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Report on Bulgaria

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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 Bulgaria

DECLASSIFIED

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## 1. EXECUTIVE SUMMARY

- The overall assessment of the evaluation team is positive.
- The evaluation visit to Bulgaria took place in a very informative and constructive atmosphere. The evaluation team had the opportunity to understand the functioning of the Bulgarian judicial system as well as the role Eurojust and the EJM can play to support the competent national authorities within this system.
- Eurojust is very well perceived in Bulgaria. Requests addressed to Eurojust come from the supervising prosecutor who is in charge of the specific case and from judges.
- Prosecutors are aware of the EJM and use it to a certain extent. Judges are far less familiar with the EJM.
- Bulgaria has set up an internal network of prosecutors who deal with cross-border/international judicial cooperation most frequently. The network seems to function very well.
- Prosecutors in Bulgaria are connected to Eurojust via a secure connection.

### *Eurojust*

- The ENCS was set up in December 2013.
- The practical implementation is ongoing and will develop further over time.
- Compliance with the reporting obligation introduced by Article 13 of the Eurojust Decision could be improved.

### *EJM*

- The EJM and its tools seem to be well known by prosecutors. The internal network of prosecutors seems to function very well and facilitates the work of prosecutors with regard to cross-border/international judicial cooperation.

- Awareness of judicial cooperation among the judges appears to be quite limited. Judges are willing to contact the national desk or prosecutors directly in order to receive information or support.
- Judges have a role to play in MLA and their awareness in this field could be improved *inter alia* by appointing a judge as an EJN contact point.

### ***Training***

- The National Institute of Justice (NIJ) regularly provides training on judicial cooperation, including training on Eurojust and the EJN and how they can assist national authorities.
- Training on mutual legal assistance, including the use of the EJN and Eurojust forms part of mandatory initial training for all magistrates nowadays.
- Since 2007, the national member for Bulgaria and the former SNE (now an assistant) have been active in giving lectures to national authorities on Eurojust.
- Knowledge of languages commonly used as communication tools among practitioners should be improved as a key way to build up confidence and allow for direct contact.



## 2. INTRODUCTION

Following the adoption of the Joint Action 97/827/JHA of 5 December 1997<sup>1</sup>, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime has been established.

In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to the practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>2</sup>, as amended by Decisions 2003/659/JHA<sup>3</sup> and 2009/426/JHA<sup>4</sup> and of the Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network<sup>5</sup> repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters<sup>6</sup>.

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust and the EJN only but rather on the operational aspects in the Member States. This is taken into account to encompass, in addition to cooperation with prosecution services, , for instance, how police authorities cooperate with Eurojust national members, how the National Units of Europol will cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities.

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<sup>1</sup> Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997 pp. 7 - 9.

<sup>2</sup> Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA), OJ L 63, 2.3.2002, pp. 1-13.

<sup>3</sup> Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 245, 29.9.2003, p. 44-46.

<sup>4</sup> Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 138, 4.6.2009, pp. 14-32.

<sup>5</sup> Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network, OJ L 191, 7.7.1998, p. 4-7.

<sup>6</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130-134.

The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJM. Thus, the evaluation will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experiences from all evaluations show that Member States will be in different positions with regard to implementation of relevant legal instruments, and the current process of evaluation could also provide useful input to Member States that may not have implemented all aspects of the new Decision.

The questionnaire for the sixth round of mutual evaluations was adopted by GENVAL on 31 October 2011. As agreed in GENVAL on 17 January 2012, Eurojust was also provided with a questionnaire. The questionnaire to Eurojust was adopted by GENVAL on 12 April 2012. The answers to the questionnaire addressed to Eurojust were provided 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. Bulgaria was the twenty second Member State to be evaluated during this round of evaluations. In accordance with Article 3 of the Joint Action, a list of experts in the evaluations to be carried out has been drawn up by the Presidency. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request by the Chairman of GENVAL to delegations on 15 July 2011.

The Evaluation Teams consist of three national experts, supported by two staff members 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 European Commission, Eurojust and Europol should be invited as observers.

The experts charged with undertaking the evaluation of Bulgaria were Ms Alessandra Giraldi (Denmark), Ms Claude Lafont (France) and Mr Juan Carlos Ochoa da Silva (Spain). Three observers were also present: Ms Carine Hanssens (European Commission), Mr Christian Lorenz (Eurojust) and Ms Anna Danieli (Eurojust), together with Ms Anne Cecilie Adserballe and Mr Sławomir Buczman 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 the findings of the evaluation visit that took place in Bulgaria from 28 till 31 January 2013. Detailed replies to the evaluation questionnaire together with detailed answers to subsequent follow-up questions served as the basis for the report.

### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. General information

The Republic of Bulgaria has been a full member of the EU since 1 January 2007; accession required a number of changes in domestic legislation in accordance with the commitments undertaken and the new challenges. This fact in itself has led to new developments in criminal justice policy, including the use of Eurojust and the European Judicial Network in the fight against various forms of serious crime.

The Judiciary in the Republic of Bulgaria, pursuant to the Constitution, is a system of authorities: the court, prosecutor's office and investigation service. All professionals having a master's degree in law working in these authorities – judges, investigators and prosecutors have a common generic name “magistrates”. The judicial procedure consists of three levels: first level, appellate level and cassation level, unless procedural law provides otherwise. The objective is to ensure maximum protection of the rights and legal interests of the legal subjects. When making their decisions, magistrates are guided by the law and their inner conviction. The Constitution explicitly sets forth that extraordinary courts are inadmissible. The number, judicial regions and seats of regional, district, military and appellate courts are determined by the Supreme Judicial Council. All courts are budget-supported legal entities.

Courts are state authorities vested with justice-administration functions in civil, criminal and administrative cases.

There are:

- 113 regional courts, which are the main courts hearing cases as a first-level court (their judgments can be appealed before the respective district court);

- 28 district courts – that operate at the first level (they hear, as a first instance court, a specific category of cases which are of a higher interest in terms of value or public relations) and at the second level (they hear, as a second instance court, judgments delivered by regional courts);
- 28 administrative courts – administrative courts have jurisdiction over all cases based on requests for: the issue, amendment, cancellation or declaration of nullity of administrative acts; declaration of nullity or voidance of agreements under the Administrative Procedure Code.
- an Appellate Court - hears cases initiated on the grounds of appeals and protests against first-instance acts of district courts in its judicial region.
- the Supreme Court of Cassation - is the supreme judicial authority with regard to criminal and civil cases.

The Supreme Administrative Court (SAC) implements supreme judicial supervision of the accurate and equal application of the laws in administrative administration of justice. It hears appeals and protests against acts of the Council of Ministers, the Prime Minister, the Deputy Prime Ministers, ministers, heads of other agencies that are directly subordinated to the Council of Ministers, acts of the Supreme Judicial Council, acts of the Bulgarian National Bank, acts of regional governors, as well as other acts set out in a statute; it rules on the compliance with statutes of statutory instruments; it reviews as a cassation instance judicial acts rendered under administrative cases and hears petitions for setting-aside of legally effective court judgments under administrative cases.

Bulgaria has about 2 000 judges, 1 500 prosecutors and about 400 investigating magistrates. Investigating judges, that exist in some Member States (e.g. in France and Belgium), do not exist in Bulgaria.

Prosecutors and police departments gather evidence in a procedure in order to lead it to trial, subject to the authorisation given by judges for certain investigations such as controlled deliveries. Most of the cases regarding mutual legal assistance are dealt with by prosecutors. However, judges are also involved in MLAs, albeit to a lesser extent.

The Supreme Judicial Council (SJC) is a supreme permanent administrative body which is responsible for the management of the judiciary, represents the judiciary and secures its independence. It determines the judiciary's composition and organisation of its work, and manages the judiciary's activity without interfering with the independence of its bodies. To exercise its powers, the SJC performs the following activities: it discusses and adopts the draft judiciary budget, and controls its implementation; it appoints, promotes, transfers and relieves magistrates from office; it imposes disciplinary sanctions in accordance with the Judiciary System Act (JSA); it organises magistrates' qualification development; it determines the number of judicial regions and the courts' headquarters, the number of judges, prosecutors and investigating magistrates in individual courts, prosecution offices and investigation services and undertakes other activities specified in the JSA.

The Ministry of Justice is not part of the judiciary. The specific powers of the Minister of Justice are, *inter alia*, as follows:

- it carries out the interaction between the judiciary and the executive;
- it oversees the development of draft laws and regulations concerning the judiciary system, the activities under the Minister of Justice's competence, and opinions on draft laws and draft regulations developed by other central authorities of the executive;
- it takes part in the organisation of judges', prosecutors' and investigating magistrates' qualification development;
- it proposes the draft budget for the judiciary and submits it to the Supreme Judicial Council for discussion;
- it manages and controls activities relating to the security of the judiciary;
- it manages the development of measures at national level needed for the implementation and application of EU instruments in the fields under the Minister of Justice's competence;
- it carries out international legal cooperation and provides international legal aid in matters included in the Minister of Justice's competence.

**3.1.1. Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust and Council Decision 2009/426/JHA on the strengthening of Eurojust**

Bulgaria introduced some provisions into its national legislation in order to comply with Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter referred to as the Council Decision of 2002) and with the Council Decision 2009/426/JHA on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter referred to as the Eurojust Decision).

These are Article 46(2) and Article 49(2) of the Law on the European Arrest Warrant and Article 114(2) of the Law on the Ministry of Interior (LMI).

Article 46(2) and Article 49(2) of the Law on the European Arrest Warrant provide for a situation when two or more EAWs have been sent to Bulgarian district courts; they are a basis for optional consultation with Eurojust and set out the legal consequences of a delay in executing an EAW.

Article 114(2) of the Law on the Ministry of Interior (LMI) sets out the rules for the exchange of data *inter alia* with Europol, Interpol and Eurojust.

They were accompanied by several orders and guidance, such as:

- the Order on setting up the Eurojust National Coordination System (Order No 3910 of 5 December 2013 issued by the Prosecutor-General of the Republic of Bulgaria);
- Guidance on the work in accordance with Article 13 of the Eurojust Decision (Guidance No 788 of 5 December 2013 issued by the Prosecutor-General of the Republic of Bulgaria);
- the Order on the appointment of the Bulgarian national member and her powers (Order No MS- 27 of 12 February 2010 issued by the Prosecutor-General of the Republic of Bulgaria);
- Guidance on the allocation of cases to Eurojust and the EJM (Guidance No 15873 issued by the Supreme Prosecutors' Office of Cassation).

### **3.1.2. Council Decision 2008/976/JHA on the European Judicial Network in criminal matters**

At the time of the visit, there were 5 EJM contact points appointed where at least one was from the local level - Burgas Prosecutor's Office of Appeal.

According to Article 38a of the Law on Extradition and the European Arrest Warrant, if a Bulgarian court has no information as to the competent authority in the executing State, it shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain information from the executing State. Article 57(1) of the said Law specifies that if the location of the person claimed in the territory of a Member State of the European Union is known, the issuing authority may transmit the European arrest warrant directly to the executing authority of the said Member State. Where the issuing authority has no information about the executing authority of the said Member State, it shall consult the European Judicial Network.

