basis to discuss the operation of the network and developments at Eurojust and the EJM.

8.2. Specific training for national members and EJM contact points

There is no specific training for the members of the desk or the EJM CPs. However, only prosecutors specialised in international cooperation are appointed as the EJM CPs. To obtain any specialisation within the PPS, one needs to get a licence as described above. The licence system prescribes a number of specific courses to be followed at the *SSR* which relate to the specialisation. For the international cooperation specialisation (*IR-officier*) the licence requires that the prosecutor must follow ten specific courses on international cooperation, including training with regard to Eurojust and Europol. In practice, it may happen that a prosecutor is appointed to a specialised post before all conditions of the licence are met. In that case, the courses are to be attended as soon as possible.

8.3. Conclusions

- The experts noted that a number of training events have been organised in the field of international cooperation. All public prosecutors have to attend training in this field. Furthermore, the public prosecutors specialised in international legal assistance have to follow additional training. Additionally, a joint Eurojust/Europol training course is offered twice a year where both the Dutch desk at Eurojust and the Europol desk are involved. Training on the EJM is included in the basic training received by all prosecutors. This training is mandatory for prosecutors. The courses are also attended by judges, legal experts and clerks.
- The members of the DD at Eurojust are active in approaching the authorities to make the possibilities for Eurojust assistance widely known. This is facilitated through the geographical location of Eurojust in the Netherlands. A Eurojust "Roadshow" programme has been set up by the DD to visit the local offices of the PPS to promote Eurojust, present cases and discuss cooperation with the specific prosecution service.
- Training on Eurojust is only mandatory for prosecutors specialised in international legal assistance.
- Detailed information on Eurojust is available on the intranet of the public prosecution service.

9. GENERAL OBSERVATIONS AND FINAL REMARKS

9.1. Overall assessment by the Netherlands

The Netherlands is very proud to be host to Eurojust's seat in The Hague and remains keen to do so in the future. For this very reason they are investing in Eurojust's new premises. In relation to optimisation of the already close cooperation between Eurojust and Europol, the offer by the Netherlands for the new head office of Europol has proved to support the former process. In 2010 a comparable offer for permanent housing was made to Eurojust on a location within a stone's throw of the Europol premises. The project concerning the new premises for Eurojust has in the meantime reached the stage of a building design, and tendering for execution will take place towards the end of 2013. Anticipating possible growth of the Eurojust organisation, the plot adjacent to the future building was acquired in 2012. The existing accommodation provides suitable premises and will support the ever closer cooperation between Eurojust and Europol.

The Netherlands authorities indicate that they highly appreciate the added value that Eurojust has provided in improving judicial cooperation between Member States in fighting organised crime and terrorism. More than anything, the importance of the positive effect that Eurojust's mere existence has had on bringing people from various Member States together and creating networks of law enforcement professionals should not be underestimated, quite apart from the actual operational results that have resulted from this over the years. The Netherlands equally appreciates Eurojust's role in relation to the JITs Network and the Genocide Network.

In addition to Eurojust's valued traditional role in coordinating and facilitating judicial cooperation, it is useful to draw attention to another role it has fulfilled. In 2009 the Netherlands opened a case at Eurojust concerning piracy in the Gulf of Aden. In this case it was agreed at Eurojust to initiate a JIT in which Eurojust would participate as well. This JIT has proved very successful. In the course of this case, the Netherlands took the lead in organising CMs at Eurojust on a regular basis in which other cases of piracy were also discussed with all the European countries involved. In 2012 it was decided that Eurojust would produce a Maritime Piracy Judicial Monitor (MPJM).

The Dutch prosecutor, who leads the Dutch piracy investigations, is on the advisory board of the MPJM. Eurojust has proved to be of invaluable support to the on-going Dutch cases and, in return, the Netherlands has taken the initiative of making Eurojust the single information centre for practitioners in this field. It is certainly conceivable that Eurojust will adopt a similar role in other fields of international crime.

This being said, the Dutch authorities note that there is still room for Eurojust to optimise its full potential, and for that reason, in the context of this round of mutual evaluation, the Netherlands finds the recommendations to Eurojust from other Member States such as, in particular, Belgium, to be very valuable material for further reflection and discussion in the run-up to the new Eurojust Regulation.