Following Article 9(1) of the Law on Enforcement, Execution and Submitting Orders for Confiscation or Forfeiture and Decisions to Impose Financial Penalties, the correspondence shall be carried out directly between the competent authorities of the issuing and executing States. If the issuing authority has no information as to the competent authority in the executing State, it shall make all necessary inquiries, including via the contact points of the European Judicial Network, to obtain information from the executing State.

## **3.2 Implementation of the Eurojust National Coordination System**

### **3.2.1 Eurojust National Coordination System (ENCS)**

The ENCS has been established by Order No 3910 of 5 December 2013 issued by the Prosecutor General.

The ENCS members have been named and their functions have been given in the Order. At the time of the visit, the following persons were the ENCS members:

- national correspondent for Eurojust and the European Judicial Network, which is the contact point in the EJM and ARO (Ivanka Kotorova - prosecutor);
- another contact point in the EJM and ARO (Tsvetomir Yosifov - prosecutor);
- two other contact points for the EJM (Svetla Ivanova and Georgi Kuzmanov - prosecutors);
- Eurojust national correspondent for terrorism matters (Radosvet Andreev - prosecutor);
- two national members of Eurojust network for JIT (Evgeni Tsvetanov and Galina Andreeva - Mincheva - prosecutors);
- a national member of the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (Mario Vasilev - prosecutor).

The person responsible for the functioning of the ENCS has also been appointed (Ivanka Kotorova).

No contact point for corruption cases has been appointed in accordance with Article 12(2)(d) of the Eurojust Decision.

No judge has been appointed as the ENCS member. Due to the recent formal implementation of the ENCS and the fact that no ENCS activities have been carried out so far, the evaluation team finds that it could be considered if it will be useful to appoint a representative from the courts to the ENCS.



### **3.2.2 National correspondents**

At the time of the visit, Ivanka Kotorova was appointed national correspondent for Eurojust and national correspondent for the European Judicial Network. After the visit she was appointed the deputy national member at Eurojust. Radosvet Andreev was appointed Eurojust national correspondent for terrorism matters.

Both are members of the ENCS.

### **3.2.3 Operation of the ENCS and connection to the CMS**

The members of the ENCS combine the performance of their official tasks and their tasks as contact points. They are not exempt from the tasks related to their activity in the Prosecutor's Office. The Bulgarian authorities estimate that carrying out other tasks takes about an hour or two a day, and sometimes necessitates overtime.

The evaluation team was informed that the members of the ENCS already have close relations, either through their positions in the SPOC, their daily work or through the national internal prosecutors' network. In the opinion of the evaluators, there should be synergy between the ENCS and the national network of specialised prosecutors to avoid duplication.

The evaluation team realised that no specific activities have been planned so far for the ENCS –only formally in place since December 2013. However, some prosecutors which the evaluation team met said that the establishment of the ENCS is not expected to provide a substantial added value to the already existing Bulgarian prosecutor's network.

A Memorandum of Understanding was signed by Eurojust and the Prosecutor General of the Republic of Bulgaria to establish a secure connection between Eurojust and the Republic of Bulgaria.

The ENCS is not connected yet to the system of registration of cases in Eurojust as the technical parameters of the particular links of the CMS (Case Management System) with the national version of the ENCS are still being specified by Eurojust. Nevertheless, a secure connection between the server of the Prosecutor's Office of the Republic of Bulgaria and the Eurojust server has been built so that every prosecutor in Bulgaria can send and receive information via e-mail securely.

### **3.2.4 Cooperation of the ENCS with the Europol national unit**

The evaluation team learnt that the prosecutors who become nowadays members of the ENCS already closely cooperated before with the Europol national unit and other law enforcement agencies.

Apart from this, every prosecutor has the power to communicate directly with the SIRENE Bureau. Cooperation is carried out by means of different communication channels, such as through direct contacts, telephone, mail, email, and fax.

The Europol national unit and the SIRENE Bureau of Bulgaria are part of the structure of the International Operational Cooperation Directorate of the Ministry of Interior (IOCD).

According to the Bulgarian authorities, the Prosecutor's Office of the Republic of Bulgaria performs an effective interaction with the IOCD regarding the international exchange of operational information and data related to national and cross-border crime activities, international and nationwide search of persons and property and for the purpose of extradition, surrender and transfer of persons. However, a representative of the IOCD is not a member of the ENCS.

### 3.3 National Desk at Eurojust

#### 3.3.1 Organisation

At the time of the visit, the national desk at Eurojust consisted of the national member (Mariana Lilova), a seconded national expert (Dimitar Hadzhiyski) and an administrative assistant.

During the visit, the evaluation team was informed that, as of 12 February 2014, the Bulgarian desk would consist of the national member (Mr. Kamen Mihov, prosecutor), a deputy national member (Ms. Ivanka Kotorova, prosecutor), both the previous EJT contact points. An assistant to the national member has been also appointed (Mr. Dimitar Hadzhiyski, prosecutor).

In 2013, a Bulgarian magistrate worked at the national desk for a period of three months under a programme of the European Judicial Training Network for long-term internships.

From 2010 until 2013, the Bulgarian desk hosted 7 interns. In 2013, the national desk hosted 2 EJT trainees, one judge and one prosecutor.

#### 3.3.2 Selection and appointment

According to Bulgarian law, the national member is elected upon the proposal of the Prosecutor General to the Council of Ministers which makes a decision and publishes it in the State Gazette. Based on that decision, the Prosecutor General issues a secondment order that is sent to the Ministry of Justice. The latter prepares a notification of the powers of the national member which is transmitted by the Permanent Representation of Bulgaria to the EU and to the General Secretariat of the Council of the European Union.

According to the established practice to date, the assistant of the national member shall be determined by order of the Prosecutor-General. This order, together with the notification of the powers of the assistant national member shall be agreed with the Minister of Justice who shall notify the General Secretariat of the Council of the European Union of the appointment.

Since 2007 the Supreme Judicial Council (SJC) determines the structure and organisation of work of the judiciary and manages its activity on the basis of the functions assigned to it by the Constitution of the Republic of Bulgaria and the Law on the Judiciary. Despite its important impact on the judiciary in areas such as the promotion, dismissal and appointment of judges and prosecutors in the whole country, the SJC is not involved in the appointment procedure and in the assessment of the performance of the members of the Bulgarian desk at Eurojust.

### **3.3.3 Powers granted to the national member**

#### *3.3.3.1 General powers*

In accordance with Article 9a(2) and (3) of the Eurojust Decision, the Prosecutor-General of the Republic of Bulgaria has determined the following powers of the Bulgarian national member of Eurojust:

- powers under Article 9b of the Eurojust Decision;
- powers governed by the provisions of Article 9c of the Eurojust Decision – after consultations with the relevant Deputy of the Prosecutor-General in charge of international judicial co-operation in the Supreme Prosecutor's Office of Cassation in very complicated cases only;
- the power under Article 9f of the Eurojust Decision after consultations with the Deputy of the Prosecutor-General in charge of international legal cooperation at the Supreme Prosecutor's Office of Cassation.

The powers under Article 9b and Article 9c of the Eurojust Decision are carried out by the national member in compliance with the requirements of the national legislation relating to power sharing between the police, the prosecution and the courts, and in view of the procedures that require prior authorisation by a Bulgarian court/such as information constituting bank and tax secrecy, use of special surveillance means and other cases specified by law.

Article 9d of the Eurojust Decision has not been formally implemented. The power to authorise a controlled delivery lies with the Bulgarian courts. However, Bulgaria has not availed itself of Article 9e of the Eurojust Decision.

The national member refers the requests of other national members in writing to the competent authorities in the Republic of Bulgaria, empowered by the national law to carry out the necessary measures.

### *3.3.3.2 Access to national databases*

Through the national contact points, the representatives of the Bulgarian desk have been granted access to the following databases :

- registers of pending preliminary proceedings;
- registers of detainees;
- registers of convictions;
- registry Agency – for the registration of companies.

In practice, the national member can use two channels for receiving the relevant information-from the national authorities or directly.

### **3.3.4 Access by the National Desk to the restricted part of the CMS**

The national member will take all decisions regarding access to the CMS. In practice, the national member, his assistant and the secretary have access to the system.

A national part of the CMS has not been established, but a secure connection between the server of the Prosecutor's Office of the Republic of Bulgaria and the server of Eurojust is established.

### **3.4 EJM contact points**

#### **3.4.1 Selection and appointment**

In the Republic of Bulgaria the authority which elects representatives of the Judiciary in the EJM is the Supreme Judicial Council. According to Article 30(1), point (17) of the Law on the Judiciary, the SJC is the body that organises, directs and controls the participation of judges, prosecutors and investigators in international legal cooperation, including their participation in the national judicial network.

As regards the representatives of the Prosecutor's Office in the EJM, the Prosecutor-General of the Republic of Bulgaria shall submit a reasoned proposal concerning each and every contact point to the SJC for consideration and voting. The decision shall be made by simple majority. At the time of the visit, the following persons were appointed as the EJM contact points:

- Mr. Kamen Mihov (prosecutor), Head of the International Legal Cooperation Department at the Supreme Prosecutor's Office of Cassation of the Republic of Bulgaria (Protocol No 4/31.01.2007 of the SJC),
- Ms Ivanka Kotorova (prosecutor), Head of the International Legal Assistance Sector in the Department of International Legal Cooperation (Protocol No 13/01.04.2010 of the SJC) - national contact point for the EJM,
- Ms Svetla Ivanova (prosecutor), Lovech District Prosecutor's Office (Protocol No 13/01.04.2010 of the SJC),
- Tsvetomir Iosifov (prosecutor), Head of the International Legal Assistance Sector at the Department of International Legal Cooperation of the Supreme Prosecutor's Office of Cassation (Protocol No 6/14.02.2013 of the SJC),
- Georgi Kuzmanov (prosecutor) - Burgas Prosecutor's Office of Appeal (Protocol No 6/14.02.2013 of the SJC).

The criteria, such as the existence of a positive attestation under the Law on the Judiciary, proficiency in one of the official EU languages were taken into account when selecting and appointing the EJM contact points. Upon such an attestation, on a proposal of the national coordinator to the Prosecutor General, the latter shall submit a proposal to the SJC concerning the election of a contact point in the EJM. All EJM contact points of the Prosecutor's Office of the Republic of Bulgaria shall possess a high level of written and spoken English.

### **3.4.2 Practical operation of the EJM contact points in Bulgaria**

In the Republic of Bulgaria, the contact points in the EJM are prosecutors from all levels of the Prosecutor's Office and they cover the whole territory of Bulgaria, which is in accordance with Articles 3 and 4 of Council Decision 2008/976/JHA on EJM. In practice, their work goes in two directions – external and internal.

External direction – this refers to the work of the contact points of EJM in seeking assistance from the contact point of a foreign country – the need to establish the exact address of the relevant authority, sending a letter rogatory with a request to forward it to the relevant competent authority. Also providing assistance upon request of a foreign contact point for clarification of such issues and problems in the Republic of Bulgaria, for example, delayed execution. A primary form of communication is through e-mail and fax. Separate issues are clarified in a telephone conversation, usually in English. The contact points also complete a number of questionnaires sent through the EJM Secretariat or a Member State.

Internal direction – through international cooperation, assistance is afforded to prosecutors in the country for the preparation of applications for legal assistance, identification of the address in the requested State, clarification of certain specific requirements for the implementation of certain court procedures through "*Fiches Belges*".