Moreover, the Dutch authorities admit that there is a certain amount of reluctance amongst national authorities in the Netherlands to take their cases to Eurojust. Fears exist concerning additional work, demands on administrative capacity and a limitation on the liberty of decision-making under the so-called opportunity principle. However, in the end the very real results and successes in many operational cases taken to Eurojust do explain why the number of (complex) cases referred to the DD is still growing, and ‘the word is out’ that using Eurojust can actually benefit cross-border investigations and prosecutions. In particular, the fact that a dialogue with foreign counterparts is made possible, as well as considerably easier, through Eurojust and that competing national interests may be reconciled, is a unique selling-point for the organisation.

9.2. Further suggestions from the Netherlands

- Implementation of the current legal framework should take absolute priority over new legislative initiatives, including the possible introduction of new and particularly binding powers. At this moment in time, and certainly pending the outcome of the ongoing sixth round of mutual evaluation, the Netherlands sees no need whatsoever to introduce such binding powers for the College or NMs.

- Moreover, improvement of Eurojust' s internal structure (governance) is pivotal to improving its operational effectiveness.
- Article 13 of the Eurojust Decision should be modified to take advantage of the existing role that Europol plays in gathering and analysing information, and to limit the administrative burden on national authorities, taking into consideration technical solutions such as those based on the EPOC IV project.
- Sufficient financial resources for Eurojust are required when supporting the Member States in their cross-border investigations and in particular JITs. Where it is already possible to recognise the seriousness and increasing intensity of cooperation, it may be expected that reliance on Eurojust will also increase in the years to come. This means that sufficient staffing levels for all desks and sufficient budget, in particular for supporting the JITs, are necessary.
- Prior to organising CMs, the necessity of doing so and the aims to be achieved must be discussed carefully, for example during a level-2 meeting.
Sufficient exchange of information prior and parallel to coordination by Eurojust is essential. Without information and analysis at the police level, a national desk will not be able to initiate investigations (the third main task of Eurojust according to the Lisbon Treaty). The cooperation with Europol and the integration of working processes should therefore remain a key policy objective for Eurojust. Eurojust and Europol should continuously seek to improve their mutual cooperation, and in so doing increasingly complement each other's roles and tasks, and avoid duplication and overlap.
- During the visit, the Netherlands suggested that the EJM use Trio Presidency programmes or similar planning tools so as to ensure planning and consistency between Presidencies
- Further integration of the work of the EJM and Eurojust is desirable, in the sense that the cooperation between the two should be improved, e.g. by promoting more personal unions for the persons who are active in the EJM and Eurojust, including the CPs, and shortening lines of communication with national authorities.

9.3. Perception of the evaluation process with regard to the subject under review

- In the opinion of the Netherlands it should be borne in mind that effective implementation of EU legislation in this field will take many years. Therefore, adequate time should be allowed to develop proper practical experience and to achieve tangible results. The results of Eurojust are numerous, but due to the hidden and somewhat introvert nature of the organisation, not always easy to discern for practitioners who are not directly involved.
- Moreover, any new legislation in this field, should, by definition, be drafted in close cooperation with practitioners from the Member States: i.e. actual prosecutors and (investigative) judges who can filter out, at an early stage, any articles that will not contribute effectively to integration and closer cooperation between national authorities.
- Finally, future new legislation concerning Eurojust should seek to align the respective roles of Eurojust and Europol, optimise their cooperation, and avoid any overlapping of their tasks as much as possible.

9.4. General observation from the experts

The Netherlands is the host nation of Eurojust and has therefore a special relationship to the Unit. This also makes it easier for the Dutch judicial and police authorities to cooperate with Eurojust than for other Member States, as they can meet frequently and at no cost. The policy of the Dutch authorities is also to use Eurojust in appropriate cases, and the statistics shown also show that this also happens in practice. The general attitude of the practitioners during the evaluation was very positive both towards cooperation with Eurojust and the European Judicial Network.

The big reform of the police organisation of the Netherlands will no doubt have an impact also on the cooperation with Eurojust (and Europol), but this can only make more efficient and strengthen the cooperation.

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A reform of the organisation of the IRCs, especially their number, is under discussion for the time being. It should follow the creation of ten regional police units in January 2013, allowing more cases to be handled. Besides, another proposal targets the need to grant powers to the IRCs to enable them to execute 80% of requests by dedicated police capacity in the 10 regional Units and in the national Unit. The remaining 20 % of incoming requests will be submitted to the so-called assessment and steering Committees. No doubt, this reform also will strengthen the carrying out of mutual legal assistance in the Netherlands.

The overall impression the experts have is that the Netherlands is on the right track in working with Eurojust and the European Judicial Network, and that current reforms, when implemented, will further strengthen the cooperation.

10. RECOMMENDATIONS

10.1 Recommendations to the Netherlands

The Netherlands should:

- ensure the regular presence of the Dutch national member at the seat of Eurojust in order to fulfil the obligations under Articles 2(2)(a) and 2(2)(b) of the Eurojust Decision to allow the national member to perform his duties continuously, and find an effective solution to remedy the current situation and to avoid such instances in the future (see 3.5.);
- promote to assessment groups and steering teams that a request from the Eurojust national member is given particular attention, in order to avoid that such a request is rejected for the sole reason that it falls outside national priorities (see 3.1.);
- implement the obligations mentioned in art. 13 of the Eurojust decision, in such a manner as to ensure that they are applied by all stakeholders effectively, while taking account of the fact that the obligations under art. 13 imply transmission of personal data (see 3.5. and 4.3.);
- encourage its authorities to apply Article 13 by providing further training and raise awareness among its practitioners with regard to the structured transmission of information. It should consider making use of the Eurojust template mandatory (see 4.1. and 4.3.);
- speed up its implementation of the ENCS in the national system in line with Article 12 of the Eurojust Decision (see 3.5.);
- connect the members of the ENCS to the national part of the CMS in accordance with Article 12(6) of the Eurojust Decision (see 3.5.);
- provide its practitioners with instructions or practical and simple guidelines on when to refer a case to Eurojust or the EJM (see 5.8.) and encourage the ENCS to define and assist in determining whether a specific case should be dealt with the assistance of the EJM or Eurojust (see 5.8. and 6.4.);
- continue to promote the OCC system to competent national authorities (see 5.8. and 5.8.);

10. 2 Recommendations to the European Union, its institutions and agencies, and to other Member States

- The European Commission should ensure that the provision of funding for the EPOC project is continued through Eurojust, either through its regular budget or through the Union financing programmes, so that it can be further developed (see 4.3.). The European Commission should ensure that funding of JITs can be managed via Eurojust in the future, either in the same way as previously (which has been very successful) or through the regular budget of Eurojust (see 7.4.);
- As in most Member States the decision to set up a JIT is taken by judicial authorities (prosecutors or examining judges), Eurojust should be considered the appropriate body for channelling JIT funding (see 7.4.);
- All Member States should ensure that they provide all necessary information defined in Article 13, preferably by using the template issued by Eurojust. They should also raise the awareness of practitioners on this issue and encourage the proper application of Article 13 by issuing instructions and practical guidelines and providing training (see 4.3.);
- All Member States should, like the Netherlands, consider widening membership of the ENCS to include key senior stakeholders concerned with serious or organised crime (see 3.5.);
- The Member States should raise awareness and promote the OCC system among their competent authorities, as well as consider entrusting the OCC service to their national desk (see 5.8.);
- The Member States should, like the Netherlands, appoint at least one member of the national desk at Eurojust as a contact point for the EJM (see 5.8.);
- All Member States are encouraged to issue instructions or guidelines on when to refer a case to the EJM or to Eurojust; preferably, this should be done in close cooperation with the EJM and Eurojust (see 5.8.);

- All Member States should seek to collect data and statistics concerning the number and types of cases handled by the EJM contact points in order to get a clearer view of the caseload and to implement necessary measures when there is a need to strengthen their capacity (see 5.8.);
- The LURIS system of tracking incoming and outgoing requests for mutual legal assistance is a useful and unified system. The Member States are recommended to study this system and consider implementing similar systems in their own procedures (see 3.1.);
- Closely connected with the work of LURIS is the organisation of IRCs and the LIRC. This seems to be an interesting model, where both police and prosecutors work together, at least for these Member States that have such a large number of requests as the Netherlands, and it should be studied further, while taking account of the obligations under modern judicial cooperation for direct contact between judicial authorities (see 3.1.);
- The "Roadshow" programme set up by the DD at Eurojust is good practice and can be recommended to all Member States (see 8.3.);