The Bulgarian authorities informed that training is offered by the EJM contact points to colleagues from the country, who are members of the National Internal Prosecutor's Network under international legal cooperation in criminal matters in the Prosecutor's Office of the Republic of Bulgaria. The focus is on daily communication via e-mail with fellow prosecutors on issues that arise in this area and national training workshops are organised at least twice a year. The workshops are of a practical nature and include lectures by the contact points on the latest changes and developments in international cooperation in criminal matters, solving case studies posed by prosecutors in the network.

Judges can benefit from the established mechanism of the EJM and, in turn, prosecutors in this network have direct and close contact with them. However, no judge has been appointed yet as an EJM contact point. During the visit the evaluation team has been informed that steps have been undertaken to appoint a judge as EJM contact point.

Maintaining and updating information on the Republic of Bulgaria as a Member State on the EJM website is organised by the national correspondent under Article 4(5) of Council Decision 2008/976/JHA. A national correspondent monitors the EJM website and information about the Republic of Bulgaria and informs the other contact points on time when it is necessary to change the data uploaded on the website.

### **3.5 Conclusions**

#### **3.5.1 The formal (legislative) implementation process**

- Bulgaria has implemented the Eurojust Decisions by means of specific provisions inserted in legislative acts, and by means of orders and guidelines addressed to practitioners, and not by *ad hoc* legislation.
- Articles 46(2) and 49(2) of the law on the EAW provide that a court may consult with Eurojust if a decision has to be taken on conflicting EAWs; and that the court shall notify Eurojust of delays exceeding 90 days from the arrest of the suspect. Article 114(2) of the Law on the Ministry of Interior is on the exchange of information.



- The legal framework applicable to international and European cooperation in criminal matters is available to prosecutors, including by means of a Manual on these instruments and the prosecutors' intranet.
- The instruments are the Order of the Prosecutor-General setting up the ENCS of 5 December 2013, the guidelines issued by the Office of the Prosecutors'-General on Article 13 of the Eurojust Decision of 5 December 2013 and the “Methodological guidance manual for work with Eurojust and the European Judicial Network” of 6 December 2013.

### **3.5.2 Division of prosecution tasks between the police and prosecutor's office**

- According to Bulgarian law, prosecutors are in charge of investigating a criminal case at the pre-trial stage. The prosecutor assigned to a case decides which investigating body to assign to the case, whether this is an ‘investigator’<sup>7</sup>, an investigating officer from the Ministry of Interior (Police) or an investigating officer from the State Agency for National Security or a combination of such investigators.
- At least during the pre-trial phase of the case, the prosecutor is solely responsible for requesting mutual legal assistance from abroad.
- After the indictment has been presented, the responsibility of the case is transferred to the court. The judge is now in charge of deciding on any additional investigative steps and on the summoning of witnesses. At this stage, the judge may himself/herself issue requests for mutual legal assistance – or may request the assistance from the prosecutor to do so.
- It was not entirely clear during the visit in which cases the court will in practice itself issue an MLA request and in which cases the court will request the assistance from the prosecutor to do so. It was the impression of the evaluators that this is decided on a case-by-case basis.

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<sup>7</sup> See page 10.

- The investigative magistrate and the SANS have set up a joint unit for crimes committed by magistrates. In these cases, the prosecutor's office has the leading role. The Supreme Cassation Office is supervising the investigation. As prosecutors can investigate colleagues from the same department, concerns are raised about the objectivity of these investigations.

### **3.5.3 The National Desk at Eurojust**

- Bulgarian national desk currently consists of a national member, a deputy and an assistant. Hence, it is in compliance with the Eurojust Decision.
- The members of the desk are proposed by the Prosecutor-General, and appointed by the Council of Ministers. The evaluation team noted, however, the important role of the Supreme Judicial Council in appointing and dismissing judges and prosecutors. In the opinion of the evaluators, involving the Supreme Judicial Council in the appointment procedure could allow Bulgarian authorities to include practitioners other than prosecutors in the functioning of the national desk.
- It was also noted that no criteria are in place to evaluate a national member (or deputy or assistant), either during or at the end of their term.
- The national member appears to be granted the specific powers under the Eurojust Decisions. However, it seems that powers under Article 9b of the Eurojust Decision are exercised “after consultations with the relevant Deputy of the Prosecutor-General”. Nonetheless, the Bulgarian authorities indicated that this may happen only in very complicated cases. Article 9d of the Eurojust Decision has not been formally implemented.
- The national desk at Eurojust seems to function well and is well known to practitioners, both at the judicial and law enforcement levels. The national member has frequent contact with national law enforcement practitioners at several training events. The national member is known in particular for having promoted Eurojust and the EJM in cooperation with the NIJ.

### 3.5.4 Implementation of the ENCS

- The ENCS was formally set up in December 2013.
- At the time of the visit, the ENCS consisted of the national correspondent for Eurojust, who also served as the national correspondent and contact point for the EJM, and as the ARO contact point, 3 other EJM contact points, 1 national correspondent for terrorism, 2 JIT (Joint Investigation Team) experts, 1 member of the genocide network, and one additional ARO contact point.
- Regarding the composition of the ENCS, all EJM contact points, as well as other members are prosecutors. The Bulgarian authorities should consider supplementing the composition of the ENCS by appointing a contact point for the corruption network.
- It should be also noted that no judge has become a member of the ENCS.
- Since the ENCS has only been recently set up it does not seem to be well known among practitioners. According to practitioners met by the evaluation team, the ENCS does not seem to represent any significant added value to the functioning of the system. In the opinion of the evaluators, the Bulgarian authorities could make an effort to explore the full potential of the ENCS as a structure having a role to improve judicial cooperation in the near future.
- However, the fact that Bulgaria has been able to count on the existence of a well functioning internal network of prosecutors specialised in international legal assistance since 2007 should not be overlooked. In the opinion of the evaluators, the functioning of the ENCS should be carried out without prejudice to the operability of the national network of specialised prosecutors.
- In accordance with Article 12(5)(d) of the Eurojust Decision close relations should be established between the ENCS and Europol's national unit. Therefore, the Bulgarian authorities could consider inviting a representative of the Europol national unit of the IOCD to participate in the ENCS meetings.

### **3.5.5 Connection to the CMS**

- The members of the ENCS do not have access to Eurojust CMS. The Bulgarian authorities expect this connection to be established by Eurojust soon.
- Bulgaria is currently working on granting access to the law enforcement services (but not yet to judges) to the secure connection of Eurojust.
- Bulgaria is one of the few Member States that has a secure connection with Eurojust.

### **3.5.6 EJM**

- The EJM contact points are appointed by the Supreme Judicial Council upon a motion of the Prosecutor-General.
- Bulgaria has appointed 5 contact points for the EJM – all of which are prosecutors. The team was informed that the Supreme Judicial Council has taken steps to have a judge appointed as an EJM contact point but at the time of the visit this had not happened.
- The evaluation team did not receive much information on the actual functioning of the Bulgarian EJM, possibly because of the absence of the national correspondent for the EJM.
- Visits to the court revealed quite poor knowledge and use of the EJM and the EJM website amongst judges. One explanation given was the fact that so far no judges have been appointed as EJM contact points.

## 4. EXCHANGE OF INFORMATION

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

#### 4.1.1. Databases relevant for the information exchange with Eurojust

The national member does not have direct electronic access to the various existing databases. However, he/she may be provided with relevant information upon request from the following databases:

- criminal records data;
- data on overseas trips;
- tax and social security data;
- banking and insurance data;
- data on property owned – real estate, vehicles, etc.;
- business records;
- data on pending court and pre-trial proceedings and on detainees;
- data on issued identity papers, including photos used for this purpose;
- data on the population (civil status, relatives and address registrations);
- data on fingerprint and DNA registrations;
- data on criminal acts recorded by the police;
- automated information system (AIS) for search activities
- National Schengen Information System.

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

Article 13 of the Eurojust Decision has been formally implemented by Guidance No 788 of the Prosecutor-General dated 5 December 2013. This order places the obligation to forward Article 13 information solely on prosecutors.

The Guidance states that the *“Prosecutor’s Office of the Republic of Bulgaria (PORB)... has the obligation to exchange with Eurojust any information needed for the implementation of goals and targets of this organisation according to its competence...”* .

The Guidance also includes references to the Eurojust Article 13 form and explains how to fill it in.

The observing prosecutor shall therefore, immediately upon the establishment of the cases described in Article 13 of the Eurojust Decision, complete a form, which he/she shall send directly to the national member with a copy to the International Department in the SPOC.

However, the evaluation team was informed that so far, no information has been forwarded to Eurojust solely for the purpose of information –contrary to information being sent in connection with a request for assistance. It was also informed that the Article 13 form is being used to report information in cases where Eurojust is asked for assistance, which was considered impractical and unnecessary.

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

To comply with Council Decision 2005/671/JHA, a prosecutor from the International Department in the SPOC was designated a national correspondent for Eurojust on terrorism. He shall participate in all annual strategic and tactical meetings at Eurojust relating to terrorism matters and shall prepare and send information regarding these meetings. He uses a standardised form sent by Eurojust to exchange information on the said Decision.

The national correspondent for terrorism matters is a member of the ENCS.

According to the National Plan for Combating Terrorism, the functions of a national coordinator for counter-terrorism shall be carried out by the Coordination Centre for combating international terrorism in SANS which is the national contact point under counter-terrorism. Exchange of information with Europol is done by the Europol national unit in the structure of the IOCD – MI.

SANS annually provides summary information to Europol in connection with the preparation of the annual strategic assessment report on the threats of terrorism /TE – SAT/.

#### **4.1.4. Channels for information transfer to Eurojust**

Information under Article 13(5) to (7) of the Eurojust Decision is obtained at Eurojust by e-mail, fax and regular mail. The "structured way" mentioned in Article 13(11) of the Eurojust Decision is applied using established national practice for referring the matter to the relevant authority (Eurojust). For the purpose of filing the case in the CMS, the national desk requires minimum information in accordance with Annex 2 to the Eurojust Decision.

#### **4.1.5. Exchange of information on the basis of Article 13 (5) to (7) of the Eurojust Decision**

The required information under Article 13(5) to (7) of the Eurojust Decision is received by the national member in a decentralised way – directly from the observing prosecutors in first-instance Prosecutor's Offices.

In the JIT, immediately after signing the JIT agreement, the team leader and/or observing prosecutor will complete a form and send it to the national member at Eurojust accompanied by a copy to the International Department in the SPOC, and a copy to the national JIT experts. Upon completion of the work of the team, he shall likewise inform the above addressees of the team's performance. In other cases, requests for coordination, preparation and setting up a JIT are obtained through the JIT contact points or the national correspondent for Eurojust.

For this purpose, Bulgaria has established a secure network with Eurojust. All prosecutors in Bulgaria have the possibility to communicate with Eurojust via a secure connection. Nonetheless, judges cannot avail themselves of a secure line when communicating with Eurojust. Contact will take place through non-secure email, fax or telephone. Since statistics show that approximately 50% of national requests to Eurojust come from the courts, this situation seems unsatisfactory.

In the opinion of the evaluators the practical application of the obligation in the Article 13 has left room for improvement.

## **4.2. Feedback by Eurojust**

### **4.2.1. Qualitative perception of the information flows between Eurojust and Bulgaria**

According to the Bulgarian authorities, the information flow between Eurojust and the competent authorities in Bulgaria is considered very positive.