10.3. Recommendations to Eurojust/the EJM

- Eurojust should promote among practitioners the added value of information transmitted to Eurojust by the Member States under Article 13; in particular it should provide information about the work of the case analysis unit and its potential (see 4.3.);
- Eurojust should simplify the Article 13 template and make it more user-friendly to enhance the necessary exchange of information; Eurojust should also provide simple means for updating information where appropriate (see 4.3.);
- Eurojust should continue promoting the use of the OCC service among practitioners and also promote its positive impact on operational work. One way of doing so would be to analyse the cases handled via the OCC and the reasons why the OCC had to be used in the particular case (see 5.8.);

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- Eurojust is encouraged to continue considering how to handle notifications concerning the observation of time limits in EAW orders from the Member States (cf. Article 17 of the EAW Framework Decision) in a more structured and effective way;
- Eurojust should continue to promote the use of coordination centres for action days, also in cooperation with Europol (see 5.8.);
- Eurojust, via the EJM Secretariat, should encourage the Member States to collect data and statistics concerning the number and types of cases handled by EJM contact points in order to monitor their potential and to implement necessary measures when there is a need to strengthen their capacity. The EJM should seek to facilitate the collection of its statistics, and refine its statistics to make it easier to determine the Member States' use of the network (see 5.8.);
- Eurojust, in cooperation with the EJM, should disseminate guidelines issued at national level on the referral of cases either to Eurojust or the EJM and support and encourage the adoption of such guidelines at national level. In the short/ medium term, Eurojust and the EJM should jointly provide such guidelines to all Member States based on Member States' experience (see 6.4);
- The EJM should use Trio Presidency programmes or similar planning tools in order to ensure planning and consistency between Presidencies (9.2.);
- The Presidency (aided by Eurojust via the EJM Secretariat) should monitor the fulfilment of requirements by the Member States when designating contact points, and monitor the regular and proper updating of the list of contact points;
- The Presidency (aided by Eurojust via the EJM Secretariat) should clarify the roles and responsibilities of the Member States in the updating of the data available through the EJM tools and closely monitor updating by the Member States, in particular as regards the Atlas.

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

Monday 18 March 2013

- 17.00: Arrival group of experts in The Hague
17.30: Welcome drink offered to the delegation by Ministry of Security and Justice
19.00: Meeting of the delegation

Tuesday 19 March 2013 – Programme in The Hague at the Ministry of Security and Justice, room Hugo de Grootzaal, N.08.01

- 09:00 – 09:30: departure from the Mercure hotel (to the Ministry of Security and Justice, Turfmarkt 147) on foot
09:30 – 10:00: coffee and welcome by Arie IJzerman, deputy director-general for the administration of justice and law enforcement
10:00 – 11:00: introduction to the Dutch criminal justice system - general outline of the organisation of police, public prosecution service, involved Ministries and the judicial system (Paul van Voorst)
11:00 – 12:30: implementing legislation in relation to the 2008 Eurojust Decision (Luut Mol Lous, Nicholas Franssen)
12:30 – 14:00: lunch at the Ministry of Security and Justice
14:00 – 15:00: the role of the international legal assistance centres (IRCs) in relation to MLA (Teun van Noord, Lisette Vos)
15:00 – 16:00: Office for International Legal Assistance in Criminal Matters (Thieu Coffeng)
16:00 – 16.30: EPOC IV project and the Netherlands (Teun van Noord)
16:30 – 17:30: LCGO/Europol/JITs (Gerda Oosterveld, Gerco Renkers)
17:30 – 18:00: end of this day's programme

Wednesday 20 March 2013 – Programme in Zoetermeer and The Hague (Police/LIRC and Eurojust)

09:00 – 09:30: delegation is driven from the Mercure hotel to LIRC Zoetermeer
09:30 – 10:00: coffee and welcome by Theo van der Plas / John Tamerus
10:00 – 10:30: BOOM (Diana Muller)
10:45 – 11:45: fight against THB/Expert Centre Human Trafficking (EMM) (Warner ten Kate)
12:00 – 12:30: delegation is driven from Zoetermeer to Eurojust
12:30 – 13:30: lunch at Eurojust
13:30 – 14:30: EJM (Teun van Noord, Jolien Kuitert, Martin Keus, Lisette Vos, Nanette van Ditzhuijzen, Malika El Mansouri)
14.45 – 15.30: visit to the Dutch Desk at Eurojust
15.30 – 16.15: EMPACT (Petra Bakker)
16:30 – 18:00: drive to and visit of museum ‘Beelden aan zee’
18:00 – 19:00: walk over the Scheveningen boulevard or beach to restaurant ‘Le Bon Mangeur’
19:00 – 21:30: dinner offered by the Ministry of Security and Justice (Theo Hofstee, Lisette Vos, Jolien Kuitert, Daniëlle Deli, Steven Sutton, Nicholas Franssen)

Thursday 21 March 2013 – Programme in Rotterdam at the National Public Prosecutor’s Office and IRC

09:00 – 10:00: delegation is driven from the Mercure hotel to the National Public Prosecutor’s Office in Rotterdam
10:00 – 11:00: Coffee and welcome plus presentation on NPO, ENCS, Article 13 (Evert Harderwijk, MT of the NPO)
11:00 – 12:00: presentation on specific themes: high tech crime (Lodewijk van Zwieten, TBC)
12:00 – 13:30: lunch offered by the NPO at hotel New York
13.30 – 14:00: departure for IRC Rotterdam
14.00 – 15.30: visit to IRC Rotterdam (Annelies Hoekstra, Arie Vermeij)
15:30 – 16:00: departure to General Procurator’s Office in The Hague (Daniëlle Deli, Annelies Hoekstra)
16:00 – 17:30: final session, including closure of visit by PG Annemarie Penn – Te Strake and debriefing of the delegation if needed (Annelies Hoekstra, Daniëlle Deli, Petra Bakker, Jolien Kuitert, Teun van Noord, Nicholas Franssen, Steven Sutton)

ANNEX B: LIST OF PARTICIPANTS

Dutch Respondents			
Name	First Name	Function	Organisation
Teeven	Fred	State Secretary of Security and Justice	Ministry of Security and Justice
Coffeng	Thieu	Acting Director of Legal and Operational Affairs Department/Head of AIRS	Office for International Legal Assistance in Criminal Matters (Security and Justice)
Deli	Daniëlle	Adviser	Procurator General's Office (International Affairs section)
El Mansouri	Malika	Public Prosecutor	Public Prosecution Service/IRC Amsterdam
Franssen	Nicholas	Counsellor	Law Enforcement Department (Security and Justice)
Harderwijk	Evert	Public Prosecutor	MT of the National Public Prosecutor's Office/NPO (<i>Landelijk Parket</i>)
Havik	Eelco	Examining Judge	Court of Rotterdam
Hermans	Koen	Prosecutor	Dutch Desk at Eurojust
Hoekstra	Annelies	Public Prosecutor	Public Prosecution Service/IRC Rotterdam
Hofstee	Theo	Chief Public Prosecutor	Public Prosecution Service Amsterdam
IJzerman	Arie	Deputy director-general	DG for the Administration of Justice and Law Enforcement (Security and Justice)
Kuitert	Jolien	Acting National Member for the Netherlands at Eurojust	Public Prosecution Service/Dutch Desk at Eurojust
Kunz	Alex	Co-ordinator/liaison officer	Police Rotterdam-Rijnmond/IRC Rotterdam
Mol Lous	Luut	Counsellor	Directorate for Legislation and Legal Affairs (Security and Justice)
Muller	Diana	International criminal law adviser	Public Prosecution Service/Criminal Assets Deprivation Bureau (<i>BOOM</i>)
Oosterveld	Gerda	Public Prosecutor	Public Prosecution Service/NPO
Penn-Te Strake	Annemarie	Prosecutor-General	Board of Procurators General
Renkers	Gerco	Chief Inspector	National Police/National Coordination Point for Cross-Border Observation (<i>LCGO</i>)
Sutton	Steven	Junior Policy Officer	Law Enforcement Department (Security and

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			Justice)
Tamerus	John	Head International Affairs Unit	National Police
Ten Kate	Warner	National Coordinating Public Prosecutor Human Trafficking	Public Prosecution Service/NPO
Tillart	Henri	Prosecutor	Dutch Desk at Eurojust
Van der Plas	Theo	Head of the National Information Organization	National Police (National Information Organization)
Van Ditzhuijzen	Nanette	Public Prosecutor	Public Prosecution Service/IRC Amsterdam
Van Noord	Teun	National Coordinating Public Prosecutor for the IRCs	Public Prosecution Service/NPO
Van Voorst	Paul	Counsellor	Law Enforcement Department (Security and Justice)
Van Zwieten	Lodewijk	National Coordinating Public Prosecutor for Cybercrime	Public Prosecution Service/NPO
Vermeij	Arie	Head IRC Rotterdam	Police Rotterdam-Rijnmond/IRC Rotterdam
Vos	Lisette	Public Prosecutor	Public Prosecution Service/NPO
Warmerdam	Tea	Assistant to the National Member for The Netherlands	Dutch Desk at Eurojust