The national desk at Eurojust notifies the competent national authorities about the result of their request, achieved through interaction with the national desks of the other Member States at Eurojust and the liaison magistrates. This also applies to cases in which, as a result of the processing of information submitted to Eurojust, related cases have been established. In many instances, numerous related cases have been established.

The national authorities send Eurojust the information required for the registration of the case and for the preparation of the request forwarded by the Bulgarian desk to the respective desks of the requested States. If the information originally provided is insufficient, the Bulgarian desk requires additional information so as to communicate the request to the other national desks in a correct manner.

All information received by the Bulgarian desk is sent to the requesting authority in Bulgaria, which, according to the Bulgarian authorities, was found useful.



#### **4.2.2. Practical or legal difficulties encountered when exchanging information with Eurojust**

The Bulgarian authorities have not reported any practical or legal obstacles in terms of the exchange of information through the regular channels.

#### **4.2.3. Suggestions for improving the information exchange between Bulgaria and Eurojust**

Nothing to be reported.

#### **4.2.4. The E-POC project**

Bulgaria has taken part in the E-POC project – and has established secure lines of communication with Eurojust.

In the opinion of the Bulgarian authorities, the E-POC IV project was completed successfully. A secure connection for exchange of information has been built and is available and used by all prosecutors in Bulgaria.

Project achievements will be particularly important for the development of the national part of the CMS, which is expected to be implemented by the end of 2014.

#### **4.3. Conclusions**

- Article 13 of the Eurojust Decision has been formally implemented by Guidance of the Prosecutor-General of 5 December 2013 on the work in accordance with Article 13 of the Eurojust Decision.

- The Article 13 form has been rarely used. The evaluation team noted that competent national authorities do not make use of this form, and prefer to send information to Eurojust along the lines of Annex 2 of the Eurojust Decision. Some improvement was noticed after an EJTN trainee who worked at the national desk returned to Bulgaria and started to use the form.
- It was also noted that prosecutors are the competent authorities naturally best placed to provide information to Eurojust, thanks also to the secure connection each prosecutor has with Eurojust. Police authorities can send information to Eurojust, but in practice it is the prosecutor who does so. There is no legal obligation in place on judges to send Article 13 information to Eurojust.
- Therefore, the evaluators think that it should be useful to follow up on the practical implementation and applicability of Article 13 of the Eurojust Decision in the future. It has yet to be seen what effect the Prosecutor's General Guidance will have in practice.
- Bulgaria has established a secure connection with Eurojust for the exchange of information. However, access to secure connection is only granted to prosecutors. Therefore, in the opinion of the evaluators, a secure method of communication between national courts and Eurojust should also be established.
- The Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences has been incorporated into Bulgarian legislation. The evaluation team was ensured that information is exchanged on an annual basis.
- In the view of the evaluators, efforts should continue to be made to provide useful information to member states in accordance with Article 13a of the Eurojust Decision.

## 5. OPERATIONAL ASPECTS

### 5.1. Statistics

The statistics provided by Eurojust show that in 2012 Bulgaria registered 69 cases, out of which 61 had a bilateral dimension and 8 a multilateral dimension. Bulgaria was involved in 64 cases as a requested country and in 69 cases as a requesting country.

The same statistics show that in 2013 Bulgaria was involved in 70 cases as a requesting country and in 63 cases as a requested country. Regarding requests from home authorities, in 2013 the Bulgarian desk received 37 requests from the Prosecutor's Offices and 32 requests from courts. In addition, one request was issued by the Ministry of Justice, and one by the State Agency for National Security.

Regarding coordination meetings in 2013, the Bulgarian desk was involved as a requested country in 12 coordination meetings, and in 7 coordination meetings as a requesting country. In 2012 Bulgaria was involved in coordination meetings as a requested country in 18 cases and in 4 cases as a requesting country.

### 5.2. Practical experience in relation to Eurojust

The Bulgarian desk in Eurojust keeps statistics of its contacts with the national authorities in Bulgaria. Each request for assistance from Bulgaria is registered as a case or temporary work file and the relevant national authority is notified. Each year, the national member prepares an annual report on the work of the national desk, which is sent to the attention of the Prosecutor-General and is included in the annual report of the PORB. In this report, the national member states keep a record of the number of cases registered in the national desk from and in relation to Bulgaria, register how many requests have been received and from which national authorities.

In the national database of the Prosecutor's Office of the Republic of Bulgaria, all cases that were assisted by Eurojust are registered. In the period from 1.11.2011 until 1.11.2013, a total of 203 cases which concern the SPOC were registered.

The Bulgarian desk has facilitated translation including translation of documents in connection with urgent and important cases. As an example, it was reported that the desk facilitated translations in two cases of transfer of criminal proceedings. In one of these cases, a Bulgarian court needed evidence from Slovenian authorities urgently. Evidence was first translated into English, and then from English into Bulgarian in just 2 days. It was also mentioned that courts request Eurojust assistance also when EAWs have to be translated.

### **5.3. Allocation of cases to Eurojust, the EJM or others**

When the competent authorities in Bulgaria have to choose where to ask for assistance in relation to a case (Eurojust, EJM or other bodies), they take into account the competence of these bodies (networks), previous positive experience, if any, as well as direct contacts with the representatives of the individual units.

The Prosecutor General of Bulgaria has developed a Methodological Guidance Manual for work with Eurojust and the European Judicial Network to prosecutors whether to ask Eurojust and to the EJM for assistance. Also, this is now part of mandatory training for all magistrates.

The conditions to refer a case to Eurojust for assistance are as follows:

- to coordinate preliminary investigations in several countries;
- to coordinate and plan an investigation in the territory of several countries at the same time;
- to set up and fund a joint investigation team;

- to provide help in urgent cases, including cases involving only two EU Member States. This may be the case if one or more accused persons are detained or coercive measures have to be applied in another country for a short time – e.g. controlled delivery, interception of telephone communications, house search, implementation of precautionary measures with regard to property, or where there is a risk of expiry of the deadline for execution of the EAW;
- the request for mutual legal assistance is not executed within the time desired by the requesting State and the direct contact between the EAJ contact points have not led to the desired result;
- in cases of factual and legal complexity, such as the execution of an EAW which needs additional information or where there is a delay in its execution. In such cases, Eurojust provides assistance even though the offence does not fall within the list of offences for which it has jurisdiction;
- in cases of conflict of jurisdictions, where two or more Member States have jurisdiction to investigate the same crime and cannot agree on which of them is in a better position to continue the investigation;
- the request for mutual legal assistance is of factual or legal complexity/corruption offences, tax evasion, money laundering, etc. or where it is related to cases with a particularly high degree of public interest; Eurojust can provide assistance in a bilateral case when only two states are involved or when the case is not urgent;
- in cases where, in order to identify and understand the legal framework of the requested State, it is necessary to make an in-depth analysis or conduct relevant discussions between the two countries.

Eurojust also supports the national authorities through the national member, his/her deputy or assistant in the following additional cases:

- in cases of emergency or in cases where other channels of cooperation are not suitable or cannot lead to a result that is needed within a short time;

- to help to obtain information concerning the phase of execution of the relevant request for legal assistance or the execution of the mutual recognition decision where other channels have failed;
- when the request for legal assistance or the decision for mutual recognition have not been fulfilled urgently or have been sent to Eurojust by the On-Call Coordination System (OCC).

The observing prosecutor may refer a case in the pre-trial proceedings to the European Judicial Network for support in the following cases:

- a request concerning the conditions for obtaining legal assistance from another EU Member State in specific cases;
- a request concerning to which body and where to send the request for legal assistance or the European arrest warrant;
- information concerning the legislation related to the matter in another EU Member State;
- where it is necessary to ask for advice on how to resolve a legal matter.

Whereas prosecutors seem to be informed on the conditions on the rules governing the referral of cases to Eurojust/EJN, it was not clear to the evaluation team to what extent knowledge of Eurojust/EJN is widespread among judges. In fact, none of the judges met knew the Guidelines issued by the Prosecutor-General on division of cases between EJN and Eurojust. The evaluation team was informed that judges do not – contrary to prosecutors – have access to centralised, specialised information on mutual legal assistance. Only they can access the websites of Eurojust and EJN. Also there was no organised sharing of experience and best practice among judges as is the case amongst prosecutors.

The judges met in Plovdiv admitted it is often difficult for Bulgarian judges to decide whether to address Eurojust or the EJN, and perceive the system as having a “lot of bureaucracy” and “too many different bodies”. This supports the idea of that there is still a need for more information and training.

Judges informed the evaluation team that they have a widespread knowledge of Eurojust and that they prefer to send requests for MLA – even simple requests – through Eurojust. Several judges felt uncomfortable with the principle of direct contact between competent authorities and found it more convenient to forward all requests through Eurojust.

The national member of Eurojust confirmed that an increasing number of requests for assistance are sent to the national desk by judges. However, a judge from the Sofia City Court mentioned that judges are relying increasingly on prosecutors to issue MLA requests. In the Prosecution Office of Plovdiv, it was mentioned that 5 prosecutors have been appointed to receive all incoming MLA-requests.

Another judge also mentioned the lack of language skills as a reason for not seeking direct contact with foreign competent authorities. This was also explained by the fact that MLA requests will often have to be translated whereas simple requests for assistance or information can be communicated through Eurojust in the Bulgarian language.

The national member is well known and easily approachable. Consequently, the evaluation team noticed that practitioners met tend to contact the national member automatically even if the case could be dealt via direct contacts with the competent foreign authorities. It has been also noted that Eurojust is asked to intervene when a request is urgent most of the time.

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

In principle, Eurojust deals with cases that are within its jurisdiction or require urgent transmission of information, urgent actions or coordination of such actions. Most often requests for assistance come in the early phase of the investigation, but there are cases where requests for assistance are referred to the national desk due to delayed execution of a letter rogatory or if the request for additional information has arisen in the trial phase.

### **5.3.2. Requirements for cooperation between Bulgarian national authorities and Eurojust**

The Bulgarian legislation does not envisage formal requirements or specific procedures for cooperation between the national authorities and Eurojust. Direct contact is mainly used for communication, and where it is necessary for Eurojust to send documents or court papers, they are accompanied by a cover letter if the Bulgarian legislation so requires.

Despite the absence of legally formalised requirements for communication, by analogy with the established Bulgarian practice of communication between judicial and law enforcement authorities, the Bulgarian national desk prepares all the correspondence in accordance with the forms and methods of communication established in Bulgarian practice.

The national member and his/her assistant perform their tasks in relation to specific cases according to the specificity of the case and the powers conferred on them by the Eurojust Decision. In practice, this involves direct communication with the competent judicial and law enforcement authorities in the Republic of Bulgaria, the Ministry of Justice and SANS regarding specific cases. In urgent cases, communication and coordination of activities is carried out by telephone and exchange of information is also carried out by telephone, and by email or fax.

### **5.3.3. Cases related to the powers exercised by the national member (Article 6)**

The competent judicial authorities in Bulgaria cooperate with the national member at Eurojust as defined in Article 6 of the Eurojust Decision, based on a direct contact. This rule is applicable to each of the listed hypotheses in the wording of Article 6.

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

According to the Bulgarian desk, it has not been necessary so far to forward a request to the national authorities pursuant to Article 7 of the Eurojust Decision in cases where Eurojust acts as a collegial body.