RESTREINT UE/EU RESTRICTED**ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
ARO	-/-	Asset Recovery Office
CCP	-/-	Criminal Code of Procedure
CMS	-/-	Case Management System
DD	-/-	Dutch Desk
EAW	-/-	European Arrest Warrant
EJN	-/-	European Judicial Network
EMPACT	-/-	European Multidisciplinary Platform Against Criminal Threats
ENCS	-/-	Eurojust National Coordination System
EPOC	-/-	European Pool Against Organised Crime
EU	-/-	European Union
GENVAL	-/-	Working Party on General Affairs, including Evaluations
IRC	-/-	International Legal Assistance Centre
JIT	-/-	Joint Investigation Teams
LURIS	-/-	National Database for MLA
LIRC	-/-	National Legal Assistance Centre
MLA	-/-	Mutual Legal Assistance
NC(s)	-/-	National Correspondent(s)
NM(s)	-/-	National Member(s)
NPO	-/-	National Public Prosecution Office
OCC	-/-	On call coordination system
PPO		Public Prosecution Office
PPS	-/-	Public Prosecution Service
SOCTA	-/-	Serious and Organised Threat Assessment
THB	-/-	Trafficking in Human Beings

ANNEX D: EJM CONTACT POINTS OF THE NETHERLANDS

Detailed List of Contact Points of Netherlands - 09/07/2013

Countries: Netherlands

PERSONAL INFORMATION

Name: M. (Malika) Al MANSOURI
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre Amsterdam
Specialization: Incoming European Arrest Warrant's for the whole memberstate
Address: Postbus 84500

PHONE NUMBER AND WAYS TO CONTACT

Phone number: (+31) 20 541 6089
Fax number: (+31) 20 541 2175
Mobile phone number:
Email Address: m.al.mansouri@om.nl
Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:
NL - Divisão Geral: Amsterdam

SPECIAL REMARKS

Languages: Dutch - English - French

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:



Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: Marina BEUN
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre North-west and Middle Netherlands
Specialization: organized crime, missing persons and fraud
Address: Postoffice Box 601



PHONE NUMBER AND WAYS TO CONTACT

Phone number: (+31) 238883020
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Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - German - French

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: Mariette BRUNSVELD
Function: Public Prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre North- and East Netherlands
Specialization:
Address: Post Office Box 588

PHONE NUMBER AND WAYS TO CONTACT

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Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages:

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:



Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: M.E. (Thieu) COFFENG
Function: Head of the Office of International Legal Assistance in Criminal Matters
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Ministry of Security and Justice
Department: Office of International Legal Assistance in Criminal Matters
Specialization:
Address: Postbus 20301



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Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: English - Dutch - German

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: M. (Margriet) DIERICK
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre North-west and Middle Netherlands
Specialization: International Criminal law
Address: Postbus 16005



PHONE NUMBER AND WAYS TO CONTACT

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Fax number:
Mobile phone number:
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Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - German

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: M. (Martin) KEUS
Function: legal officer
Type of CP: CP-TC
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Ministry of Security and Justice
Department: Department of International Legal Assistance in Criminal Matters
Specialization: EJM Tool correspondent
Address: Post Box 20301



PHONE NUMBER AND WAYS TO CONTACT

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Fax number: +31 70 370 7945
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Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - German

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: J.C.J.G.B. (Jolien) KUITERT
Function: Deputy National member for the Netherlands / coordinating EJN Contact point
Type of CP: CP-NC-ENCS
ENCS-Eurojust National Coordination System
Last Update: 6/17/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: EUROJUST
Department: College
Specialization: Will receive requests for (operational) legal assistance
Address: Post Office Box 16183

PHONE NUMBER AND WAYS TO CONTACT

Phone number: (+31 70) 412 5223
Fax number: (+31-70) 412 5521
Mobile phone number: (+31 6) 533 32875
Email Address: jkuitert@eurojust.europa.eu
Remarks: Outside Office hours please contact +31 79 3459888
Extras:
Phone (Direct): (+31 70) 339 96