## 5.4. Practical experience related to coordination meetings

### 5.4.1. Qualitative perception

Bulgarian judicial and law enforcement authorities highly praised the quality of organisation of coordination meetings under the auspices of Eurojust. They mentioned the following advantages of the meetings:

- enabling direct participation of representatives of the competent judicial authorities of the relevant stakeholders;
- providing interpretation;
- creating scope for direct exchange of information and evidence;
- discussing and outlining steps for follow-up;
- discussing the parameters of future agreements establishing joint investigation teams;
- discussing and analysing opportunities for transfer of proceedings and avoiding problems such as "*ne bis in idem*", and the conflict of jurisdictions, etc.

These meetings also have an important role in building and strengthening mutual trust between judicial and law enforcement agencies of the participating countries. The only drawback mentioned is the limited number of participants from the national authorities due to budgetary restrictions.

### 5.4.2. Role of the ENCS

According to the Bulgarian authorities, there is no role allocated to the ENCS in coordination meetings.

### **5.5. Use of the On-Call Coordination (OCC)**

The commissioning of the OCC as of 4.04.2011 led in fact to the designation of the national member and the assistant of the national member of Bulgaria at Eurojust as contact points. According to the rules of operation of the OCC, contact persons shall be available by phone for emergencies around the clock. A free international phone number: 00800-38765878 has been introduced for 25 Member States (including Bulgaria). Contact persons are available to receive phone calls on a 24/7 basis.

According to the assessment made by the Bulgarian authorities, the OCC has not been in practical use due to the fact that the competent national authorities in Bulgaria have the contact details of all members of the Bulgarian desk at Eurojust and communication is carried out by office fixed telephone, office mobile telephone, email and/or fax that allow fast communication in urgent cases.

The evaluation team was informed that the national desk is available 24/7.

Additionally, the contact persons have direct contacts with the national authorities (by office fixed telephone, office mobile telephone, email and/or fax), including, if necessary, with the specifically designated persons on duty for the relevant time period.

The national authorities received information on the existence of the OCC at Eurojust from ongoing training events at home and abroad on topics related to international legal cooperation in criminal matters and in particular on the functioning of Eurojust.

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

Considering that the ENCS was set up in December 2013, the evaluation team did not have possibility to hear about the cooperation between the ENCS and the Europol national unit.

## 5.7. Conclusions

- The statistics show a high level of involvement of the national desk in mutual legal assistance.
- The Prosecutor-General of Bulgaria issued a Methodological Guidance Manual for work with Eurojust and the European Judicial Network to prosecutors governing rules on when to allocate cases to Eurojust and to the EJM. This could be regarded as an example of best practise.
- The allocation of cases to Eurojust or the EJM is decided on a case-by-case basis either by the competent prosecutor leading the investigation and prosecution or by the competent judge in the trial phase. A certain overlap between Eurojust and the EJM was noted, in particular when the court needs information on foreign authorities and Eurojust is contacted.
- The overall impression from the visit was that prosecutors and law enforcement officers met have a good knowledge of Eurojust and the possibilities and added value that Eurojust can offer (inter alia organisation of the coordination meetings). Feedback from practitioners showed that the assistance of the Bulgarian desk to national authorities is highly appreciated.
- The national desk is easily accessible and helpful. It was noted, however, that the national member was commonly approached also for issues which are not part of Eurojust matters, such as providing addresses of foreign courts or information about legal regulations abroad. In the opinion of the evaluators, most of these issues could be dealt with successfully and efficiently by the EJM, or directly by practitioners via on-line EJM's tools. A sustained effort is therefore needed to pursue information sessions on the respective fields of incumbency and the available tools.
- Practitioners positively assess coordination meetings organised by Eurojust. This assessment is based on the views expressed by participants who said the meetings were useful and showed great satisfaction as regards their outcome.
- It was mentioned several times by prosecutors and law enforcement officers that coordination meetings are considered very useful. Bulgaria has, considering its size, initiated and participated in a high number of coordination meetings.

- With regard to the Europol national unit, according to the information provided by the IOCD, close relations are already established with the Prosecutor- General's Office. However, in the opinion of the evaluators, it would be useful to consider inviting formally the Europol national unit of the IOCD to participate in the ENCS.
- The OCC has not been used yet. However, national authorities had been informed of its existence and its role. In practice, the national member or deputy can be contacted on their mobile phones also after working hours.

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## 6. COOPERATION

### 6.1. Cooperation with EU agencies and others

According to the Bulgarian authorities, the national desk of Bulgaria at Eurojust has experience in cases involving Europol and OLAF. In connection with these cases, the national desk exchanges the necessary information with Europol and OLAF, especially when coordination meetings with the participation of Europol and OLAF should be organised. Moreover, the Bulgarian desk has a very good interaction with the liaison officers of Bulgaria at Europol, who are also invited to participate in these coordination meetings organised by Eurojust.

Besides, the Department of Europol in IOCD of the Ministry of Interior can send requests from the Bulgarian judicial authorities including the EJM contact points to Europol and the law enforcement authorities of the Europol Members States. Outside the country, the Ministry of Interior is served by liaison officers in some countries, and two Bulgarian representatives situated in the headquarters of Europol in The Hague.

Under the EU policy cycle for combating serious and organised crime, experts from the Ministry of Interior and the main structural unit of SANS with expertise in the fight against organised crime are involved in the identified priority areas for immediate consideration as priorities of the new EMPACT (European Multidisciplinary Platform against Criminal Threats). These experts are involved in adopting a multiannual (four-year) strategic plan (MASP) and consequently, in adopting operational action plans containing concrete objectives for which certain Member States are designated contact points in the performance of the tasks set in the territory of the country.

## **6.2. Cooperation with third states**

### **6.2.1. Policy with respect to the involvement of Eurojust**

If there is a need for assistance from Eurojust while working with third countries, the Bulgarian authorities reported that they had received adequate cooperation. As an example, it was mentioned that, in the case of the terrorist attack in Burgas, the Bulgarian authorities asked for information through the Turkish Eurojust contact point on the stage of execution of Bulgarian letters rogatory. The Bulgarian national member at Eurojust stayed in touch with the contact point from Turkey and rendered full assistance.

Equally positive experience has been noted with regard to Switzerland and Panama.

Whenever necessary, the national member at Eurojust received prompt and adequate assistance from Iber-RED.

### **6.2.2. Added value of Eurojust involvement**

From the perspective of the Bulgarian desk, involvement of Eurojust in cases with third countries results in added value, for which there are specific examples.

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

### **6.3.1. Cooperation between the national member and the EJM**

At the time of the evaluation visit, the Bulgarian national member at Eurojust as well as the national correspondent for the EJM, who is also the national correspondent for Eurojust, were prosecutors of the International Legal Cooperation Department at the SPOC.

According to the Bulgarian authorities, in all cases, appropriate consultations between the national member and the national correspondent, the contact points of the EJM for Bulgaria and the contact points of the national prosecutor's network in the country were carried out. In addition, the assistant of the national member was also a member of the national prosecutor's network in Bulgaria. Consultations in various cases were conducted in such a way as to ensure complementarities in efforts to achieve a better result in criminal cases requiring international cooperation.

### **6.3.2. Resources allocated domestically to the EJM**

Additional funds as payment are not allocated to the contact units, the contact points and the national correspondent. They all show professional commitment.

By Order No LC-6880 of 26.10.2007 of the Prosecutor General of the Republic of Bulgaria, an internal prosecutor's network was set up under the international legal cooperation in criminal matters in the Prosecutor's Office of the Republic of Bulgaria. It involves 100 prosecutors from all territorial Prosecutor's Offices in the Republic of Bulgaria and has instructions for the operation of the national prosecutor's network under the international legal cooperation, approved by the Prosecutor-General of the Republic of Bulgaria.

The evaluation team appreciated that the network is widely known in those offices that were visited, and seems to function very well. It is understood that prosecutors assist each other in matters pertaining to international cooperation in criminal matters, and provide assistance to judges if so requested.

At the time of the visit no judges have been appointed as the EJM contact points. This may explain why for example judges in Sofia court are still using letters rogatory channelled through the Ministry of Justice for matters in which direct contact should be the rule according to legislation in the area of freedom, security and justice. In the opinion of the evaluators, only when they are not executed, should the courts turn to the national desk to speed up proceedings.

The evaluation team was however informed that a process to appoint a judge as the EJM contact point is ongoing as part of the Supreme Judicial Council. Nonetheless, it is not certain that the designation of a single person as a contact point for judges could redress the lack of information. Judges are involved in MLA and some of them (from Appeal Courts) must also authorise the surrender of persons brought in as part of an EAW. When a person has been incarcerated, the time limits are very short and supplementary information can prove essential. They should therefore be aware of the possibilities offered by the EJM and Eurojust. In the opinion of the evaluators, it would be helpful to create a website for judges that is as didactic and dynamic as the site for prosecutors.

### **6.3.3. Operational performance of EJM contact points**

From 1.11.2011 until 1.11.2013, all national contact points worked on 179 cases under the EJM – 44 cases, inquiries, questions per contact point in that period.

According to Bulgarian law, only the contact points at central level – the prosecutors in the Supreme Prosecutor's Office of Cassation – are entitled to communicate with all relevant authorities and to exchange information.

Contact among relevant stakeholders in the field of international judicial cooperation in criminal matters is facilitated by the fact that most of practitioners are on personal terms with each other. The fact that most powers in this field are conferred upon members of the Prosecution Service also facilitates informal and standing contacts. According to the evaluators, it is positive in general terms, as it adds expediency and functionality to the system. At the same time the importance of institutional role playing should not be underestimated.

Moreover, the network of practitioners is composed of prosecutors only and all EJM contact points are prosecutors. Similarly, the national desk consists only of prosecutors.



In the opinion of the evaluators, some networking for judges would seem advisable, to enhance their participation, along the lines of what has been successfully set up for prosecutors, although it is a matter for discussion whether they should share the same network. After all, the perception of fair trial calls for a clear distinction between courts and prosecution offices in the eyes of the people entering the justice system.

According to practitioners met in the courts, judges do not even have an extranet to access updated information, contrary to the case of prosecutors. Judges report that there is no secure connection between the courts and Eurojust.

#### **6.3.4. Perception of the EJM website and its tools**

Maintaining and updating the information on the Republic of Bulgaria as a Member State on the EJM website is organised by the national correspondent who monitors the EJM website and the information about the Republic of Bulgaria and contacts the other contact points in time when it is necessary to change the data uploaded onto the website.

According to the Bulgarian authorities, the website of the EJM contains many useful technical means which facilitate judicial cooperation in criminal matters. The website provides information about various forms of cooperation possible in each of the national legal systems of the EU Member States, the applicable legal instruments for international legal assistance and mutual recognition of judicial acts. The instruments are convenient to use and available in different modes. In their daily work, Bulgarian magistrates mainly use two Atlases to determine the competent local authorities receiving and executing letters rogatory and the European Arrest Warrant in order to carry out direct communication and implement the *Fiches Belges*.

The Library is very useful and offers the scope to use legal instruments adopted within the EU, the Council of Europe and the UN and EAW manuals, Joint Investigation Teams and the case law of the Court of Justice. However, the Bulgarian authorities pointed out that the site is open to improvement concerning the speed of opening the Atlas menus for international legal assistance and the information relating to the mutual recognition instruments.

In the opinion of the evaluators, the EJM tools do not appear to have been used that often. The Atlas was referred to as a complicated tool. Also, one judge reported that he had visited the EJM website in 2008 but had found it difficult to use and had not revisited it since. Other judges which the evaluation team met had never visited the EJM website or contacted any EJM contact point.

#### **6.4. Conclusions**

- Information provided by the Bulgarian authorities indicates that Eurojust cases involving Bulgaria and third States are not rare.
- Eurojust assisted in facilitating judicial cooperation with third States in several of these cases. In many cases, this involved the use of Eurojust's contact points in IberRed countries.
- Already in 2007, by means of the Prosecutor's General Guidance No LC 6880, Bulgaria has set up a national specialised network of prosecutors at the six prosecutors' offices of Appeal, the 32 District Prosecutor's Offices and the Sofia City Prosecutors' office to handle international legal cooperation issues.
- At the time of the visit, all Bulgarian EJM contact points were based in the Public Prosecutors' Office. Besides, at the regional level (e.g. in Plovdiv) some prosecutors are appointed to receive all incoming MLA-requests.
- The Bulgarian authorities indicated full cooperation of the national desk (facilitating *inter alia* translation of documents in connection with urgent and important cases) and appropriate consultations between the main stakeholders regarding mutual legal assistance provided by the national member and the national correspondent, the contact points of EJM for Bulgaria and contact points of the national prosecutor's network.
- The Supreme Prosecution Office of Cassation issued Guidance on Eurojust and the EJM, indicating circumstances when Eurojust or EJM should be contacted first. This should be regarded as an example of best practice. Application of the Guidance is mandatory for prosecutors but not for judges.
- Bulgarian authorities can also rely on a manual entitled "International legal cooperation in criminal matters. Modus Operandi", dealing with all aspects of international cooperation in criminal matters.

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- The appointment of the EJM contact points out of prosecutors together with the Guidance may explain why the EJM is well known among prosecutors. It is used by them in simple cases, provided that they are not urgent.
- With regard to judges, the EJM is much less known, and they tend to revert to Eurojust also for simple requests, including for the identification of foreign competent authorities. The appointment of a judge as the EJM contact point is imminent.
- Therefore, in the opinion of the evaluators, taking steps to disseminate knowledge of the EJM and the added value of the available EJM tools among judges is needed to make them use the EJM in simple but not complex cases.
- It would also be worth considering the possibility of establishing an internal national network of judges.
- The practitioners interviewed claimed to know the EJM website, using mostly the Atlas and Compendium. However, in the opinion of the evaluators the EJM tools do not appear to have been used that often (e.g. the Atlas).

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## **7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES**

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

Within the framework of a police operation, including an international operation, a controlled delivery is authorised upon the issue of a reasoned request to the Supreme Prosecutor's Office of Cassation (SPOC), which issues a decree for the conduct of the event. The decree is drawn up in two copies – one for the service requesting a permit for controlled delivery and one for the Customs Agency in its capacity as an authority allowing the entry into Bulgarian territory of the incriminated item.

During pre-trial proceedings, the competent Prosecutor's Office issues a letter rogatory with a request for an international controlled delivery through the International Department of the SPOC.

Pursuant to Bulgarian law, a controlled delivery is treated as a kind of special intelligence means (SIM) for which the observing prosecutor can issue requests for the application of SIM under Article 10a of the Law on SIM to the Chairman of Sofia City Court, who gives permission for the conduct of a controlled delivery operation.

In the case of initiated pre-trial proceedings, under which the investigative actions are guided by a prosecutor, only a request to the Chairman of Sofia City Court shall be made at the central level or to the Chairman of the District Court at the local level.

The authorities authorised to conduct controlled deliveries are the employees of the Directorate-General for "National Police" under the Law on the Ministry of Interior and agents of SANS under the Law on the State Agency for National Security.

In conducting a controlled delivery international operation in which the Republic of Bulgaria is the initiator, transit or final destination, coordination and information exchange are carried out through one of the following channels:

1. The Europol channel;
2. The International Criminal Police Organization, INTERPOL, channel;
3. The overseas representatives of the Republic of Bulgaria in the countries concerned;
4. The Southeast European Law Enforcement Centre (SELEC, Bucharest);
5. In the case of receipt of letters rogatory with the conduct of a controlled delivery as their subject and in the case of transfer of criminal proceedings – the Eurojust channel.

The Drugs Department of the former CDCOC – MI, successfully conducted a total of six international controlled delivery operations in 2012, and one in 2013.

There have been no cases where the national member needed to coordinate controlled deliveries. In cases where there were letters rogatory for controlled deliveries sent via Eurojust, they have been promptly communicated to the competent authorities in Bulgaria.

As a result of receiving letters rogatory having as their subject the conduct of a controlled delivery and transfer of criminal proceedings through the Eurojust channel, operations have been conducted with Romania and Greece, as has the international “Vatany” operation, a sub-project of the “Heroin” analytical work file (AWF) of Europol.

The Bulgarian authorities reported that controlled delivery operations usually begin through the Europol or SELEC Bucharest channel, and then in the event of a specific legal need Eurojust is included in the operation, which allows for a full implementation of the launched international investigation. No cases have been referred to Eurojust by the Bulgarian authorities concerning the tracking of a controlled delivery in another country.

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

On the date of the evaluation, Bulgaria had concluded 19 JIT agreements, of which 17 have been consulted and developed with the participation of Eurojust; of these 17 teams, 2 were set up before the EU programme for the funding of the JIT carried out by Eurojust.

JITs have been particularly appreciated as a tool to counteract trafficking in human beings (THB) and currency counterfeiting. According to Eurojust statistics, Bulgaria has participated in 4 JITs with the Netherlands on THB, 2 with the UK, 1 with France and 3 with Germany. It was mentioned that the JIT which started in 2012 with France has been singled out by the Commission as an example of best practices for detection of THB criminal networks. With respect to currency counterfeiting, Bulgaria has been involved in 7 JITs. 2 are ongoing and have received funding from Eurojust to cover costs for translations, evidence transfer and operational meetings in the relevant Member States.

The authority which has to be notified when setting up a JIT and controlled deliveries is the Deputy of the Prosecutor-General at the Supreme Cassation Prosecutor's Office, who is in charge of the international judicial cooperation. At the same time, the prosecutor in charge of the investigation (the so called monitoring prosecutor) who usually becomes a JIT leader on behalf of Bulgaria is the authority that makes the decision whether or not the case is suitable for setting up a JIT. Normally the decision on setting up a JIT in a certain case includes a few key players - the prosecutor in charge of the investigation, the Deputy of the Prosecutor-General and the national member at Eurojust.

According to the Bulgarian authorities, a JIT is an effective tool for the timely collection of evidence, a means of enhancing trust among national authorities involved in the JIT, a means of shortening the time for investigation and closing cases at the pre-trial phase in time. Some of the cases where a JIT was set up resulted in a conviction, and in some of the cases, the judgements were final in the first instance. There is a growing interest among the Bulgarian national authorities to use this tool for judicial cooperation.

The Bulgarian overall assessment of this tool of cooperation is that it is extremely useful in the investigation of complicated cases with an international element. The Bulgarian authorities mentioned many advantages of using a JIT, in addition to the option for a comprehensive evaluation of cases and maximisation of the demand for a wide range of criminal liability of persons who have committed a crime in the territory of different countries.

The national member at Eurojust and the assistant of the national member have been always involved in JITs (but not as JIT members). Their involvement in JITs creates a good opportunity for coordination, communication, exchange of information in real time, especially in cases where, within the framework of a JIT, there is a joint day of action, where actions can be coordinated by a Coordination centre based at Eurojust.

According to the Bulgarian authorities, Eurojust and Europol play an important role in the joint investigation teams, especially at the stage of preliminary assessment and negotiations, by providing the Member States with for example legal advice and expertise from participation in JIT. Furthermore, rooms for meetings and interpretation are at the disposal of the Member States. Moreover, given their role in the exchange of information and coordination of mutual legal assistance, Europol and Eurojust could identify cases suitable for setting up a JIT, and then ask the Member States to take action on this request. Although the participation of Europol and Eurojust in the setting up and operation of JITs is not mandatory, the two organisations play a crucial role in ensuring efficiency and operational capacity of JITs and thus – the ultimate success of the investigation.

According to the Bulgarian authorities, the national member of Bulgaria for Eurojust has always provided active assistance to prosecutors both in the negotiations for setting up JITs and in their work, termination and evaluation. Many Bulgarian prosecutors and investigators have participated in JITs. The latter have achieved significant results and justified their expectations.

### 7.3. Conclusions

- The competent authority for approving controlled deliveries is according to the Law on SIM, the Chairman of Sofia City Court or the Chairman of the District Court at the local level, which give permission for the conduct of a controlled delivery operation.
- Article 9d of the Eurojust Decision has not been formally implemented. The power to authorise a controlled delivery lies with the Bulgarian courts. However, Bulgaria has not availed itself of Article 9e of the Eurojust Decision.
- Bulgaria often uses JITs. To facilitate that, the manual of International legal cooperation in criminal matters " Modus Operandi" has been issued to all prosecutors and judges.
- Bulgarian authorities are very keen on JITs. In particular, SANS (the State Agency for National Security) authorities and some of the prosecutors interviewed showed great interest and demonstrated experience in setting up and/or participating in JITs.
- Taking the size of Bulgaria into consideration, the country has participated in a high number of JITs. There seemed to be a widespread knowledge amongst prosecutors and law enforcement officers of the added value of JITs as a special investigative tool and a tool of specialised judicial cooperation.
- The need for partial funding of JITs was underlined several times.
- The national member at Eurojust and the assistant were always involved in the JITs in which Bulgaria has taken part. However, neither of them have been a member of JITs. It was highlighted that the national desk at Eurojust plays an important and very useful role in both the setting up and the running of JITs.



- Eurojust's role in supporting Bulgarian authorities has been widely recognised. In particular, Eurojust has been appreciated for assisting national authorities in their determination on whether a JIT was needed in a certain case, preparatory work to set up a JIT, providing practical and legal advice regarding the drafting and signing of the JIT agreement and by providing JIT funding.

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## 8. TRAINING AND AWARENESS RAISING

### 8.1. Promoting the use of Eurojust and the EJM

#### 8.1.1. Training

The National Institute of Justice (NIJ) provides centralised training for all Bulgarian magistrates. It provides training not only to the judiciary, but also to law enforcement authorities, particularly with regard to international cooperation in criminal matters or other themes such as trafficking in human beings requiring a more holistic approach.

Since 2007, it also provides training on Eurojust and the EJM. The following matters were organised with the involvement of the NIJ:

- marketing seminars of Eurojust – 3 seminars since 2007;
- regular participation of the national member and the assistant in training and seminars at the invitation of the NIJ;
- seminars of the International Department at the SPOC;
- regular training and workshops by the NIJ ;
- initial NIJ seminars and follow-up training;
- participation of the national member and the assistant of the national member in international training events also involving representatives of the Bulgarian judicial and law enforcement authorities;
- conducting workshops of the national prosecutor's network in the Prosecutor's Office of the Republic of Bulgaria under international legal cooperation; a lecture on the website of the EJM is held at each workshop. In 2012 a separate workshop solely on the EJM was conducted. It was attended by 50 prosecutors – national contact points;

- in March 2013, the Eurojust Strategic Report on the analysis of the cases on trafficking in human beings was translated from English into Bulgarian by the national desk at Eurojust and a copy was uploaded onto the NIJ site for use by the Prosecutor's Offices.

Since 2008 the NIJ held annual meetings with Bulgarian magistrates – public lectures of the national member of the Republic of Bulgaria at Eurojust. The lectures focused on the role of Eurojust in the fight against transnational organised crime, terrorism, trafficking in human beings and drugs, as well as setting up and supporting joint investigation teams, and the role of Europol and Eurojust. These trainings in the form of public lectures are held twice a year and besides the national member for Bulgaria they often include national members for other countries (Germany, France, UK), as well as experts from Europol and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX). At the meetings with Bulgarian magistrates, the national member also presented the annual reports on the activities of Eurojust.

The issues relating to the structure, activities and functions of Eurojust and the EJM were analysed within the specialised trainings of the NIJ dedicated to judicial cooperation in criminal matters in the EU and EAWs. Annually, at least two training sessions on such topics are conducted, and the prosecutors – members of the national prosecutor's network in international criminal cooperation and the contact units of the EJM also take part in them. Besides attendance meetings and trainings, the NIJ maintains and updates a section on judicial cooperation in criminal matters under the heading "Training Materials in European law" on its website.

Eurojust and the EJM are included as separate topics in this section under the heading "Structures of judicial cooperation in criminal matters". Current information about the projects on which Eurojust is working, provided by the national member for Bulgaria, is also available on the Extranet site of the NIJ (accessible only to magistrates upon registration). On the website of the NIJ, in the section on the EAW, a direct link to the website of Eurojust and the EJM is available through the portal "Useful Links".

Nonetheless, practitioners that the evaluation team met stressed insufficient training to improve language skills.

Language training (English) is foreseen in a three-month course although places are limited and the training is funded by means of a programme. Once the programme is finished, the training is no longer guaranteed.

### **8.1.2. Other measures**

The Bulgarian authorities are informed of the existence and role of Eurojust and the EJM by various means, such as:

- uploading information and documents about these means onto the internal departmental information site of the PORB, which are thus made available to prosecutors, including the JIT Model Agreement, the Eurojust Handbook on JITs, model forms for the transmission of information under Article 13 (5) to (7) of the Eurojust Decision;
- preparing "Modus operandi" by the team of prosecutors who won a project under the OPAC, available for all prosecutors in the country;
- producing two sections of the textbook for junior prosecutors in the project under the OPAC for training at the National Institute of Justice on the "Structure, authorities, jurisdiction of Eurojust, the EJM, Europol and OLAF.
- participation of prosecutors in meetings at the international level organised by these bodies, posted by their sites, by the mass media, etc.

The national authorities are informed about the projects on which Eurojust or the EJM are working through the SPOC, the NIJ or directly (documents on these projects are presented at various seminars by members of the national desk), seminars of the national prosecutor's network in the Prosecutor's Office of the Republic of Bulgaria under international legal cooperation (such seminars have been held at least twice a year since 2007) and by conducting a separate seminar dedicated solely to the EJM (which was attended in 2012 by 50 prosecutors – national contact points).

The Bulgarian authorities also reported that the national correspondent at the EJM organised and participated in a regional seminar of the EJM held outside an EU Member State for the first time. The seminar was conducted jointly with the Ministry of Justice of the Republic of Turkey from 30.10.2013 to 1.11. 2013 in Istanbul, Turkey and its topic was the fight against trafficking in human beings and the practical issues of overcoming the problem by joint investigation teams. The seminar was attended by the Secretary of the EJM, representatives of the Ministry of Justice, the Prosecutor's Office and the Police of the Republic of Turkey, the national correspondent in the EJM for Bulgaria, and one Bulgarian contact point of the EJM, contact points of the Hellenic Republic, the Federal Republic of Germany, Romania, Bosnia and Herzegovina. The Secretary of the EJM assessed the importance of the seminar as extremely high historically as it was the first seminar held by the EJM outside the EU having a huge role in promoting the EJM.

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

The Bulgarian authorities reported that the national member (the previous one) is a prosecutor with long prosecutorial experience, part of which has been in the field of international cooperation prior to his/her designation as a national member. The assistant of the national member is an active member of the national prosecutor's network involved in international cooperation projects. The national correspondent for the EJM (currently deputy national member) is a prosecutor of long professional experience, part of which has been in the area of international cooperation.

The national member and the assistant of the national member have been involved in trainings in Eurojust and the EJM, and the EJM contact points were involved in EJM English legal language trainings associated with their duties. They all have participated in training sessions at national and international level on specific themes in this regard.

The evaluation team was assured that the new composition of the national desk also affords a high level of professionalism and a high knowledge of Eurojust and EJM matters.

### 8.3. Conclusions

- Bulgaria has established training programmes in international legal cooperation. This covers mandatory initial training for junior judges and prosecutors but also continuing training on mutual legal assistance, including the use of the EJM and Eurojust for judges and prosecutors.
- In 2010, a handbook on international legal cooperation was issued by the NIJ to increase the possibilities of ongoing training on matters related to Eurojust and the EJM for all practitioners. According to the evaluators, this may be an example of best practice.
- The evaluation team had the impression that the national member has done much to promote the use of Eurojust. All relevant stakeholders met had a good knowledge of Eurojust and the assistance offered. It was mentioned several times that the national member participates personally in national training sessions, both at the NIJ and at local/regional training events.
- The involvement of the national desk in training as well as the active network and clear structure of the Prosecution service result in a good knowledge among prosecutors of the EJM in daily practice. The promotion of both the EJM and Eurojust is also taken care of by the EJM contact points through the provision of all the relevant information.
- However, it was found that the knowledge of Eurojust and the EJM is not that widespread among judges. They prefer to contact either prosecutors or the national member to obtain the relevant information on mutual legal assistance.
- Apart from general training in international cooperation, as is the case in many other EU countries, foreign language training seems to be much needed. Knowledge of languages commonly used as communication tools among practitioners should be considered as a key way to build up confidence and allow for direct contact.
- According to the evaluators, such language training should be in the form of basic training for magistrates. Judges in charge of international legal cooperation met in Sofia and Plovdiv courts –by far the largest in the country- found it difficult to discuss professional issues in English.

## 9. GENERAL OBSERVATIONS

### 9.1. Overall assessment

The visit to Bulgaria was very well organised by the Bulgarian authorities. The evaluation team had the opportunity to understand the functioning of the Bulgarian judicial system as well as the role Eurojust and EJM can play to support the competent national authorities within this system. In general, the evaluation team would have welcomed a more direct exchange of views with the various authorities participating in the visits, rather than relying (apart from the visits to the Ministry of Interior and the National Institute of Justice) on the interpreters.

The evaluation team also appreciated the opportunity to speak with a section in the Ministry of Interior dealing with international police cooperation.

The national member for Bulgaria at Eurojust participated in all visits. The SNE (currently the assistant) to the Bulgarian desk also participated in many of the visits and social events. Their participation was useful to understand the workload of the national desk and to see the interaction between the desk and the national prosecutors, the authorities most frequently asking support to Eurojust.

The visit highlighted that prosecutors are in charge of investigating cases at the pre-trial stage (the term most frequently used was “*dominus litis*”). This aspect was confirmed especially by authorities in the law enforcement services, like those interviewed from the Ministry of Interior – the IOCD and from the State Agency for National Security (SANS). It was interesting to note that these two bodies appear to have similar mandates, the latter intervening when serious/organised crimes is believed to affect national security. It is interesting to note that it is the prosecutor in charge of the case who decides which of the two authorities is best placed to carry out the investigation.

The visit highlighted that the prosecutor is the authority that most frequently engages with Eurojust and the EJM. Judges request Eurojust's assistance, in particular regarding the execution of EAWs. The evaluation team also noted that judges are requesting more and more support from Eurojust. It was also highlighted that albeit only in a few occasions, police authorities contacted the Eurojust desk directly. In those circumstances, the national member liaised with the prosecutor in charge of the investigation.

The evaluation team also appreciated the prosecutors' network that was set up by Order of the Prosecutor General of the Republic of Bulgaria of 26 October 2007. The network consists of about a hundred prosecutors from the Prosecutor's Offices in Bulgaria, who are most frequently dealing with international cooperation in criminal matters.

## **9.2. Further suggestions from Bulgaria**

The Bulgarian authorities pointed out that they highly appreciate Eurojust and the EJM. Both bodies are extremely useful in implementing and accelerating cooperation and coordination with the national authorities of the other EU Member States and third countries.

Due to the small size of the Republic of Bulgaria, prosecutors and judges personally know the national representative for Eurojust and the members of the ENCS. In practice, when assistance is needed from Eurojust and the EJM, it is provided through a direct, personal contact with them. When assistance is needed from and by Eurojust, the EJM or the ENCS, they consult each other with regard to which of them is best placed to render assistance in the concrete case.

According to the Bulgarian authorities, it would be beneficial to build a system for better cooperation between the law enforcement authorities of the EU, namely Eurojust, Europol and OLAF, and to coordinate joint training programmes with a view to comprehensive and full use of the capabilities of Eurojust by law enforcement authorities.



### 9.3. General observation from the experts

The implementation of the Eurojust Decision was carried out by means of specific legislation and by means of circulars and guidelines. The latter are mostly addressed to the prosecutors since they were issued by the Prosecutor-General and are therefore not binding on judges.

Bulgaria is a country of limited size, which means that contact among relevant stakeholders in the field of international judicial cooperation in criminal matters is made easy by the fact that most of them know each other personally. The fact that most powers in this field are conferred upon members of the Prosecution Service also facilitates informal and long-standing contacts. According to the evaluators, it is positive in general terms, as it adds expediency and functionality to the system. At the same time the importance of institutional role playing should not be underestimated. Relying on informal internal structures could lead the system along a path that diverges from the one adopted as the common rule by the EU lawmaker. For instance, the relatively scarce use of EJM could be linked to the very active role of the Bulgarian Eurojust desk. One of the challenges for the Bulgarian authorities in this sense is to continue running the system in an efficient manner without having an effect on institutional building in the future.

Although courts have a role to play in judicial cooperation in criminal matters, it was found that judges tend to rely on prosecutors for international cooperation - sometimes because they lack resources (in terms of training, experience and support, but also in technical equipment). The network of practitioners is only composed of prosecutors; all EJM contact points are prosecutors; all members of the national desk are prosecutors; no judges are members of the ENCS.

Apparently this is set to change in the near future (one judge from Plovdiv will be seconded to the national desk; another one will be appointed as the EJM contact point). Although an effort is being made to involve the courts, a lot more can undoubtedly be done.

The feedback received from practitioners (including judges) as to the support offered by Eurojust is positive. In particular, the ability of Eurojust to facilitate communication with foreign authorities and speed up the execution of urgent requests is regarded as added value.

On the basis of information received during the visit, the evaluation team has some doubts as to whether the EJM is used to its full potential by practitioners, in particular by the courts.

## 10. RECOMMENDATIONS

As regards the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters, the expert team involved in the evaluation of Bulgaria has been able to assess the system in Bulgaria.

The evaluation team would therefore make a number of suggestions for the attention of the Bulgarian authorities. Furthermore, based on the various good practices, related recommendations to the EU, its institutions and agencies, and to Eurojust in particular, are also put forward.

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

### 10.1 Recommendations to Bulgaria

Bulgaria should:

1. consider strengthening the role of the Supreme Judicial Council in the appointment procedure of the members of the national desk at Eurojust; (cf. 3.1, 3.3.2, and 3.5.3)
2. appoint to the ENCS a contact point for the corruption network in accordance with Article 12(2)(d) of the Eurojust Decision and consider inviting the courts and the Europol national unit of the IOCD to participate in the ENCS meetings; (cf. 3.2.1, 3.2.4, 3.5.4 and 5.7)
3. consider making an effort to explore the full potential of the ENCS as structure having a role to improve judicial cooperation in the near future; (cf. 3.2.1 and 3.5.4)

4. ensure efficient implementation of Article 13 of the Eurojust Decision in practice and increase awareness of all practitioners in relation to the obligations under Article 13 of the Eurojust Decision, in particular regarding the “systemic” information flow as set out in that Article; (cf. 4.1.2 and 4.3)
5. increase awareness on the EJN and the available EJN tools among judges, for instance by disseminating guidelines or by exploring the possibility to task the International Relations Department at the SJC with providing support to practitioners or by appointing a judge as an EJN contact point; (6.3.2 and 6.4)
6. consider establishing an internal national network of judges specialising in international cooperation; (6.3.2 and 6.4)
7. make sure that MLA requests are forwarded in compliance with the principle of direct contact between competent judicial authorities; (6.3.2 and 6.4)
8. secure a budget for providing language training for practitioners, in particular practitioners involved in mutual legal assistance; (cf. 8.1.1 and 8.3)

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

1. Member States should accelerate establishing a secure connection with Eurojust for the exchange of information; (cf. 4.3)
2. Member States should consider issuing a manual dealing with all aspects of international cooperation in criminal matters (such as “International legal cooperation in criminal matters Modus Operandi” in Bulgaria) and indicating circumstances when Eurojust or the EJN should be contacted first (such as guidelines issued by the Supreme Prosecution Office of Cassation); (cf. 5.7 and 6.4)
3. The Commission should secure EU funding for JITs through Eurojust; (cf. 7.2 and 7.3)

### 10.3 Recommendations to Eurojust/the EJM

1. Eurojust should provide support for the exchange of experience and best practices of the ENCS of all Member States, e.g. by regularly updating the *Fiches suédoises*; (cf. 3.5.4)
2. Eurojust should continue efforts to provide useful information to the Member States in accordance with Article 13a of the Eurojust Decision; (cf. 4.3)
3. Eurojust should examine the possibilities of providing assistance in resolving problems linked to the length and the quality of the translation of documents in urgent cases; (cf. 6.3.2)
4. Eurojust and the EJM should work out better criteria to define whether a case should be handled by Eurojust or the EJM in order to improve the performance of both institutions; (cf. 6.4)

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**ANNEX A: PROGRAMME FOR THE ON-SITE VISIT**

**Monday, 27.01.2014.**

Arrival and accommodation of the expert team

**Tuesday, 28.01.2014.**

10:00 – 11:00 Ministry of Justice – introductory meeting

11:30 – 12:30 State Agency “National Security”

13:00 – 14:00 Lunch hosted by the Ministry of Justice

14:15 – 15:30 National Institute of Justice

16:00 – 17:30 Ministry of Interior – IOCD

17:30 – 18:30 Tour of Sofia

20:30 – Dinner, hosted by the Ministry of Justice

**Wednesday, 29.01.2013.**

09:30 – 10:15 Supreme Council of Judiciary

10:30 – 13:30 Supreme Prosecutor’s Office of Cassation and Sofia City Prosecutor’s Office

13:30 – 14:30 Lunch

14:45 – 17:30 Sofia Court of Appeal and Sofia City Court

**Thursday, 30.01.2014.**

8:30 – 9:30 visit to Plovdiv

10:00 – 12:30 Plovdiv District Prosecutor’s Office

12:30 – 14:00 Lunch

14:30 – 16:30 Court of Appeal and District Court Plovdiv

16:30 – 18:00 Tour of Plovdiv

**Friday, 31.01.2014.**

10:00 Closing Session

11:30 End of Visit

Departure of the expert team

## ANNEX B: PERSONS INTERVIEWED/MET

## Meetings on 28 January 2014

Venue: The Ministry of Justice, Sofia

Person interviewed/met	Organisation represented
Borislav Petkov	<i>Director of the International Legal Cooperation and European Affairs Directorate</i>
Silvia Filipova	<i>International Legal Cooperation and European Affairs Directorate</i>
Dimitar Terziivanov	<i>Expert, International Legal Cooperation and European Affairs Directorate</i>
Dimitar Hadzhiyski	<i>Public prosecutor, Seconded National Expert to the Bulgarian Desk</i>
Mariana Lilova	<i>Public Prosecutor, National member of Bulgaria to Eurojust</i>

Venue: State Agency for National Security, Sofia

Person interviewed/met	Organisation represented
Vanya Stefanova	<i>Deputy chairman of SANS</i>
Vera Tsintsarska	<i>Director</i>
Tanya Karakash	<i>Director</i>
Vanya Bozhkova	<i>Head of Department</i>
Georgi Zhelev	<i>Expert</i>
Mihaela Hranova	<i>Expert</i>

Darin Dimitrov	<i>Expert</i>
Kalin Litov	<i>Expert</i>
Lidia Dimitrova	<i>Expert</i>
Mariana Lilova	<i>Public Prosecutor, National member of Bulgaria to Eurojust</i>
Silvia Filipova	<i>International Legal Cooperation and European Affairs Directorate</i>

*Venue: the National Institute of Justice, Sofia*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Dragomir Yordanov	<i>Director of the National Institute of Justice</i>
Neli Madanska	<i>Deputy Director of the National Institute of Justice</i>
Silvia Hadzhiyska	<i>Director of Continuing Training of Sitting Magistrates Directorate</i>
Kalina Tsakova	<i>Programme Coordinator, Institutional and International Relations</i>
Kremena Haralanova	<i>Senior expert in EU law</i>
Mariana Lilova	<i>Public Prosecutor, National member of Bulgaria to Eurojust</i>
Silvia Filipova	<i>International Legal Cooperation and European Affairs Directorate</i>

**RESTREINT UE/EU RESTRICTED***Venue: Ministry of Interior, Sofia*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Iliya Pulov	<i>Director of International Operative Cooperation</i>
Kremena Nenova	<i>Head of Europol national unit</i>
Valentin Kostov	<i>Head of SIRENE Bureau</i>
Mario Dimitrov	<i>Senior legal adviser, IOCD</i>
Ruzha Bogatsevska	<i>Senior legal adviser, International Cooperation Directorate of the Ministry of Interior</i>
Konstantin Adamu	<i>Officer in Europol National Unit</i>
Nikolay Danovski	<i>Legal adviser, International Cooperation Directorate of the Ministry of Interior</i>

**Meetings on 29 January 2014***Venue: Supreme Council of Judiciary*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Sonya Naydenova	<i>Member and Representative of the SCC</i>
Maria Kuzmanova	<i>Member of SCC</i>
Rumen Boev	<i>Member of SCC</i>
Hristina Todorova	<i>Director of "International Relations" Directorate</i>
Adelina Kandova	<i>Expert at the "International Relations" Directorate;</i>
Strahil Nedkov	<i>Expert at the "International Relations" Directorate</i>



**RESTREINT UE/EU RESTRICTED**

*Venue: Supreme Prosecutor's Office of Cassation and Sofia City Prosecutor's Office*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Asya Petrova	<i>Deputy of the General Prosecutor of Bulgaria at the Supreme Prosecutor's Office of Cassation</i>
Evgeni Cvetanov	<i>Public Prosecutor, Deputy Chief of International Department at the Supreme Prosecutor's Office of Cassation</i>
Cvetomir Yosifov	<i>Public Prosecutor, Deputy Chief of International Department at the Supreme Prosecutor's Office of Cassation</i>
Radosvet Andreev	<i>Public Prosecutor, International Department at the Supreme Prosecutor's Office of Cassation</i>
Silvia Filipova	<i>International Legal Cooperation and European Affairs Directorate</i>
Mariana Lilova	<i>Public Prosecutor, National member of Bulgaria to Eurojust</i>

*Venue: Sofia Court of Appeal*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Petya Shishkova	<i>Deputy-Chairman of the Court, Chairman of Criminal Division;</i>
Hadezhda Trifonova	<i>Judge, Criminal Division; Appellate Court – Sofia</i>
Stefan Iliev	<i>Judge, Criminal Division; Appellate Court – Sofia</i>
Karamfila Todorova	<i>Judge, Criminal Division; Appellate Court - Sofia</i>
Vladimir Astarzhiev	<i>Judge, Sofia City Court</i>

Meeting on 30 January 2014

*Venue: Plovdiv District Prosecutor's Office*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Rumen Popov	<i>District Prosecutor</i>
Galin Gavrailov	<i>Deputy District Prosecutor</i>
Galina Andreeva – Mincheva	<i>Prosecutor at the District Prosecutor's Office - Plovdiv</i>
Hristo Anchev	<i>Prosecutor at the District Prosecutor's Office – Plovdiv</i>
Dimitar Panayotov	<i>Prosecutor at the District Prosecutor's Office – Plovdiv</i>

*Venue: Palace of Justice, Plovdiv*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Georgi Chambov	<i>Chairman of the Court of Appeal</i>
Hristo Kracholov	<i>Judge, Criminal Division of Appellate Court – Plovdiv</i>
Brigita Bayryakova	<i>Judge's Assistant, Criminal Division of Appellate Court – Plovdiv</i>
Veselin Hadzhiev	<i>Chairman of the District Court in Plovdiv</i>
Magdalina Ivanova	<i>Deputy Chairman of the District Court in Plovdiv</i>

Meeting 31 January 2014

Venue: Ministry of Justice

Person interviewed/met	Organisation represented
Borislav Petkov	<i>Director of the International Legal Cooperation and European Affairs Directorate</i>
Silvia Filipova	<i>International Legal Cooperation and European Affairs Directorate</i>
Dimitar Terziivanov	<i>Expert, International Legal Cooperation and European Affairs Directorate</i>
Dimitar Hadzhiyski	<i>Public prosecutor, Seconded National Expert to the Bulgarian Desk</i>
Mariana Lilova	<i>Public Prosecutor, National member of Bulgaria to Eurojust</i>

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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CMS	-/-	Case Management System
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
FRONTEX	-/-	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
IOCD	-/-	International Operational Cooperation Directorate of the Ministry of Interior
JIT	-/-	Joint Investigation Teams
JSA	-/-	Judiciary System Act
MLA	-/-	Mutual Legal Assistance
NIJ	-/-	National Institute of Justice
OLAF	-/-	European Anti-Fraud Office

**RESTREINT UE/EU RESTRICTED**

<b>LIST OF ACRONYMS, ABBREVIATIONS AND TERMS</b>	<b>ENGLISH OR ACRONYM IN ORIGINAL LANGUAGE</b>	<b>ENGLISH</b>
SANS	-/-	The State Agency for National Security
SELEC	-/-	The Southeast European Law Enforcement Centre
SIM	-/-	Special Intelligence Means
SIS	-/-	Schengen Information System
SJC	-/-	Supreme Judicial Council
SPOC	-/-	Supreme Prosecutor's Office of Cassation

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