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - German - French

OTHER DEPENDENT CONTACTS

If outside the office: National Criminal Intelligence Service
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: G. (Gerda) OOSTERVELD
Function: public prosecutor
Type of CP: CP-ENCS
ENCS-Eurojust National Coordination System
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department (National Public Prosecutor's Office)
Department: National Co-ordination Centre for International Legal Assistance
Specialization: Joint Investigation Teams
Address: Postbus 395

PHONE NUMBER AND WAYS TO CONTACT

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Fax number: (+31) 10 496 6005
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Remarks:
Extras:



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages:

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: A. (Alexandra) OSWALD
Function:
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutor's Office
Department: International Legal Assistance Centre Amsterdam
Specialization: Incoming European Arrest Warrant's for the whole memberstate
Address: Postbus 84500

PHONE NUMBER AND WAYS TO CONTACT

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Email Address: a.oswald@om.nl
Remarks:
Extras:



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: Anne-Marie SMIT
Function: Judge
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Court of Appeal
Department: criminal law division
Specialization: International criminal cases
Address: Leeghwaterlaan 8



PHONE NUMBER AND WAYS TO CONTACT

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Fax number: +(31) 736204381
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Email Address: a.m.smit@rechtspraak.nl
Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: English - French - Dutch

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: H. (Henri) TILLART
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Eurojust
Department:
Specialization: Assistant to the National Member for The Netherlands
Address: Post Office Box 16183

PHONE NUMBER AND WAYS TO CONTACT

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Mobile phone number: +31(0)6 45666733
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Remarks:
Extras:



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - German

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: K. (Kasper) van der SCHAFT
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre Amsterdam
Specialization: incoming European Arrest Warrant's for the whole memberstate
Address: Postbus 84500

PHONE NUMBER AND WAYS TO CONTACT

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Mobile phone number:
Email Address: k.Schaft@om.nl
Remarks:
Extras:
Phone (General): irc.amsterdam@om.



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:
NL - Divisão Geral: Amsterdam

SPECIAL REMARKS

Languages: English - German - French - Dutch

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available: National Criminal Intelligence Division (SIRENE)

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: N. (Nanette) van DITZHUYZEN
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutor's Office
Department: International Legal Assistance Centre Amsterdam (Central Authority for incoming EAW's)
Specialization: Incoming European Arrest Warrant's for the whole memberstate
Address: Postbus 84500

PHONE NUMBER AND WAYS TO CONTACT

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Remarks:
Extras:



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - French

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: D.W.A. (Dávid) van KUPPEVELD
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutor's Office
Department: International Legal Assistance Centre Limburg
Specialization:
Address: Postbus 2800

PHONE NUMBER AND WAYS TO CONTACT

Phone number: (+31)433465142
Fax number: (+31)438885755
Mobile phone number: (+31)613974347
Email Address: d.van.kuppeveld@om.nl
Remarks:
Extras:



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - German

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: T. (Teun) VAN NOORD
Function: Public Prosecutor
Type of CP: CP-NC-ENCS
ENCS-Eurojust National Coordination System
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: National Prosecutor's Office
Specialization:
Address: Posthumalaan 74

PHONE NUMBER AND WAYS TO CONTACT

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Email Address: t.van.noord@om.nl
Remarks:
Extras:



REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: Dutch - English - French - German

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
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Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: M. (Marleen) van SOLINGEN
Function: public prosecutor
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre Rotterdam/Dordrecht
Specialization:
Address: Post Box 50956



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Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:
NL - Divisão Geral: Dordrecht

SPECIAL REMARKS

Languages: Dutch - German - English

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available:

Detailed List of Contact Points of Netherlands - 09/07/2013

PERSONAL INFORMATION

Name: Nicole VOGELENZANG
Function: Officier van Justitie
Type of CP: CP
Last Update: 7/8/2013

INFORMATION ABOUT THE ORGANIZATION

Organization: Public Prosecutions Department
Department: International Legal Assistance Centre The Hague
Specialization: International judicial cooperation
Address: IRC Den Haag
Postbus 264



PHONE NUMBER AND WAYS TO CONTACT

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Mobile phone number: +31 (0) 6 1031 1567
Email Address: N.Vogelenzang@om.nl
Remarks:
Extras:

REGIONAL COMPETENCE FOR THIS CP

Member State and Region:

SPECIAL REMARKS

Languages: English - Dutch

OTHER DEPENDENT CONTACTS

If outside the office:
Please contact via:
If not available: