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Report on Spain

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1. EXECUTIVE SUMMARY

- During the on-site visit the evaluation team had fruitful meetings with very engaged actors in the whole legal system. The Eurojust National Member for Spain and the Deputy National Member also took an active part in the evaluation visit. Their presence and support throughout the evaluation visit has greatly contributed to the quality of its outcome.

- Spain has not implemented yet the 2008 Eurojust Decision, which is considered a problem by many practitioners. The Spanish authorities have announced that legislation and other measures to that effect were in preparation. A draft bill has been approved by the Council of Ministers on 30th of May 2014. The team has been able to assess its content its content to some extent. This draft Bill has been submitted as a first step to the State Prosecutor's Office and the General Council of the Judiciary for them to comment on.

- Cooperation with Eurojust seems to work in practice because of the personal networks and commitment of those involved. Given the diversified nature of the Spanish legal system and the lack of real powers in the national desk, this cooperation still appears vulnerable.

- The Spanish Desk functions in a very professional way in spite of limited resources/huge workload. It is one of the most requested desks, mainly dealing with bilateral cases. The desk is busy with the retrieval of unexecuted letters rogatory in the absence of a unique/central registration system for all incoming letters of request (LoRs). By contrast, Spanish practitioners rather rarely call upon the assistance of Eurojust.

- To date the ENCS is not in place despite announcements made during the on-site visit to the effect that it would be established. Coordination of and support to practitioners in judicial cooperation mainly rely on the three domestics networks set up for prosecutors, judges and court clerks respectively. Each of these networks is active, well-organised and provides efficient services to its profession. However there is a lack of communication between the three networks and the existence of these networks cannot and should not be a substitute for the ENCS. This might be an obstacle to the effectiveness of the National Correspondent to and the National Desk at Eurojust.

- The EJN does not seem to be widely used throughout Spain. However coordination between the three domestic networks and the EJN contact points should be improved, which would also allow the Spanish Desk at Eurojust to focus on its core business.

- To date Article 13 of the Eurojust Decision has only been partly implemented and the recent legislative proposal shown to the team during the on-site visit did not seem to fully remedy the situation. The most recent draft however seems to be more comprehensive. The number of notifications is rising and relatively high in comparison to that in other Member States but lower than desirable in consideration of the characteristics of the country. However the quality check made by the international unit of the Prosecution Service is underlined as a good practice to ensure the accuracy of information transferred to Eurojust.

- The active and accurate exchange of information with Eurojust on terrorism matters is worth mentioning.

- Although the National Member and his Deputy have confirmed that they enjoy total independence in the management of their casework, their position in the organisational chart of the Ministry of Justice (MoJ) services entailing that they do not retain their original powers as prosecutor/judge, is perceived by some of the judicial and prosecutorial authorities the evaluation team met as problematic.

- The issue of confidentiality during part of the investigation is a major issue for the Spanish judicial authorities. It seems necessary that the EU legislator and Eurojust seek legal and practical solutions to overcome any obstacles to exchange of information because of this issue.

- Experiences in Spain with joint investigation teams appear to be limited, primarily relating to cases at the *Audiencia Nacional* (National High Court). Practitioners from local district might not have the same level of awareness about JITs.

- In general, Spanish authorities and practitioners met by the evaluation team provided very positive feedback on the usefulness or the coordination meetings organised by Eurojust. At the same time, some practitioners provided useful suggestions to improve the effectiveness of such meetings.

- The "*Prontuario*", an impressive IT tool is important to investigating judges and other MLA practitioners, providing legal information and technical assistance regarding international cooperation. It may serve as an example of best practice for other Member States.

2. INTRODUCTION

Following the adoption of the Joint Action 97/827/JHA of 5 December 1997[1], 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[2], as amended by Decisions 2003/659/JHA[3] and 2009/426/JHA[4] and of the Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network[5] repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters[6].

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

2 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.

3 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.

4 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.

5 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.

6 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 aims to be broad and interdisciplinary and not focus on Eurojust and European Judicial Network (EJN) only but rather on the operational aspects in the Member States. This is taken into account to encompass, apart from cooperation with prosecution services, also, for instance, how police authorities cooperate with Eurojust National Members, how the National Units of Europol will cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities. The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJN. Thus, the evaluation will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experiences from all evaluations show that Member States will be in different positions regarding implementation of relevant legal instruments, and the current process of evaluation could provide useful input also to Member States that may not have implemented all aspects of the second 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. Spain was the 24th 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 on 15 July 2011 to delegations made by the Chairman of GENVAL.

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

The experts charged with undertaking the evaluation of Spain were Ms Lynne Barrie (United Kingdom), Mr Nicholas Franssen (the Netherlands) and Mr João Centeno (Portugal). Three observers were also present: Mr Hjortenberg and Ms Catherine Deboyser (Eurojust), Mr Jeroen Blomsma (Commission), together with Mr Hans Nilsson and Ms Claire Rocheteau from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Spain between 3 and 7 February 2014, and on Spain's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions. Upon finalising the report, the evaluation team was provided with an English translation of a draft Bill which has been submitted to Spanish judicial authorities for consultation purposes. It was possible to take some aspects of this draft Bill into account in the final draft of the evaluation report. However, it is too early to assess whether the draft Bill will enter into force in this form, when this will be the case or whether the entry into force will solve all issues raised in the present report without additional measures to enable its practical application.

3. GENERAL MATTERS AND STRUCTURES

3.1. General information

Some specific features of the Spanish judicial system that are likely to impact the judicial cooperation in the domain under evaluation must be pointed out to begin with.

- From a general organisational standpoint, the investigating judge (*Juez de Instrucción*) is in charge of criminal investigations regardless of the seriousness or triviality of the offence. The investigating judge is assisted by the judicial police.

The territoriality principle applies to Spanish investigating judges, whereby they only have competence to authorise measures within their own territorial jurisdictions. Only those of the *Audiencia Nacional* - dealing with most serious crimes among those falling within Eurojust remit such as terrorism, organised crime, drug trafficking, or financial crimes causing serious damage to the national economy - have jurisdiction throughout the whole of Spain.

- The Spanish criminal legal system relies on a sophisticated jurisdictional structure (for an overview, see annex 0). In particular there are a number of investigating courts and trial courts in criminal matters at both local and national level - the main of them being as follows.

1) Local level

Juzgados de Instrucción are investigating courts located in each town with a population of more than 20.000; they are competent to investigate a case within the territory of a district.

Once ready for trial the case will either be transferred to
- a *Juzgado de lo Penal* acting at district level (339 district criminal courts), or
- an *Audiencia Provincial* acting at provincial level and competent to trial criminal cases where the prescribed sentence could exceed five years imprisonment (90 provincial courts).

2) National level

Serious crimes which are deemed to be crimes against the State (eg. counterfeiting currency and bank cards, drug trafficking by organised groups, large-scale fraud, etc.) and forms of crime with an international component (crimes committed outside national territory, criminal proceedings begun abroad, enforcement of judgements delivered by foreign courts, serving of custodial sentences imposed by foreign courts, when required of the Spanish courts by Treaty, questions of transfer of jurisdiction in criminal matters under international treaties, outward extradition) are dealt with by the Central Courts at the *Audiencia Nacional.*

There the *Juzgados Centrales de Instrucción* investigate the cases to be tried either by
- *The Juzgados Centrales de lo penal* where the case is punishable by less than five years imprisonment, or
- the *Audiencia Nacional* itself in other cases.

Juzgados Centrales de lo penal also have competence for the enforcement of all European Arrest Warrants submitted to Spain.

The role of the Spanish Public Prosecution Service is to move forward the work of the justice system in defence of the law; public prosecutors intervene in the criminal justice process by requesting the courts to adopt precautionary measures and to take steps to bring the facts to light. However they can also initiate preliminary investigative measures.

There are 50 territorial Prosecutor's Office plus the Special Central Prosecutor's Offices (*Audiencia Nacional,* Anticorruption and Antidrugs).

- For purposes of international cooperation in criminal matters, not only investigating judges and trial judges may be involved.

- The Public Prosecution Service is responsible for promoting or, as appropriate, providing the international judicial aid provided for by international conventions, treaties and laws. It also has, by virtue of a statement attached to the 1959 European Convention on Mutual Assistance in Criminal Matters and applicable to the 2000 Convention, the status of judicial authority for purposes of international cooperation.

- The Court clerks, acting as procedural and technical managers of the Spanish Judicial Office, also have the status of judicial authority for the same purposes.

- The status of Central authority is accorded to the Ministry of Justice, including for the purposes of European Union instruments such as the 2000 Convention.

- During the evaluation visit, the evaluation team was given the impression that there could , in practice, be some overlap in the competencies of prosecutors and investigating judges regarding MLA. It is understood that exceptionally a prosecutor may open a limited and preliminary investigation in accordance with article 5 of its organic law and instruct and carry out such enquiries independently. But if coercive measures have to be sought, or if the prosecutor is aware that a judge is investigating a case, he must cease investigations and pass the case to the judge. Both will then deal with the case within their respective competences but it will be the investigating judge that will decide in the case. Once the phase of judicial investigation is concluded, and if the judge has not dismissed the case, it is in principle the prosecutor who decides if the case will proceed to prosecution, and it is the prosecutor who remains involved as a party in the criminal process in the case through the trial phase once the investigating judge's role is finished. The possible overlap in roles occasionally seems to cause tension, for example regarding the undertaking and composition of a JIT. The competent authority to set up a JIT is the Audiencia Nacional (if it is involved in the investigation) or the Ministry of Justice (if the Audiencia Nacional is not involved). Exceptionally, also the Ministry of Interior may be a competent authority. There is no legal provision about the mandatory presence of Prosecutors in the team, although it seems that in practice they are often involved. This is one reason why the Prosecution service wishes that Eurojust pays for 3 persons (and not only 2) when coordination meetings are held at Eurojust.

- To help in coping with its rather complex and diversified judicial system, Spanish authorities have set up a system of internal networks for judicial cooperation, made of:

  - the Spanish Judicial Network for International Judicial Cooperation (REJUE), composed of judges and coordinated by the General Council of the Judiciary (*Consejo General del Poder Judicial* - CGPJ),
  - the Network of Prosecutors for International Cooperation, coordinated by the State Prosecutor's Office (*Fiscalía General del Estado* - FGE),
  - the Spanish Network of Court clerks for International Cooperation (RESEJ), coordinated by the Ministry of Justice.

The role of these networks as a means of disseminating knowledge and assisting their respective members on questions regarding international cooperation in criminal matters is worth mentioning. There are nominated judges/ prosecutors/ court clerks for each province who are specialists trained in international cooperation and can deal with international LoRs. The different networks have annual meetings at which they receive training, share experience, etc. The nominated experts can deal directly with international LORs and also provide advice and guidance to their colleagues. The prosecutors' network can deal with international LORs when it is not clear which territory/province is competent to execute a request, because as a centralised organisation they can operate throughout Spain. If coercive measures are required the prosecutor can undertake preliminary enquiries and then refer to a judge for authorisation. If there are enquiries in different provinces the prosecutor can liaise with the different judges to provide some oversight of the request as a whole.

Although the internal networks appear to work very effectively, and provide good examples of best practice to other Member States, it has been made clear to the team during the interviews that they mainly operate distinctly as there is no structured and continued internal coordination between them. A good exception to that is the *Prontuario*, an intranet dedicated to practitioners in international cooperation, set-up as a result of cooperation between the three networks.

The MoJ is the central authority in international cooperation within the EU. However, the MoJ is not responsible for executing the requests and needs to be distinguished from the role of judicial authorities.

The complexity of the Spanish judicial system may present to other Member States' judicial authorities some difficulties as more and more international cooperation takes place directly between judicial authorities.

3.2. Formal implementation of Council decisions 2002/187/JHA and 2009/426/JHA

Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime was introduced into Spanish law by Law 16/2006 of 26 May 2006 *regulating the status of the National Member of Eurojust and relations with that European Union body*. This law imposes on judges, public prosecutors and public bodies an obligation "*to cooperate with Eurojust*", even subject to possible disciplinary action. It also incorporated the role of terrorism correspondent, created by Decision 2005/671/JHA of 20 September 2005.

Article 78 of Regulation 1/2005 on ancillary aspects of international jurisdictional cooperation already referred to the "*coordinating functions*" of Eurojust, the EJN and the domestic networks for international cooperation, to which the competent judicial authorities will apply for the enforcement of requests for international assistance where the request for judicial assistance affects the territory of several judicial demarcations or where there are several interrelated applications.

Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust has not yet been transposed by Spain although the aforementioned draft Bill is under preparation. The evaluation team was advised that the delay in implementation was mainly linked to the on-going revision process of the criminal procedural system undertaken by the previous and present governments, which could lead to the public prosecution office being made responsible for the investigation stage. Spanish authorities also argued that, given the submission of two European draft regulations reforming Eurojust and creating the European Public Prosecutor's Office respectively, they were hesitant to adopt a piece of legislation which might shortly become obsolete. By contrast, the evaluation team was not persuaded by this argument because there is an obligation to implement anyway, and also because it might take a while before the said regulations enter into force.

The Ministry of Justice also advocated that Law 16/2006 was quite wide and already covered some aspects of the 2008 Eurojust Decision; therefore the failure to implement was not causing any prejudice in practice.

However, during the on-site visit, the *Fiscalía General del Estado* (FGE) expressed the view that an implementing law was required. Similarly the *Consejo General del Poder Judicial* (CGPJ) considered it would have been desirable for a Spanish law to have been enacted - although claiming that Spanish judges are in position to apply directly Article 13 of the 2008 Eurojust Decision. In a common letter dated 31 October 2012, FGE and CGPJ called the Ministry to implement the 2008 Decision by law, what Spain has so far failed to do.

During the evaluation visit, the Ministry of Justice said it plans to implement the Decision 2009/426/JHA by way of a Royal Decree, which it advises has the same legal effect as an Act of Parliament, but is quicker to bring into force. The announced Royal Decree would cover the ENCS system, amongst other aspects of the Decision. In addition to this, however, an Act of Parliament would still be necessary, because some amendments required to be made to Law 16/2006 cannot be effected by means of Royal Decree. As noted, it seems that the new draft Bill will address a number of issues which were only partially covered by the Royal Decree and it is understood that. the idea of a Royal Decree has been abandoned with the work on a new draft Bill.

The MoJ also indicated during the on-site visit being in the process of preparing a draft bill "on mutual recognition of criminal rulings in the European Union", in which will be included a provision transposing the obligation under Article 13 of the Decision 2009/426/JHA.

The evaluation team requested to be sighted on the draft legislation but was advised this was not possible, except for the draft provision implementing Article 13 of the Eurojust Decision, drafted as follows:

"1. *When a mutual recognition instrument affects directly at least three Member States and requests or decisions of judicial cooperation have been sent to two Member States, Eurojust must be informed in the terms laid down in its legal framework.*

2. *The judicial authority in charge of the proceedings can decide that the information include a request for Eurojust assistance*".

The evaluation team stressed that the draft provision provided to it in respect of the Article 13 obligation was fairly wide and vague in its terms, and did not cover all the circumstances referred to in this Article – only covering mutual recognition instruments and for example not joint investigation teams. It was also noted that the enactment of a Royal Decree and then an Act of Parliament is perhaps a rather piecemeal way in which to implement the Decision 2009/426/JHA, however it is observed that there is currently no international cooperation legislation in Spain and the new draft law would be first step towards this.

After the on-site visit (on 7 May 2014) the Ministry of Justice informed the evaluation team as follows:

1 - The draft bill on "mutual recognition instruments" (including the general provision related to Article 13 of the 2008 Eurojust Decision) is currently examined by the national Parliament;

2 - Having regard to the observations made by it during the visit and by Spanish institutions taking part in international judicial cooperation, the preliminary possibility of partially implementing the 2008 Decision through a Royal Decree was no longer considered;

3 - A new draft Bill has been set up to regulate the statute of the national Member and his relations with Eurojust, international cooperation judicial networks and liaison magistrates, and fully transposing the 2008 Decision; MoJ also said this draft Bill describes in detail the functions of the National Correspondents and the Correspondent for terrorism matters, establishes the mandatory creation of the post of assistant to the National Member, so that the Spanish desk shall be composed by the National Member, a deputy and an assistant;

4 - As for the timing, it is foreseen that, once the Council of Ministers decides on further steps, specifically, on the queries, opinions and reports that have been requested, the parliamentary procedure will start; the MoJ estimates that the Act shall be published in the National Official Journal by the end of 2014.[7] The evaluation team hopes that this ambitious time frame can be kept.

[7] On the 30th of May 2014 the evaluation team was provided with a copy of the draft bill adopted by the Council of Ministers the same day (Spanish version). This draft has been provisionally assessed by the team. By the time of finalising the report, the English version of the draft was made available to the team.

It is good that, pending the adoption of an updated legal framework, some non-legislative implementing steps have been taken by the various competent Spanish authorities, in particular:

- The appointment of the Eurojust National Correspondent by the MoJ.

- The distribution by the CGPJ to all judges with criminal jurisdiction, of a Guide recommending to provide information to the Spanish Desk according to Article 13 and to use the template set up by Eurojust for that purpose. This template was made available on Prontuario.org. However, these guidelines are not binding on courts (investigative judges in particular), though practical compliance with Article 13 of the Eurojust Decision may widely vary from a practitioner to another and appears to be weak in total.

- The State Prosecutor's Office has implemented Article 13 of the Eurojust Decision by Instruction No 3/2011 *on the new system for information exchange on the basis of the Decision of the Council of the European Union of December 2008 on the strengthening of Eurojust* which bindingly requires prosecutors to make the communications provided for in Article 13 in cases of which they have knowledge and in accordance with the model form approved by Eurojust.

In addition the following relevant instructions drawn up by the State Prosecutor's Office, are binding on prosecutors:

- *Instruction 3/2001 of 28 June on the current mechanisms and procedures for international judicial assistance in criminal matters.*
- *Instruction 2/2003 of 11 July on the operation and organisation of prosecution services in international judicial cooperation,* which established the Special International Judicial Cooperation Service and a computerised system for the registration of international cooperation cases; it defines the roles of the prosecutors making up the prosecutors' international judicial cooperation network; it resolves common problems with the execution of letters of request and it establishes coordination rules for the execution of requests for assistance in the territories of several prosecution services.
- *Instruction 2/2007 on the organisation of the international cooperation section of the technical secretariat of the State Prosecutor's Office and the fulfilment of the functions assigned to the Public Prosecution Service by Law No 16/2006 of 26 May 2006.*

- *Instruction 1/2011 on the functions and powers of the special prosecutor for international criminal cooperation,* which gives the special prosecutor for international criminal cooperation responsibility for operations based on Eurojust's activities, relations with OLAF, with the European Judicial Network and Iber-Red, and consequently the management and coordination of the activities of the international cooperation prosecutors' network. That Instruction also states that the special prosecutor "may help to meet the organisational requirements required of the Public Prosecution Service to fulfil the requirements of Decision 2009/426/JHA".

- Lastly, as regards court clerks, it is worth mentioning *Instruction 2/2009 of the General Secretariat for the Administration of Justice on promoting international judicial cooperation,* whose purpose is to set uniform and coordinated criteria for action in this area.

3.3. Implementation of the Eurojust National Coordination System

3.3.1. Eurojust National Coordination System (ENCS)

Spain has not established a Eurojust National Coordination System, neither formally or in practice.

In their reply to the questionnaire, Spanish authorities acknowledged that the ENCS could have been implemented by means of practical measures (in line with some other Member States) and said that they now plan to establish rules for the setting up of such a coordination system. The draft Bill contains provisions relating to participation in the ENCS, relations to the Europol National Unit and law enforcement as well as customs agencies. The national coordinator (i.e. National Correspondent) of Eurojust is responsible for the functioning of the ENCS. It is unclear if the ENCS could already function in practice, pending the legislative process.

3.3.2. National correspondents

Under Article 8 of Law 16/2006 both categories of national correspondents to Eurojust are to be appointed by the Ministry of Justice:

- The national correspondent for terrorism matters
- One or more national correspondents for other matters.

Being designated as national correspondent will not alter the administrative situation of the person concerned, nor will it mean that the person will be assigned to a different/specific post. National correspondents will also serve as EJN contact points. The obligation which Law 16/2006 (repeated in the draft Bill) imposes public prosecutors and public bodies to cooperate with Eurojust, even subject to possible disciplinary action, also covers Eurojust National Correspondents in the context of their remit. The draft Bill will extend this obligation to investigating judges.

Two National Correspondents have been nominated.

- The current National Correspondent for terrorism matters was appointed in July 2011 among public prosecutors at the *Audiencia Nacional* specialising in terrorism. As he has been serving for a few years already he is actively exchanging information with Eurojust, providing figures on terrorism cases every 3 months; nevertheless in many cases information is sent at a rather late stage, once an individual has been formally accused rather than during the investigative phase – perhaps because due to some concerns about confidentiality.

- In September 2013 Spain appointed a public prosecutor at the Special Prosecutor's Office to combat corruption and organised crime as National Correspondent to Eurojust. This appointment was – in accordance with information made available to the evaluation team – decided without consulting the Prosecution Service.

Thanks to her long experience and vast expertise as a former assistant to the National Member, the National Correspondent has been able to identify opportunities to carry out a proactive work for Eurojust - as the Spanish Desk traditionally shows shortfalls as regards active contributions and it is little known by Spanish investigating judges and prosecutors.

The National correspondent said that, pending the regulatory framework that will clarify the positions of all actors participating in international cooperation, so far her work has been mainly developed between the Central Investigating Magistrate’s Courts and the Prosecutor’s Office attached to the National High Court. Her position as a Prosecutor has allowed her to detect several situations of positive jurisdictional conflicts among different Member States, for which she has requested the assistance of the Spanish National Desk.

However it is still not clear to the evaluation team whether the current positioning of the National Correspondent outside the international unit of the FGE helps facilitating a smooth liaising between the competent authorities in charge of cooperation in criminal matters throughout Spain and the National Desk.

Given the diverse and somewhat diversified nature of the Spanish criminal justice system, it is submitted that the role of the National Correspondent to Eurojust in Spain is of particular importance, as to promote and facilitate adequate coordination. It is commendable that the MoJ provides further clarity on the role and remit of the National Correspondent, by agreement with relevant stakeholders (National Desk, State Prosecutor's Office and Council of the Judiciary). Hopefully the future legislation to implement the 2008 Eurojust Decision will also assist with this.

The duties of the Eurojust National correspondent are described as follows in Article 9(1) of Law 16/2006: *"At the request of the Eurojust National Member, national correspondents shall forward requests made in the course of performing their duties to the judicial authorities or the Public Prosecution Service. Likewise, they shall provide the National Member with the technical support required to carry out his or her tasks.*

Relations between the National Member and national correspondents shall not preclude direct relations between the National Member and the competent authorities."

The draft Bill builds on this but also expands the provision.

In practice, despite there not yet being an ENCS, the Eurojust National Member, his Deputy and the two National Correspondents (mainly the National Correspondent for terrorism as he has been serving as such for a few years) have drawn up guidelines to assist Eurojust in its needs in terms of information, coordination, cooperation and facilitating requests for judicial assistance.
According to these guidelines the National Correspondents are involved in this *modus operandi* on two levels:

- On a passive level, both the National Member and the Deputy request the assistance of the national correspondent in matters of interest such as the following:
    - information on contact points and communication with various judicial bodies;
    - information on court duty-staff services;
    - information on certain public entities in the field of banking and stock exchange supervision;

- searching for background and contributions provided for certain strategic seminars on smuggling offences and extortion;
- finding data and information in national databases accessible to the national correspondent;
- flow of information related to Eurojust or its strategic projects on drugs, terrorism, trafficking in human beings, corruption, its contact points in third States, and between judges and public prosecutors.

- On an active level, and as a technical support, the national correspondent operates in the courts, tribunals and prosecution offices of the *Audiencia Nacional*, and has daily contact with the judicial and prosecution authorities most proactive in the prosecution of transnational crime. This working relationship generates initiatives for joint teams, their funding, as well as cooperation and coordination via Eurojust.

The National Member and his Deputy are notified of all such initiatives via the International Criminal Cooperation Unit at the State Prosecutor's Office with the staff referred to in Article 13 of Decision 2009/426/JHA when they relate to communication within the parameters of that Article, or directly in ad hoc written form when cases are already open or new ones are envisaged.

To perform their duties National Correspondents currently use the external webmail user to send documents as well as their own official email account provided by the Ministry of Justice. Spanish authorities said TESTA access via the Ministry of Justice will shortly be implemented.

3.3.3. Operation of the ENCS and connection to the CMS

The secure electronic network between Spain and Eurojust is not ready.

With regard to the connection to the CMS referred to in Article 12(6) of the 2008 Decision, and despite the fact that the Decision has not been transposed, a pilot project was set up in 2012 by the Eurojust information management unit via its so-called "Eurojust Decision team" (EJD team) in cooperation with the Eurojust National Member's office in order to prepare the connection, via a secure telecommunications system, between Spanish authorities involved in the ENCS and the Spanish delegation. It will set up email accounts on Eurojust servers for Spanish judicial authorities that were previously authorised.

In addition, for the secure telecommunications system the VPN site-to-site system has been ruled out in favour of the s-TESTA cable system, which belongs to the Commission and which the Spanish administration is connected to via the national SARA network.

The EJD team recommends that the initial pilot project connect the SARA and s-TESTA networks as the path already embarked upon and the most secure option. If for whatever reason this is not viable, the second option must be explored although it will require four different VPN connections and the signing of four separate memoranda of understanding. There is also the possibility of joining the EPOC IV project (EJ27 project) as a partner.

There is currently technical compatibility allowing communication via the SARA cable connected to s-TESTA with public prosecutors and officials in the Ministry of Justice who have an account with the Ministry of Justice domain name (@fiscalía.mju.es).

3.3.4. Cooperation of the ENCS with the Europol National Unit

Spain has designated a contact point in the Europol National Unit, in line with the mandate given by the 2008 Eurojust Decision to "maintain close relations" with this Unit. Pending the development of the ENCS the Eurojust National Correspondent holds periodic meetings with Europol National Unit, with a view to finding out about:

- new initiatives under Article 4 of Law 31/2010 for the simplified exchange of information and intelligence relating to possible communication of information emanating from judicial investigations;
- the financing needs of police teams, as well as their problems and solutions;
- the opening of new analytical fact sheets on organised crime by Europol and their specific features;
- the work of the police contact points in the various cooperation networks (genocide, ARO, corruption, joint teams);
- operational implementation of the various EMPACT action plans relating to the judicial investigation of criminal offences regarded as a priority at EU level;
- Europol meetings that might affect the course of judicial investigations.

Moreover a police officer currently seconded to the Spanish Desk as a National Expert

- contributes to the Spanish delegation's operational work all information from police databases under the same conditions of access granted to any national authority, judge or public prosecutor, in order to meet Eurojust's objectives. In particular, he or she has access in real time to highly sensitive data concerning police investigations, which allows parallel investigations on the same persons and acts to be tracked down very rapidly.
- briefs the Europol national unit and the specialised judicial police units on the outcomes of coordination meetings with regard to the operational aspects which concern them.
- acts a privileged interface with the SIRENE national unit, for monitoring urgent cases or problems arising from the transfer or transit of parties to proceedings.
- receives from Europol's national unit the queries that the national unit itself on the financing of joint teams or on the way in which a case should be presented for consideration by the national member.

Presentations made to the evaluation team showed this collaboration works well in practice.

The Spanish Desk may request information from, and exchanges information with, the Spanish Europol liaison office and by extension with the Europol national unit to which it is accountable, with regard to all investigations or data of interest that may be linked to current or possible future Eurojust cases.

An international cooperation division has recently been set up within Spain's Ministry of Interior (Directorate-General for Police). Its General Secretariat centralises and coordinates the national desks and units of Europol, Interpol and SIReNE. The General Secretariat of the International Cooperation Division will provide a point of reference for institutional relations under the ENCS.

SIReNE cooperation takes place in two main areas: the processing, execution and forwarding of European Arrest Warrants and international LoRs for the exchange of information and biological profiles (DNA). Spain's National Desk at Eurojust has direct access to a version of the SIS II database for a specific level of consultation.

As for the Interpol national desk and its analytical section, there is cooperation on tracing and following up international letters rogatory which other countries have channelled through Interpol when the investigations resulting in such letters have led to the opening of cases in Eurojust.

3.4. National desk at Eurojust

3.4.1. Organisation

The Spanish Desk is currently composed of three practitioners and two administrative assistants, the latter provided and financed by Eurojust. The National Member, who was a public prosecutor, has been appointed by Royal Decree 1564/2012 of 15 November 2012 and elected Vice-President of Eurojust on 28 October 2013.

The Deputy National Member, appointed by Royal Decree 744/2013 of 27 September 2013, was an investigative judge. The team finds it a very useful choice made by the Ministry of Justice to compose the Desk with a prosecutor and judge, given the distribution of tasks within the Spanish system.

The Desk is supplemented by a police officer (seconded as national expert) and has a dual role, also liaising and facilitating close contacts with Europol and national police forces (see above n.3.3.4).

The Desk also occasionally welcomes trainees or judges and prosecutors on work placements for periods of up to a maximum of three months.

A common assumption is that the Spanish Desk at Eurojust remains understaffed, in particular taking into account that Spain is the most requested country of Eurojust and that the National Member has recently been appointed as vice-president. Due to the duties associated with this new position, the national member himself has less time to devote to casework. The Spanish authorities have refrained from strengthening the Spanish desk as a complementary step to implementing the Eurojust Decision. The draft Bill in preparation will make the creation of a post of assistant mandatory, as per requirement of the Eurojust Decision; once the law is adopted, the appointment process "may begin".

In view of the structural workload incumbent to the Spanish Desk as evidenced by statistics, it might be recommended to reinforce further the capacity of the desk by the adjunction of an additional practitioner, e.g. through the secondment of an additional national expert.

A further suggestion would be to send prosecutors and judges on internship of a minimum of three months, which would be long enough for them to also contribute to the desk. Such internships would also help the work of Eurojust to be more known throughout the large Spanish territory.

3.4.2. Selection and appointment

In line with the provisions of the 2002 Eurojust Decision, Law 16/2006 provides for the appointment of a national member and an assistant with authorisation to deputise the National Member (several assistants may be appointed with the prior approval of the College of Eurojust).

In accordance with Law 16/2006 but in contradiction with the consolidated Eurojust Decision which provides that the mandate of the National Member should be of 4 years at least, both appointments are made for three years, renewable for a further three years, by Royal Decree of the Government on a proposal from the Ministry of Justice. This lacuna will be remedied if the draft Billhas entered into force.

Candidates must be judges or public prosecutors with at least ten years of service and accredited experience in the criminal jurisdiction, and such requirements must be proven by a report from the General Council of the Judiciary or the State Prosecutor's Office depending on whether the proposed candidate is a member of the judiciary or a public prosecutor. In addition to expiry of mandate and resignation, the incumbent will cease to exercise his or her duties if he or she is no longer a member of the judiciary or a public prosecutor, or is dismissed.

The appointment of the current National Member and Deputy has resulted from an open and transparent procedure. Prior to their respective appointment and for the very first time, the Ministry of Justice organised a competition open to all qualified members of the judiciary and public prosecutors. This new mechanism felicitously introduces the principle of transparency into the selection process. The evaluation team considers that it could be useful to involve the National Member in the selection process of the future incumbents, if only by way of consultation on qualifications and profile, although this is not, stricto sensu, a legal obligation under the Eurojust Decision.

The National Member must submit an annual report on his or her activities as Eurojust National Member to the Ministry of Justice, which forwards the legislative chambers a copy, and so may be called to brief the Justice and Home Affairs Committees of the Congress of Deputies and of the Senate. The most recent report has been made available to the evaluation team. The reporting obligation for the Spanish National Member to Parliament is something other Member States could draw inspiration from.

The National Member also sends the Directorate-General for International Judicial Cooperation of the Ministry of Justice a quarterly report of the activities of the Spanish Desk.

3.4.3. Powers granted to the National Member

3.4.3.1. General powers

Law 16/2006 states that Spain's Eurojust National Member and his/her Deputy become part of the organisational chart of the Ministry of Justice after they are appointed. Both are, in administrative terms, so-called “special services” of the MoJ. Although the conflict-of-interest and abstention rules are those which would apply to them as career judge or prosecutors, they don’t retain their respective powers and tasks as national judicial authorities during the period of their appointment to the Spanish Desk and are only entitled to exercise those specifically entrusted to them by Law 16/2006. The draft Bill contains a Chapter on powers but it seems that the draft does not give any self-standing powers to the national member. The draft only makes it possible for the national member to "propose" to the competent national authorities certain issues. The draft specifies that the proposal is not binding for the competent national authority.

The National Member and his Deputy have confirmed that, in practice, they enjoy a total independence in the management of their casework; however their status as administrative authorities reporting to the Ministry of Justice is perceived by some Prosecution and Judicial authorities the team met as problematic in some cases. According to the practitioners met by the evaluation team, this could negatively impact the confidence placed in Eurojust although there is no factual evidence that it has actually done so.

In the same vein, the issue of confidentiality arose during the on-site visit – in particular, but not only, if a case is declared secret, where the judge and prosecutor have exclusive access to the information contained therein. As confidentiality during the criminal investigation appears to be of particular importance in Spain, there is a question of to what extent information may be shared with an external party. In practice, the judges of the *Audiencia Nacional* did not feel this would prevent them from sharing information with the Spanish Desk; they suggested that if there is any reluctance from the average practitioner it would be due to a general preference to have direct dealings and share sensitive criminal information with a few people as possible. It seems desirable that Eurojust and the Spanish authorities reach practical solutions to overcome any obstacles to judicial cooperation resulting from that context.

Under the current Spanish legal system the National Member and, where appropriate, the Deputy National Member, will exercise the powers conferred upon them by European Union law in accordance with Law 16/2006, which currently expressly confers the following powers:
receipt and forwarding of requests for judicial assistance from the Spanish judicial authorities or the Public Prosecution Service;

- receipt and forwarding of requests for judicial assistance sent via Eurojust by the competent authorities of other Member States;
- receipt and immediate forwarding of requests for international assistance sent directly by European judicial authorities in an emergency;
- correction of errors, division of the request or any other modification to requests for international assistance which might be necessary to ensure they are processed promptly and properly, immediately informing the authority making the request.

Generally speaking, there is provision for direct communication between Eurojust and the judicial body or public prosecutor's office dealing with the case. However, requests on the following are forwarded to the Chief State Prosecutor who will make a decision, without prejudice to the decision taken in due course by the competent judicial authority:

- Initiation of an investigation or criminal proceedings in respect of specific acts;
- Recognition that the authorities of a Member State may be in a better position to conduct an investigation or judicial proceedings in respect of specific acts.

By way of derogation from their obligation of cooperation with Eurojust, Spanish competent authorities may refuse to comply with Eurojust requests, subject to a reasoned decision. The justification may also, where appropriate, simply invoke harm to essential national security interests, investigations under way or the safety of individuals. The draft Bill does not mention ongoing investigations nor does it mention the reasoned decision.

3.4.3.2. Access to national databases

To comply with the provisions of Article 11 of Law 16/2006, which specifies the type of registers which the National Member should be able to access, and in line with the provisions of Article 9(4) of Decision 2002/187/JHA and Article 9(3) of the 2008 Decision, the National Member has been registered in the Judicial Neutral Position, needing only a user name and password for access.

The Judicial Neutral Position is a Spanish judiciary network providing a total of 39 services, in particular:

Property and domicile consultations:

1. Full property consultation
2. Full domicile consultation
3. Spanish Tax Agency
4. Directorate-General for Traffic
5. National Statistical Institute (census address)
6. CORPME (property register indexes)
7. National Institute of Employment (unemployment benefits)
8. Police: DNA searching
9. e-Cadastre
10. General Social Security Fund

Exchange of information:

11. Wages Guarantee Fund
12. CORPME
13. Association of Public Prosecutors
14. Madrid Bar Association

Prison-related consultations:

15. Consultations relating to prison inmates
16. Connection to the prison information system

Judicial proceedings:

17. Computerised seizure services

Ministry of Justice services:

18. Central register of judgments passed in respect of minors
19. Central register of defendants in civil proceedings whose domicile is unknown
20. Deposit accounts and payments to the court

Other services:

21. Archive of powers of representation in court
22. Directory of Madrid lawyers
23. Serving of community services sentences
24. Central Commercial Register
25. Gender Violence
26. All police databases via the communications system of the national expert, the liaison officer and the Europol national unit

A direct connection to the Central Criminal Records Register is not technically possible and access is gained by submitting a standard form; since May 2013, an immediate response is provided upon receipt of this form.
Neither is it technically possible to access the DNA database; access is gained indirectly through SIRENE.

Access to the Single Computerised Index of the General Council of Notaries is managed in accordance with the provisions of Article 17(3) of the Notaries Act and Law 10/2010 of 28 April so that the information can be used in cases of money laundering and international financial crime.

3.4.4. Access by the national desk to the restricted part of the Case Management System (CMS)

All members of the national desk have access to the CMS after they have completed the relevant training and set up their access key.

Administrative assistants from the Secretariat are responsible for recording cases and changing or deleting data, with the assistance of the CAU. Administrative assistants periodically distribute a list of pending cases with a view to updating them and sending the necessary reminders to delegation members in order to move the cases along in accordance with the established deadlines.

3.5. EJN contact points

3.5.1. Selection and appointment

Taking into account the many people involved in international judicial cooperation, selection is made on the basis of proven experience and specific training in the subject matter.

In accordance with the second additional provision of Law 16/2006, contact points for the European Judicial Network are appointed by the Ministry of Justice, ensuring that the three institutions involved in cooperation processes, i.e. the Ministry of Justice, the Judiciary and the State Prosecutor's Office, are adequately represented. Contact points for the Judiciary and the State Prosecutor's Office must be appointed based on a proposal from the General Council of the Judiciary and the State Prosecutor's Office, respectively.

Appointments in the General Council of the Judiciary are the responsibility of a member of the committee for international relations and one or more legal practitioners.

With regard to the State Prosecutor's Office, appointments are made according to the needs of those public prosecutors' offices most heavily involved in international cooperation, particularly the special prosecutors' offices dealing with drugs, corruption and organised crime and terrorism, as well as the International Cooperation Unit of the State Prosecutor's Office. Within those prosecutors' offices attention is paid to the capabilities that the European Judicial Network's document recommends contact points should have, especially knowledge of languages and availability to address the relevant issues.

In the Ministry of Justice, appointments are made from among senior staff in the bodies most heavily involved in criminal judicial cooperation and also court clerks.

3.5.2. Practical operation of the EJN contact points in Spain

In their replies to the questionnaire Spanish authorities stated that, since the Eurojust national coordination system was still in its infancy, it was not possible to identify any patterns with regard to the meetings and tasks of contact points and national correspondents.

In general EJN appears underused in Spain, and during the on-site visit some expressed the view that EJN had lost its relevance. There was a marked preference to use the Spanish Desk at Eurojust, Liaison Magistrates or direct contacts notably through the police.

It was also noted that the Court Clerks have an instruction to use the EJN Atlas so they make more use of this than judges and prosecutors.

3.6 Conclusions

3.5.3. Formal (legislative) implementation process

- Spain implemented Council Decision 2002/187/JHA by way of provisions introduced into Law 16/2006 of 26 May 2006.

- Council Decision 2009/426/JHA has not been yet implemented. After the on-site visit the Ministry of Justice advised the team that a draft legislative act is intended to be presented to Parliament soon and to be adopted before the end of 2014.When finalising the present report, the evaluation team had the opportunity to examine the draft Bill which is in preparation to some extent. However, it is too early to assess whether the draft Bill will enter into force in this form, when this will be the case or whether the entry into force will solve all issues raised in the present report without additional measures to enable its practical application.

3.5.4. The national desk at Eurojust

- The Spanish National Desk at Eurojust is currently composed of a National Member, a Deputy National Member, a Seconded National Expert and two Administrative Assistants. The creation of a post of assistant to the National Member by way of the implementation law in preparation has been announced by the MoJ. Considering its heavy workload the Spanish Desk would also benefit from the appointment of an additional resource e.g. coming from the national prosecution service or from the Judiciary.

- The duration of the mandate of the current National Member is currently not in line with the requirements of the 2008 Eurojust Decision. The draft Bill, when adopted, will remedy this. The open and transparent manner in which both the National Member and the Deputy were selected and appointed is commendable. It would be a further suggestion (not required by the Eurojust Decision but seen by the evaluation team as best practice), following in the same vein, to involve the National Member in the appointment process of his collaborators. It should also be noted that the current law (and the draft Bill) foresees a prior report from either the General Council of the Judiciary or the State Prosecutor's Office, as the case may be.

- Given the distribution of tasks within the Spanish judicial system, the respective profession of the current National Member (a career prosecutor) and his Deputy (a career judge) fosters a solid entrenchment of the Desk amongst the national authorities. Moreover, the post holders are individually well-known and appreciated for their experience and expertise in the field of judicial cooperation.

- However, the National Member and Deputy having been appointed as part of the organisational chart of the Ministry of Justice, do not retain their previous judicial powers and status., This does not seem to hamper their independence in practice or cause practical problems in actual cooperation. Concern has been expressed by some practitioners the team met during the visit that this could have an impact in certain cases of cooperation with Eurojust. The team has, however, not been provided with any practical evidence in this regard.
- The National Member enjoys access to a number of databases available to national authorities; he is granted direct access to the largest part of them, with some exceptions causing no particular problems or delays in practice.

- The Desk includes a Chief Inspector of the national police acting as a seconded national expert, able to liaise smoothly with Europol and obtain information from national law enforcement authorities.

3.5.5. Implementation of the ENCS

- The ENCS has not been established yet, which appears to be particularly detrimental in the case of Spain, considering the crucial need for internal coordination; It is hoped that when the draft Bill has been adopted, this will be remedied. At any rate, this is one of the stated goals of the draft.

- The National Correspondent to Eurojust for terrorism matters has been serving for a few years already and is actively exchanging information with Eurojust.

- The National correspondent to Eurojust for other matters (an experienced prosecutor and a former member of the Spanish Desk) has been appointed by the Ministry of Justice. She has a position outside the international cooperation unit of the FGE. It seems that this appointment has been made without prior consultations. It would be desirable that the MoJ, in conjunction with other relevant authorities, clarify the role and tasks of the National Correspondent, so as to optimise the effective impact of her work. The draft Bill will provide a clear basis for this. The team is confident that this will help her in her fulfillment of her tasks, but suggests that the issue is kept under review.

3.5.6. Implementation of Article 13 of the Eurojust Decision

- To date Article 13 has not been fully implemented in law although the draft Bill adopted on 30 May 2014 is comprehensive and seems to fully implement the Eurojust Decision. The draft Bill assigns the task of transmission to "the national authorities, within the framework of the respective competences they are legally assigned". It is to be hoped that there are no difficulties in relation to dual competences or unclarity about competences as both investigating judges, prosecutors and Court clerks may be involved in the same case. Since the transmission is provided through the National Correspondent according to the draft Bill, or with a copy to her if it is provided directly, the Spanish authorities are optimistic that this will avoid any duplication. This issue should be kept under review once the law has entered into force.. Currently, public prosecutors are bound by an instruction issued by the State Prosecutor's Office to send relevant information to Eurojust and to use the template made up for this purpose; the investigative judges are only subject to guidelines.

3.5.7. Connection to the CMS

- The secure electronic network between Spain and Eurojust is not ready.

3.5.8. EJN

- While EJN contacts points are in place (some of them being commendably members of the domestic networks mentioned below), the evaluation team was not able to understand clearly the use made of EJN by Spanish practitioners.
- Assistance in cooperation in criminal matters appears being mainly ensured by the three domestic networks respectively set up among judges, prosecutors and court clerks. They are composed of highly qualified professionals and provide very useful assistance to their members in every day practice. However, they lack structured coordination between them and seem to be more an alternative to the EJN contact points than to act for awareness raising and use of the EJN.
- Prontuario.org is a remarkable website offering all MLA practitioners the assistance and information on all relevant MLA instruments.

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

Spain has no IT application or integrated system for recording requests for international assistance at national level.

Spanish authorities stressed however that all of the judicial bodies have case management systems equipped with effective search tools based on different criteria and use uniform criteria for recording cases, including those relating to international judicial cooperation. In particular, the General Council of the Judiciary makes use of judicial data through its international relations department in order to identify potentially problematic cases involving judicial cooperation, in the event of which it is able to adopt a proactive role, offering assistance to the judicial body in which the potential problem has been identified.

Progress has been made on the interoperability project between the different case management systems used in the Autonomous Communities with devolved powers and in the Autonomous Communities in which the Ministry of Justice retains jurisdiction.

At the same time, Article 15 of Regulation 2/2010 concerning general standardisation criteria for the common procedural services lays down that requests for international judicial cooperation must be recorded and allocated in a specific way, which makes it easier to trace letters rogatory. However the evaluation team understood from practitioners that in practice this may not always work effectively.

The General Council of the Judiciary has produced a guide to facilitate the allocation of cases involving international judicial cooperation. Among the criteria making it easier to identify the judicial authorities involved in the execution of a letter rogatory, with a view to possibly attending a coordination meeting, it is worth highlighting the importance placed on sending a confirmation of receipt.

In 2012 the State Prosecutor's Office launched CRIS, a uniform IT application for all Spanish prosecution offices which deals with the different international cooperation records and reports processed throughout the country by the relevant provincial delegates, and which has an accompanying system of alerts.

With regard to the Ministry of Justice, although the increase in direct communication between judicial authorities in Europe means that recourse to the central authority is limited, in practice a significant number of EU-level requests are processed through the central authority under the 1959 Convention (not only from Spanish judicial authorities but also from central authorities abroad).

The MoJ maintains a database containing all letters rogatory processed through the central authority, together with information on their current state of progress. In order to identify which letters rogatory could meet the criteria for information to be sent to Eurojust, the database has been modified to set up a system of alerts that detects when a single judicial body has sent two or more letters rogatory to different EU countries as part of the same proceedings. In that case, if its analysis makes it clear that the requirements laid down by the 2008 Decision have been met, this information is sent to the Spanish Eurojust delegation so that the National Member can contact the relevant judicial authorities.

In order to identify on-going judicial proceedings related to a case involving a coordination meeting, it is common practice to use police information obtained via the National Expert seconded to the Spanish Desk. This information may also help to identify the judicial authority responsible for executing a letter rogatory.

Spanish authorities advised that recently, mechanisms have been developed to accelerate communication with Spain's main senior judges so that the Spanish delegation can directly identify as quickly as possible the judicial authority to which the execution of a letter rogatory relating to a Eurojust case has been allocated.

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

A number of forms have been sent to the Spanish delegation despite the fact that the 2008 Decision has not been transposed, as the topic has been addressed by *Instruction No 3/2011 of the State Prosecutor's Office on the new system for information exchange on the basis of the Decision of the Council of the European Union of December 2008 on the strengthening of Eurojust* and the General Council of the Judiciary's Guide dated 10 July 2012.

Spanish authorities explained they have developed a "provisional" model, which is optional for everyone but prosecutors, and which could be described as "assisted" decentralisation, so that although information exchange can be initiated by judges or prosecutors, assistance will be provided by the international relations department of the General Council of the Judiciary and the International Cooperation Unit of the State Prosecutor's Office, respectively. The evaluation team did not see this in practice and it is not clear what form it takes.

The Spanish authorities advised that the Eurojust National Correspondent, using the knowledge and experience gained in her previous post as assistant to the National Member, is involved in identifying and actively promoting information exchange under Article 13.

In 2012, 23 forms were received primarily in the mailbox set up for this purpose (art13ES@eurojust.europa.eu). Spain stressed that this is significantly more than were sent over the same period in some States in which the ENCS is already operational. As for 2013, 33 forms were received from Spain. It was noted that Article 15(2) of the Spanish Law of 2006 and Art 13(1) of the Eurojust Decision are similar, although the Spanish Law is wider. The provision under Spanish Law has been in place since 2006 but appears to have been interpreted by the FGE as optional, rather than mandatory, and as something which could be delayed if it would compromise investigation.

One may wonder why the provision does not apply to investigating judges – as they are the ones in charge of the investigation (from the point at which it becomes judicialised) it would seem to make more sense for them to be responsible. At present prosecutors have a duty to notify, based on an instruction by the Prosecutor General, but judges are not compelled to. It is understood, however, that all notifications from prosecutors are routed through the FGE, and that the FGE only sent 8 notifications in 2013, which suggests that the majority must have been sent by investigating judges. It was said that there is no duplication because the prosecutor and judge communicate with one another, and this appears to work in practice. It is understood that the new Law will provide for judges to make notifications as well as the draft Bill assigns the obligation to all national authorities..

There is a perception by practitioners that the Article 13 obligation is unduly onerous and a lack of awareness/understanding of the purpose and potential benefits it may bring.

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

According to Article 9(2) of Law 16/2006 which transposed the 2005 Decision, the terrorism correspondent *"shall carry out the tasks laid down in European Union law. For this purpose, the correspondent shall have access to and send to Eurojust information relating to any investigation or judicial proceedings concerning terrorist offences, and at the least information relating to:*

a) the identity of the persons or entities subject to such investigations;

b) the activities subject to investigation or proceedings and their specific circumstances;

c) any connection with other relevant cases involving terrorist offences;

d) any related action involving international judicial cooperation that may have been pursued, and the outcome of such action.

In practice, the Terrorism Correspondent systematically sends information to the Eurojust National Member on the number of judgments issued by the *Audiencia Nacional* in cases involving terrorist offences; this information is provided in files which are later updated with the decisions of the Supreme Court.

The files identify the proceedings and the defendants, and specify the alleged facts and the type of terrorism involved, the offences claimed by and penalties sought by the prosecution, the judgment of conviction or acquittal handed down and whether or not the judgment is final, whether European arrest warrants have been issued, whether letters rogatory have been issued, and whether there are any connections with activities in other countries.

In order to safeguard the fundamental rights of presumption of innocence and protection of image, given that the information is provided so that it can be included in a terrorism database, the procedure is to forward the information once a judgment has been issued, without prejudice to further information that may follow should the Supreme Court's decision modify the judgment of the *Audiencia Nacional*.

In order to produce the files, the public prosecutor's office of the *Audiencia Nacional* receives terrorism-related judgments from the four sections of the Criminal Chamber and Central Criminal Court, which have jurisdiction over these crimes.

The information in the files sent to Eurojust stems from an exhaustive and detailed examination of the judgments in order to provide the data required for processing by Eurojust. Each file is designated by year, section and judgment number so they can be quickly and reliably identified by both the public prosecutor's office and Eurojust. The files are stored in digital form and classified by year, quarter and terrorist group.

The National Terrorism Coordinator sends judgments quarterly by email to the management of Eurojust. At the end of each quarter each file is reviewed before being sent in order to determine whether it is final - this information is also updated every quarter - and so create annual and quarterly files of "judgments modified in previous years and quarters". A total of 329 files concerning judgments were sent between the end of 2009 and the third quarter of 2013.

In addition to this periodic information, information on proceedings relating to terrorist offences has been promptly provided on several occasions at the request of Eurojust.

On the basis of the contributions and recommendations of the National Terrorism Correspondent, Eurojust is developing the content of its Terrorism Convictions Monitor (TCM). Moreover, the contributions of the Terrorism Correspondent have supplemented Eurojust's contribution to Europol's EU Terrorism Situation and Trend Report (TE-SAT).

It should be noted that Spain is the Member State which provides by far the most information in respect of the obligation to exchange terrorism-related information:

- In 2011, 235 information transfers out of a total of 346 (followed by France with 46)
- In 2012, 71 information transfers out of a total of 137 (followed by France with 25).

4.1.4. Channels for information transfer to Eurojust in case of Article 13 of the Eurojust Decision

In the majority of cases, the information is emailed to Eurojust's Outlook account. To a much lesser extent, information is also faxed.

With regard to Article 13(11), the 2008 Eurojust Decision has not been implemented and thus information exchange is not mandatory. Spanish authorities underlined however that effective compliance with the provisions of Article 13 occurs in the majority of cases using the form developed by Eurojust. They also noted that the essential information is provided, although there are occasional gaps due to a lack of compulsory fields in the template developed by Eurojust and the fact that the exception under Article 13(8) of the Eurojust Decision has not been applied.

Specifically, the 10 forms submitted by the State Prosecutor's Office were based on Article 13(6), indications that a criminal organisation is involved (five cases), Article 13(7)(c), repeated difficulties regarding judicial cooperation (four cases), and Article 13(7)(a), cases where conflicts of jurisdiction are likely to arise (one case).

4.2. Feedback by Eurojust

In addition to the automatic confirmation of receipt generated when a form is received by the specially created email account, as far as possible the National Member communicates informally with the national authorities that provided the information in order to inform them that the form has been received, further information is required, or proceedings have started.

If the request for assistance resulted in a request to bring a case before the College of Eurojust and, where relevant, possible coordination meetings, the National Member or member of the national desk assigned to handle the case informs the national authorities of the way in which the information provided is being used.

Demonstrating the importance he places on this feedback and on a final evaluation of the process, the National Member emphasised to the College at its meeting on 5 November 2013 the need for an information form or final case evaluation to be sent to the national authorities that submitted the information under Article 13, summarising the outcome when the objectives that caused the case to be opened are achieved.

4.2.1. Qualitative perception of the information flows between Eurojust and Spain

Law 16/2006 specifically requires the State Prosecutor's Office to inform Eurojust *"about the existence of any judicial investigation or operation within Eurojust's scope of competence that has repercussions on an EU scale or that could affect another Member State of the European Union*", and the National Member has a parallel reciprocal obligation (Article 15) to notify information that he or she possesses and that may be of interest for any investigations or criminal proceedings conducted by the Spanish courts, or for their coordination with those being conducted in another Member State of the European Union. In this context, Instruction 2/2007 issued by the State Prosecutor's Office is again worth mentioning.

On the other hand, the transmission of information does not always equate to a request for assistance (Article 13(2)), which precludes the opening of a case at the Spanish delegation, though it does mean that the information is filed in the CMS.

Finally, there is a need to stress the importance of actively providing training and information about Eurojust to Spanish judges, prosecutors and court clerks, in order to ensure the quality of information flows, along the lines of the Eurojust Guide prepared by the General Council of the Judiciary), in addition to the specific guidelines on Article 13.

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

The fact that the Spanish criminal procedure legislation contains no express provisions on the secrecy of proceedings in relation to cooperation with Eurojust and especially coordination meetings, even if the General Council of the Judiciary (CGPJ) has interpreted it in the sense most favourable to information sharing, has generated reticence among some judicial authorities. The complexity and "user unfriendliness" of the model discourages judges, prosecutors and court clerks who are already overburdened in their daily work.

In order to facilitate fluent communication with Eurojust, access to the directories of judicial and prosecution bodies and to the Central Investigating Courts' sittings calendar has been requested.

4.2.3. Suggestions for improving the information exchange between Spain and Eurojust

Spanish authorities suggested the following.

- The automated processes generated by case management software and operating systems, and introduced by the EPOC IV project, would facilitate the exchange of information, avoiding the added complications entailed by the form.
- Legislation clarifying the possibility of reconciling the secrecy of proceedings with the exchange of information would dispel any doubts about this matter.
- There is a need to foster two-way information flows.
- There is a need to provide more training and information on Eurojust for judges, prosecutors and court clerks.

4.2.4. The E-POC project

Spain did not participate in the EPOC IV project exploring the possibilities for interoperability between the various national operating systems and between the national systems and Eurojust's CMS.

4.3. Conclusions

- The number of notifications made under Article 13 is rising (23 in 2012; 33 in 2013) and relatively high in comparison to that in other Member States., but also lower than desirable in consideration of the characteristics of the country. There has been an absence of a clear legal obligation for all practitioners, in particular investigating judges, to send information to Eurojust. These problems are addressed by the new draft Bill.
- There is no centralised case management system in Spain, which means it can be challenging to find information and to track down international letters rogatory. It may be one of the reasons for the Spanish Desk to be so highly requested. The Desk confirmed that the task of tracking LoRs can be very time-consuming.
- The CRIS database of the State Prosecution Office is a very helpful IT-tool to facilitate and improve the general quality of judicial cooperation. If it could somehow be connected to the other databases it would be easier to track down LoRs.
- The vast amount of information that the National Correspondent for terrorism matters has provided to Eurojust over the years is to be particularly appreciated.

5. OPERATIONAL ASPECTS

5.1. Statistics

In its annual reports Eurojust provides statistics for the period in question on, among other things, types of offence, the multinational or bilateral nature of the assistance requested and whether the Member States involved are requesting or requested states.

Eurojust CMS provides statistics generated using different search patterns, in particular where Spain is the requesting State, which is not so often the case.

The Spanish national desk at Eurojust keeps data on cases in which it was a requested country, which are set out in detail in the National Member's annual activity report for 2012.

From 2004 (first statistics) to the end of 2012, a total of 7 741 cases were registered with the College. The Spanish delegation was involved (either as requested or requesting county) in a total of 2043 (23.39 %) of cases or 2283 (30.61 %) counting TWFs. From 2007 to 2012, despite occasional slack periods, the caseload increased by an average of 0.73 %. These overall figures illustrate the importance of the Spanish Desk at Eurojust.

5.2. Practical experience in relation to Eurojust

1) **The majority of cases involving the Spanish delegation are bilateral**.

By country, the delegations most involved in the cases registered by the College at the request of the Spanish delegation in 2011 were Romania (12 cases), Italy (11 cases) and the UK (9 cases). During 2012, the greatest number of registered cases was addressed to the Netherlands and Romania (8 cases each). On the other hand, the countries that opened the most cases addressed to the Spanish delegation in 2011 were France (27 cases), the Netherlands (27 cases) and Portugal (19 cases). Again in 2012, the French national desk opened the greatest number of cases addressed to the Spanish delegation (28 cases).

2) **Most of the cases opened by the Spanish delegation in Eurojust involved drug-trafficking offences**. Other offences include money-laundering, trafficking in human beings and fraud or swindling. As regards the cases opened by other national delegations to Eurojust and addressed to the Spanish delegation, drug-trafficking offences are the most common form of crime in the initial investigations. They are followed by miscellaneous offences, covered by the catch-all provision in Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) allowing units to assist in investigations and prosecutions of other offences at the request of a competent authority of a Member State. Within the EAW category, the vast majority of cases (252) involved facilitating the execution of warrants issued.

3) **The overwhelming majority of requests are made at the investigation stage** and only exceptionally do they occur at the hearing or execution phase.

4) **Spain stands out clearly as a requested country**. The Spanish delegation has been a requested country in 21.83 % of the cases registered at the Eurojust College since 2004, while the cases opened by the Spanish office represent 3.05 % of the total number of cases registered at Eurojust since 2004. This results in an average of +/- **230** cases as requested country per year over the five last years.

By contrast, the number of cases opened by the Spanish Desk has always been considerably lower, although an increase has been noted since 2009; the average number of cases opened per year from 2009 to 2013 is **50**.

Regarding possible keys for interpreting these data, it is acknowledged that the prevalence of bilateral cases, which in theory are an anomaly, is a pattern that is repeated across various delegations.

Regarding the marked imbalance between active and passive cases, the evaluation team was advised that the reasons, *inter alia*, behind this discrepancy might be multiple.

- The high number of incoming requests to Eurojust might be explained by the following factors:

  - Spain is from a geographical perspective, at the crossroad of trafficking routes, in particular drug trafficking, with connections with the entire world and in particular South America as region of origin and almost all EU Member States as countries of destination;

  - Spain is host to many suspects and convicted criminals;

  - The Spanish criminal procedural system is extremely complex and fragmentary; cooperation in criminal matters it is characterised by a multiplicity of actors and a lack of overall coordination as well as the absence of a comprehensive tool for tracing MLA requests; the Spanish desk at Eurojust plays a coordination role for competent authorities of the other Member States that allows to overcome the difficulties created by this complexity.

    In several occasions during the on-site visit, practitioners brought the attention of the evaluation team on the increase of low-quality translation of LoRs as an issue which may result in involving additional efforts from Eurojust and/or EJN.

The low number of outgoing requests channelled by the Spanish desk at Eurojust is more difficult to understand, but can be explained as follows:

The practitioners of local districts are not all familiar with Eurojust and the EU instruments in general; due to its huge territory and the high number of practitioners, training on these issues represents a challenge, in particular with regards to the examining judges who are in charge of the most serious cases – and should thus be in principle benefit from such training – but face an important workload that makes it difficult for them to attend training. However, practitioners who have "experienced" Eurojust have been convinced of its added value, and want to use it again; they are promoting the use of Eurojust, and this explains the recent and steady increase of cases opened by Spain as requesting country.

- In general, and in particular in bilateral cases – which represent the majority of cases requiring cooperation – practitioners prefer to use direct contacts, where appropriate facilitated by the "international cooperation networks" of prosecutors or of judges and do not see the added value of involving Eurojust.

- The evaluation team has been advised that uncertainty as to the confidentiality regime applicable in the other Member States concerned to the information exchanged at Eurojust might also play a possible role in the hesitancy of practitioners to use Eurojust.

- It is not clear that all practitioners in small districts are aware of all services and added value that Eurojust can provide in supporting the prosecutions with cross border connections.

- As already noted the Spanish system is characterised by the existence of three well-established and well developed domestic networks of practitioners dealing with judicial cooperation in criminal matters (one for prosecutors, one for judges and one for clerks). These networks provide a range of services and "self-help" mechanisms which may make Eurojust and the EJN less necessary to the eyes of practitioners, such as the Handbook on international cooperation. In addition, Spain benefits from the assistance of liaison magistrates seconded to France, Italy and recently the United Kingdom, as well as those seconded to Spain by France and the UK.

- According to some practitioners and authorities met by the evaluation team, this disinclination might also be linked to the status of the National Member and the Deputy, who belong during their mandate to "special services" of the Ministry of Justice, and thus, although they enjoy full independence in the exercise of the management of casework, are subordinated from an administrative point of view to the Minister of Justice and are deprived of proper judicial powers and status.

The criteria for registering and opening active cases can also vary, depending on the delegation. The Spanish delegation's approach has, to date, been restrictive.

Spanish authorities acknowledged that it was also possible to encourage active cases through training activities and meetings promoting the possibilities offered by Eurojust.

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

Spanish authorities said the decision to seek the assistance of Eurojust, the EJN and other players in a case can depend on the nature of the assistance required, whether a prior coordination meeting has taken place and what authorities attended the meeting and, in many cases, previous personal contacts.

During the relevant training sessions and in the Guide of good practices for the Spanish judicial authorities on obtaining the assistance of liaison magistrates, the European Judicial Network, Eurojust and IberRed, drawn up jointly by the General Council of the Judiciary, the Chief State Prosecutor and the Ministry for Justice, the following criteria are repeated in relation to the preferential assignment of a case to the Spanish national desk at Eurojust:

- the multilateral nature of the case;
- the complexity of the case;
- the urgency of the case, particularly with the possibility of contacting On-Call Coordination;
- whether coordination is required for conducting proceedings;
- whether conflicts of jurisdiction have arisen or could arise;
- the need for logistical support (meeting rooms, translation and interpreting);
- joint investigation teams;
- the involvement of third countries, especially those with which Eurojust has signed an agreement or in which it has contact points;
- in general, the criteria mentioned in Article 13 of the 2008 Eurojust Decision.

Instruction 2/2007 already provides that prosecutors should transmit information to Eurojust in cases of greater importance or complexity, adding that "*in the event of cases of bilateral cooperation, or the resolution of straightforward matters or issues of lesser importance relating to the execution of letters rogatory, Prosecutors shall continue to request the assistance and intervention of the Liaison Magistrates and the contacts of the European Judicial Network.*"

To facilitate and ensure transmission and avoid duplication of effort, where the competent authority has not been specified and jurisdiction extends to the entire national territory, requests for assistance received are transmitted via the International Cooperation Unit at the State Prosecutor's Office, together with an explanatory memorandum or note outlining their content, purpose and issuing authority as well as the original request or a copy thereof if the original has already been sent through another channel. On the other hand, if the requested judicial authority has already been identified or is easily identifiable as the sole competent judicial authority, or the request is in addition to another which has already been executed, there is no intermediary.

Active cases are assigned with ID numbers attributed by the CMS at the outset, with even numbers corresponding to the National Member and odd numbers to his Deputy. Passive cases, which represent the majority of the cases dealt with by the Spanish national desk, are assigned on the basis of two groups of Member States, responsibility for which is shared evenly between the National Member and his Deputy in the light of CAU statistics, the complexity and nature of the cases opened towards Spain, and other factors such as knowledge of languages and stated preferences.

At coordination and level II or CC meetings, the Spanish delegation is represented by the National Member or his Deputy, though it may also be represented by SNEs with the prior authorisation of the National Member, and the National Member or Deputy may be assisted by trainees or administrative assistants from the national desk.

The National Member communicates directly with the judicial body or prosecution office hearing the case (Article 14(1) of Law 16/2006), and forwards to the Chief State Prosecutor all requests relating to the following:

a) initiation of an investigation or criminal proceedings in respect of specific acts.

b) recognition that the authorities of a Member State may be better placed to conduct an investigation or judicial proceedings in respect of specific acts.

Where a request concerns the establishment of a joint investigation team (JIT), the National Member forwards the request to the authority with responsibility for establishing the JIT.

In general, the administrative assistants seconded to the Secretariat perform the following functions:

- keeping of manual files under the supervision of the person who is responsible for the case. Files must be kept of all of Spain's active cases and of the passive cases before the College of Eurojust, with consultation in the case of passive cases which only have a TWF number. It is not necessary to keep files on spontaneously disclosed information or isolated initiatives (videoconferencing, networking with authorities, helping to speed up CRIs, notifying EAW extension). The file contains the decision to open the file or the preliminary report by the National Member for Spain or on his behalf by the National Member's assistant or the SNE who dealt with the case, to which the Secretariat adds a dated account of any relevant incidents or updates, copies of documents submitted and of any related emails.
- administrative management of the CMS: sending documents from Outlook to the CMS, opening and closing files, entities, etc., under the supervision of the National Member, assistant or SNE dealing with the case.

5.3.1. Cases related to the tasks of Eurojust acting through its National Members (Article 6)

The Spanish delegation at Eurojust receives very limited information on possible or potential conflicts of jurisdiction on the basis of the reporting obligation provided for in Article 13(7)(a) of the 2008 Eurojust Decision. These situations are generally discovered indirectly, for instance where *ne bis in idem* is cited as grounds for refusing to execute an EAW.

Where the National Member issues a recommendation recognising that one of the jurisdictions may be better placed to conduct an investigation or judicial proceedings in respect of specific acts, he asks the Chief State Prosecutor to issue a decision on whether the recommendation is well-founded and, where appropriate, to instruct the Prosecution Service to take such measures as are appropriate to the Spanish prosecution or investigation. Similarly, where there is agreement between the parties, the National Member may, once he has received the communication or decision of the European judicial authority allowing him or her to do so, recommend transferring foreign proceedings so as to launch or extend an existing investigation in Spain, directly to the prosecutor or judge in the case so that he or she can use the new transferred proceedings to further his or her investigation.

The data relating to the recommendations are published in the Public Prosecution Service's annual report, in the section on International Cooperation. Eight recommendations were received between 2009 and 2012: one per year except for 2011, in which five were received. In all of the cases bar one (where, due to the circumstances, there could not have been a better procedural position, as the proceedings had concluded under the foreign jurisdiction), the Chief State Prosecutor accepted Eurojust's submissions, and the order was given to the case prosecutor to submit them to the competent court.

All recommendations were forwarded to the Chief State Prosecutor except for one (in 2010): as it was a request by a judicial authority of another Member State to extend a national investigation to further acts (Article 16 of the Spanish law), the decision was taken to forward it to the competent judicial authority directly (Article 16), which in this instance was the Cádiz prosecution service (in 2010).

In 2012, the Spanish National Member made use on two occasions of the powers under Article 6 of the Eurojust Decision, specifically under Article 6(1)(a)(i) and (ii) thereof, by asking the competent authorities to accept that a foreign jurisdiction was in a better position to continue the investigation or to bring charges and investigate certain acts.

5.3.2. Requirements for cooperation between Spanish national authorities and Eurojust

Under national law, the relationship with national authorities is regulated by Articles 13 et seq. of Law 16/2006 though no specific procedures have been drawn up. However, the following can be noted:

- There is an obligation to cooperate with Eurojust, subject to possible disciplinary action.
- There is direct communication with national authorities.
- There are specific circumstances in which requests are received via the Chief State Prosecutor, who decides whether they are well-founded and instructs the Prosecution Service to take the necessary steps.
- The Ministry of Justice authorises the creation of joint investigation teams.

5.3.3. Cases related to the powers exercised by the National Member (Article 6)

Spain has not yet incorporated the 2008 Eurojust Decision into its national law. However in their reply to the questionnaire Spanish authorities expressed the following observations:

- Although on paper the powers vary from country to country, in practice they are very similar since the only powers exercised by National Members are the ordinary advisory, facilitation and coordination powers, which are exercised in cases where the national judicial authorities are competent.

- In practice, on a daily basis, the national member receives, transmits and facilitates the execution of requests for international judicial assistance, follows up the requests and provides additional information in relation to them. The National Member receives support from the staff in the national office and cooperates closely with the national authorities.

- As for Article 9c, while the Spanish national member cannot issue requests for international judicial assistance, execute them or order investigation measures, he/she can, as mentioned previously, complete the requests issued by his/her national authorities.

- As for Article 9d (b), in cases of emergency only, the Spanish national member has the legally recognised power - and often exercises it - to receive requests for judicial assistance from the authorities of another EU Member State directly. These requests must then be forwarded to the competent authorities without delay. The national member does not, however, have powers to execute these urgent requests.

- As for the specific powers of the National Member in accordance with Articles 9c and 9d, Law 16/2006 establishes that Eurojust, and by analogy the national member, can request, via the Chief State Prosecutor, "*the initiation of an investigation or criminal proceedings in respect of specific acts*". When requests refer to the establishment of a JIT, Article 14(3) of the same law provides that the national member's request "*must be forwarded to the authority which is competent for forming the JIT*". Under Article 3 of Law 11/2003, which governs joint investigation teams, the competent Spanish authority is the *Audiencia Nacional* or the Ministry of Justice, depending on the nature of the offence prompting the investigation. Likewise Article 15(5) establishes that the Eurojust national member *"shall communicate to the Chief State Prosecutor any information he or she possesses which could be of interest for any investigations, proceedings or criminal procedures taking place under Spanish jurisdiction or for the purposes of coordinating these with any such procedures taking place in another Member State of the European Union"*.

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

In the case of the investigation into the Prestige disaster, the College, after holding three coordination meetings, issued an opinion stating that Spain was in a better position to conduct the proceedings than France, with special reference to the interests of the victims.

5.4. Practical experience related to coordination meetings

In 2012 Eurojust organised 194 coordination meetings, of which 164 took place at its headquarters in The Hague, and the rest (30) elsewhere. Out of the total number of coordination meetings organised by Eurojust, the Spanish delegation participated in 54 of them. Of these 54 meetings, 13 were organised by the Spanish delegation in the context of nine cases in total. In the comparative tables for 2012 this is shown as a 62.5 % increase vis-à-vis 2011. The rest (41) refer to meetings organised in relation to cases (34) of other Member States.

The category of offence giving rise to coordination meetings in the highest number of cases was *"offence against property and public goods, including fraud"*, in particular in 2012. This was followed by drug-trafficking, involvement in a criminal organisation and money-laundering.

According to the Spanish authorities these meetings have many advantages. They allow for the exchange of information in real time and in person between the judicial and police authorities of different Member States, with the possibility of participation by representatives of third States, on the progress of their respective investigations. This can include identifying parallel investigations, avoiding conflicts of jurisdiction, resolving the problems which the requested assistance may raise, discussing legal matters or coordinating a "day of action" with the added advantage of simultaneous interpretation provided by Eurojust. The personal contacts, which are essential for the functioning of the networks, also benefit judicial authorities which may not necessarily be specialised, but are in charge of coordinating investigations. The contacts help develop mutual trust, which is of prime importance in constructing the European judicial area.

According to the Spanish authorities the following aspects could be improved:

- Funding for a third participant in these meetings - withdrawn by the College on 4 December 2012 - at least in exceptional cases. The funding of a third participant is especially costly for Spain on account of its geographical distance, compared with other countries which are closer to each other.
- Maintaining personal contacts between authorities after the meetings.
- Following-up what was agreed upon.
- Harmonising the handling of confidentiality with regard to drafting acts and to access to the information divulged in the meetings; harmonisation of the meeting itself in line with respective national procedures. An example of good results from these meetings is the *Groningen* case - ID 10662, which was initiated on the basis of a request issued in 2012 in connection with a sentence handed down by a Spanish court ordering the payment of a significant sum of compensation to the victim of serious injuries. The upshot was that the Dutch central authority responsible for executing the request included the compensation in the concept of the financial penalty for the purposes of applying the 2005 Framework Decision, without having to resort to Regulation (EU) No 44/2001, and the transfer of the money paid by the convicted party was unblocked.

With regard to the coordination centres (CC), while the Spanish delegation did not participate as an organiser in 2012, it made use of them on at least three occasions. The last such occasion, 6 November 2013, concerning the *Sunbird* case and organised by the Netherlands, was a great success, thanks to two months' preparation beforehand.
The assessment of CCs made by the prosecution service is positive. Eurojust informs the relevant public prosecutor, his or her chief prosecutor and the Cooperation Unit (which takes care of the administrative authorisations needed) whenever a meeting is taking place; in this way controls of the meetings are carried out.

In general, the organisation of the meetings is satisfactory, but Spain would insist on the need to fund a third participant to allow the investigating judge, the prosecutor and a member of the police services to attend the meeting

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

In June 2011, an on-call coordination cell was established on a permanent basis within the Spanish delegation in accordance with the 2008 Eurojust Decision.
As from the date on which the Deputy took up the post, the National Member and the Deputy take it in turns to be available 24/7 on alternate weeks. Judges, public prosecutors and law enforcement officers have been given the telephone numbers for the OCC. The General Council of the Judiciary sent a letter to the entire judiciary informing it of the cell's existence, together with a letter from the National Member. The members of the prosecutors' international cooperation network have also been informed of the cell's existence and functioning.

In practice, as is currently the norm for many Member States, practitioners tend to prefer contacting the National Desk by other means of communication (in particular mobile phones). In any case the Eurojust National Member and Deputy are permanently on call, able to respond to urgent requests for assistance (usually controlled deliveries) at any time, although these interventions are not officially registered as "OCC".

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

From the outset, there have been very close working relations with the National Member and his team, resulting in various initiatives. It is hoped that these relations will be even closer after the ENCS has been implemented.

In the meantime, the working relations between the Eurojust National Member and Europol's national unit have improved in the light of the Eurojust Decision 2009/426/ JHA. The Eurojust National Member and Europol's national unit agreed at the time to step up their joint efforts in the international field and to enhance their communications and investigation initiatives by designating a full-time liaison officer from Europol's national unit as a Eurojust national expert. In addition, the Europol national unit submitted initiatives for investigations to the Eurojust National Member and his team, in cooperation with the judicial police forces specialised in organised crime, and in line with the EMPACT priorities. The National Member assisted in these initial investigations by registering them as TFW; in this way the information provided by the Spanish judicial police could be analysed by Eurojust's analysis unit. According to the register of cases, contributions from Europol's analysis archives were also received.

As an example of this approach, the delegated cybercrime prosecutor of Galicia launched investigative proceedings in 2010 to investigate a group of hackers operating in various Member States and in Ukraine, the final destination of the appropriated funds. By registering the case at Eurojust, it was possible to receive the analysis from the CAU and from the Europol High Tech Unit archive. The aim of the investigations was to identify the final recipients of the remittances of appropriated funds. The cross-checks carried out by Europol on the identities of the first and second-level mules in various Member States made it possible to identify the two public call centres in Kiev to which the money was being transferred from various Member States by monitoring the MTCN (Money Transfer Control Number) registers. The Spanish Public Prosecution Service presented the Ukrainian authorities with the facts and launched an investigation.

In 2011 a new investigation initiative was registered as a TWF by Eurojust's Spanish delegation in collaboration with Europol's national unit, Eurojust's UK and Netherlands delegations, and officials from SOCA in the UK. The aim was to identify the illegal distribution and sale in Spain of false British passports, which had originally been genuine, among British and Dutch nationals settled on the Spanish coast and profiled by the police.

Lastly, a number of police officials are currently designated as contact points in large European networks for police and judicial cooperation (Joint Investigation Teams Network, ARO network, Anti-Corruption Network and the Genocide and Crimes against Humanity Network). Europol's national unit attaches particular importance to the work of the contact points, in particular the ARO and Teams Networks, where the judicial police is very active with respect to the strategic information it obtains via the network secretariats or through sharing experiences and strategic projects with other police contact points.

5.7. Conclusions

- There is an issue of concern relating to the marked discrepancy recorded between the number of incoming (+/-230) and outgoing (+/- 50) requests that the Spanish Desk at Eurojust has to deal with on an annual basis.

- Statistics and answers given during the on-site visit made obvious that, as a general trend, Spanish judicial authorities underuse Eurojust, EJN and all European MLA tools. One reason for this situation might be that Spanish practitioners hardly call on international legal assistance and, in cases they do so, they tend to prefer direct contacts.

- The practitioners met by the evaluation team were aware of the benefits of JITS and of Eurojust’s support to them, including the JITs funding programme. It seems however that the numerous practitioners from local districts might not have the same level of awareness.

- The Spanish Desk has organised coordination meetings every year since 2009. It has taken part in 6 coordination centres in 2013. The feedback from the participating authorities was very positive. Some practitioners have expressed the wish to speed up the decision-making process and information on the organisation of the coordination meetings.

- Spanish authorities regret Eurojust's policy to limit the reimbursement of costs to 2 participants to a coordination meeting, as the Spanish procedural regime would favour the attendance of a prosecutor, an investigating judge and a policeman as to ensure efficiency in the meeting and in the follow-up to the meeting.

- Like other Member states have indicated in the course of this 6th Round of evaluations, Spain has expressed its wish that coordination meetings be better prepared (e.g. better timing, prior defining of the exact goals of the meetings, etc.).

6. COOPERATION

6.1. Cooperation with EU agencies and others

Spanish authorities expressed the opinion that, with due respect for the sphere of responsibility and activity of each EU agency, it is recommended that, whenever a case has a judicial dimension, the meetings to be organised and the measures to be taken by Eurojust be taken into account by those agencies; it is also possible to obtain the documentation and analytical reports which these agencies produce and to invite them (in particular Europol) to the meetings held at Eurojust.

6.2. Cooperation with third states

6.2.1. Policy with respect to the involvement of Eurojust

Eurojust's relations with third States are organised and planned through the External Relations Team, which is actively supported by the Spanish National Member as one of the Team's members. This enables him to be familiar from the start with the agreements that Eurojust, with the prior agreement of the Council of the European Union, concludes with third countries. He is also involved in the negotiations, conclusion and follow-up to other "soft-law" instruments such as the Memoranda of Understanding concluded with UNODC, Interpol and the Ibero-American Network for International Legal Cooperation (IberRed).

6.2.2. Added value of Eurojust involvement

Relations with Latin America are a priority for the Spanish National Member at Eurojust, justifying his membership to the Eurojust's External Relations Team. The College of Eurojust appointed the National Member for Spain as Central Contact Point for IberRed in July 2013.

The Memorandum of Understanding (MoU) between Eurojust and IberRed of 4 May 2009 has facilitated cooperation between Member States of the EU and Latin American countries by improving communication channels, facilitating requests for information on legal requirements and legislation, state of execution of Letters of Request and extraditions requests, and identification of relevant authorities and contact points. Since the entry into force of the MoU until 31 December 2012, 45 queries based on the MoU were received and processed through the Spanish desk at Eurojust.

In addition to the queries processed by the Spanish desk as Central Contact Point for IberRed at Eurojust, the Spanish desk at Eurojust opened 32 cases involving third States from 1 January 2010 until 31 December 2013. The main crime types in these cases were drug trafficking, fraud and money laundering. The most frequently requested third States were Switzerland, United States of America, and Turkey. Further, coordination meetings involving, *inter alia*, Switzerland were organised. In such files, Eurojust has shown considerable added value.

6.3. Practical experience of the EJN

6.3.1. Cooperation between the Spanish Member and the EJN

Spain stated that collaboration between the National Desk of Eurojust and the EJN is smooth, not only with regard to the actual contact points, but also with its correspondents or delegates in the international judicial or legal cooperation networks of judges (REJUE) and delegated international cooperation prosecutors and members of the networks of international cooperation prosecutors and of court clerks (RESEJ), to whom the national desk often has recourse, in order to coordinate and follow up the execution of requests for assistance.

6.3.2. Resources allocated domestically to the EJN

- Contact points in the Ministry of Justice, Tables I and II corresponding respectively to 2011 and 2012 are attached in Annex E, with the itemised information.
- Contact points in the General Council of the Judiciary: Only the data relating to its relationship with Eurojust are attached in Annex F. Nevertheless, the international relations department has information relating to the consultations made by the department itself and, through the annual report that must be submitted by the REJUE correspondents, also via the latter.

As regards the resources allocated to the tool correspondent, the CGPJ assigns its own staff (legal practitioners of the international relations department and a head of section) to this task, with two persons normally attending the meetings of the tool correspondents organised by the European Judicial Network on criminal matters.

- Contact points in the Public Prosecutor's Office: Summaries of information relating to 2009 and 2012 are attached in Annex G.

Spanish authorities viewed the operation and response capacity of the Network's contact points positively.

6.3.3. Operational performance of EJN contact points

The contact points in the General Council of the Judiciary and in the Public Prosecutor's Office are assisted by the Spanish domestic networks specialised in international judicial cooperation. There appears to be a certain degree of overlap in that most if not all the Spanish EJN contact points are members of these domestic networks. However, the networks seem to function independently from the EJN to a large extent.

As for **the Judges' Network (REJUE)**, it comprises a criminal and a civil division. Numbering approximately 50 in total, members are dispersed throughout the national territory, with two correspondents present in the *Audiencia Nacional*. Its members are selected by the General Council of the Judiciary (CGPJ) for renewable five-year periods, by means of a selection procedure based on the principles of openness, equality, merit and capability, from among magistrates who have rendered three years of service in the category and who have been members of the judiciary for at least five years. The selection process takes special account of the applicants' command of foreign languages and of their knowledge, experience and direct involvement in the field of international legal cooperation.

Members of the Network will assist the contact points in the European and Ibero-American Judicial Networks, and will act as active intermediaries to facilitate international judicial cooperation. Active intermediation includes the functions of informing, advising, coordinating, as appropriate, and carrying out other actions aimed at facilitating international judicial assistance, while fully respecting the jurisdictional power of the judicial bodies concerned. Such intermediation is provided at the request of any Spanish judicial body, the Spanish central authority, the Public Prosecution Service or a foreign authority competent to request assistance. They are also responsible for the tasks of training and preparing studies and documents, and for proposing other instruments designed to facilitate international judicial cooperation.

For its part, the Prosecutors' Network performs functions such as the following:

- The execution, or at least the coordination of and follow-up to the execution, of letters rogatory that are to be dealt with by the public prosecutor's office.
- Assistance, if necessary, to the other public prosecutors in drafting outgoing letters rogatory.
- Support for the Spanish and foreign contact points of the European Judicial Network who require information on the state of execution of the pending requests for international judicial assistance.
- Follow-up to complaints received at the public prosecutor's office in accordance with Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters.

RESEJ is a Network of court clerks that are experts in International Legal Cooperation. The mission of the Network is to facilitate, improve and promote International Legal Cooperation requested or provided by Spain, through the active provision of advice and support to court clerks, domestic and foreign, in two possible manners: performs functions such as the following:

- Responding to specific consultations from other clerks of the court in an informal intervention that does not preclude respect for the formal mechanisms of cooperation place.
- Contributing to create tools to facilitate, improve and promote International Legal Cooperation.

6.3.4. Perception of the EJN Website and its tools

Errors have been detected at the correction stage with regard to certain Spanish judicial authorities. The CGPJ has drawn attention to the defects in the Atlas in relation to the Spanish judicial authorities. In that context, the CGPJ drew up a new table of all the judicial bodies and their competences and it has been submitted to both the Network Secretariat and to the other Spanish institutions involved (Ministry of Justice and State Prosecutor's Office). Nevertheless, the assessment of the Judicial Atlas by users is generally very positive. However, the Compendium instruments are not considered very user-friendly and it is simpler, for example, to fill in the ODE form in Word format. The "Library" option is generally of less practical use to the normal user who is trying to access a form.

On the other hand, emphasis should be placed on the work carried out over many years by the General Council of the Judiciary, through the REJUE and with the cooperation of the prosecution service, the Ministry of Justice and, more recently, also of the RESEJ, to prepare a handbook on international cooperation. Its printed publication more than ten years ago offered judges and prosecutors for the first time the possibility of identifying and consulting all treaties signed by Spain and the European instruments on international judicial cooperation.

In its criminal section, it is already possible, through a webpage designed by the Judicial Documentation Centre (www.prontuario.org), which maintains the page and periodically updates it with the help of the networks, to make a cross-consultation by country and type of procedure, facilitating access to certain assisted forms in addition to those available on the EJN webpage, which are accessed via links. The form also allows for access to the instrument, with its updates, statements and reservations, if any, to guides to good practice of the various countries or explanatory reports, to the Atlas, etc.

As added value in addition to the resources on the EJN's webpage, mention may be made of the language, the integrity of the information, which is not limited to European cooperation, updating, simplicity of access, ease of assistance in their native language by experts from the decentralised national networks close to the user, by means of e-mail messages or the participation of judicial authorities and foreign experts (liaison magistrates in Spain, embassy officials, etc.) who revise the wording of forms and offer additional practical information. The handbook has some content reserved especially for judges, prosecutors and court clerks.

6.4. Conclusions

- The role and responsibilities of the EJN contact points vis-à-vis the role played by the domestic networks of practitioners is not completely clear to the evaluation team. From the description above it can however be concluded that the domestic practitioners make use of the internal networks. More generally, the use of the EJN by the Spanish authorities is not completely clear either but it seems that at least some Spanish contact points are used often by practitioners..

- The prosecutors and investigating judges met by the evaluation team were aware of the EJN website and the EJN tools. They expressed the importance of these tools for their daily work.

- The Spanish authorities have however expressed their concerns as regards the keeping up-to-date the information available on the EJN tools. They deplored in particular that, in spite of the information having been regularly provided to Eurojust/EJN with regards to the contact details of the competent Spanish authorities, the Atlas has not been brought up-to-date and lacks accuracy.

7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

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

The competent authorities to authorise or coordinate a controlled delivery in Spain are the examining magistrate, the Public Prosecution Service, and the heads of the central or provincial organisational units of the Criminal Police and their senior management.

Spanish authorities stated that, each time the National Member had had to get involved in controlled deliveries, this power has always been exercised in agreement with the competent authority.

As an overall assessment of the use of the possibility of controlled deliveries by Eurojust, Spain answered that the diversity of existing laws makes harmonised cross-border application difficult, although the existence of centres specialised in this area at police and court or prosecution level and permanently on call in most Member States means that implementation is in practice really effective.

7.2. Participation of National Members in joint investigation teams (Article 9f)

The use of joint investigation teams is not currently as widespread among Spanish judicial authorities as it deserves to be, with the exception of the *Audiencia Nacional*.

Spanish authorities advised the reasons for this reluctance can be found in the difficulty in adjusting this procedure to the structure of criminal proceedings governed by the adversarial principle and the related reservations from the point of view of the admissibility and the evidential scope of the information and the material gathered, together with the difficult balance of the *lex loci* criterion by which it is governed and the needs with regard to *lex fori* and the requirement for the consent of the State on the territory of which the information was obtained.

Spanish authorities said that, despite the above mentioned problems, national judicial authorities are starting to familiarise themselves with JITs. In this respect, the criminal police units favour this formula because of its considerable operational possibilities and opportunities for exchanging information in real time. The Europol national unit and its liaison office in The Hague have formed part of the teams ensuring proper processing of data, its operating codes, and its direct connection with Europol's analysis archives.

The Spanish delegation took part in five of the 48 joint investigation teams (JITs) set up and registered with Eurojust in 2012. The judicial and prosecution authorities that have been heads of teams are the magistrates of Torrevieja, el Prat de Llobregat, Denia and the central investigating courts and the corresponding prosecution services of the *Audiencia Nacional*, of Alicante and Barcelona. On two occasions the Spanish judicial authorities were responsible for the case which gave rise to the setting up of the team, while, on the other two, the National Member was invited to take part in JITs set up at the request of European authorities. In the two JITs set up at the request of the Spanish delegation, the investigations in question related to drug trafficking offences, while in the JITs in which it was invited to participate to the cases involved massive fraud and euro counterfeiting. All the teams were financed with Community funds.

As for the Spanish assessment, despite the bureaucratic formalities required for setting up and funding teams, and the reservations holding back their necessary extension, it is clearly positive for the following reasons:

- it provides an ideal framework for carrying out investigation proceedings directly, with a smooth exchange of information and with the implementation of measures restricting fundamental rights subject to authorisation and with appropriate supervision by the judicial authorities leading it, thereby eschewing the need to issue formal applications for international assistance.
- the members of the team may be involved in the operational investigation proceedings, such as entry and search operations and questioning, executed in a State other than their own.

- the JITs create group dynamics and *"investigative synergies"*. This overcomes individualistic approaches and facilitates understanding among investigators, thus avoiding conflicts of interests or corporate conflicts and avoiding nationalist or sovereignty-related approaches in cross-border investigations.
- the financial support of Eurojust, which is sometimes essential, particularly to facilitate the participation of countries with limited budgets, making possible the digitisation and translation of documents, document storage and communication systems, and secure channels for information exchange and mediation between investigating agencies from different countries.

7.2.1. Practical experience

Insofar as the role of the National Members and of experts from Europol is limited to that of the analytical involvement and legal, technical and financial support provided for in the 2000 Convention, and does not directly affect the execution of investigation proceedings to be carried out by the members of the JIT, their participation is assessed positively by Spanish authorities.

7.3. Conclusions

- The conclusion of a JIT agreement under the Framework Decision is subordinated to the authorisation of the *Audiencia Nacional* or the approval of the MoJ. According to the feedback received, such approval is only formal and does not create difficulties in practice as it so far has always been granted expeditiously.

  Practitioners have expressed the need to receive more information, assistance and guidance from the Eurojust's administration in respect of legal and practical issues related to JITs (confidentiality, transfer of jurisdiction, closure of a JIT, financing etc.). The team has noted there are on-going discussions about the leadership of JITs.

8. TRAINING AND AWARENESS RAISING

8.1. Promoting the use of Eurojust and the EJN

8.1.1. Training

There are training modules in international judicial cooperation as part of the general and decentralised initial and in-service training of judges and of public prosecutors, and in the training of judicial officers. The objectives of the training vary slightly depending on whether they are initial or in-service training and on the profiles of those receiving the training. In all cases they refer to the nature and functions of the European Judicial Network and Eurojust, as well as providing guidance on interaction with both bodies, with a particular focus on obligations to cooperate with Eurojust.

All initial training plans now include a week on international judicial cooperation. In-service training plans take place annually and tend to include one or more modules on judicial cooperation in criminal matters. In particular, the Judicial School has begun including, in its training plans for trainee judges, a half-day session presenting Eurojust's role and activities. This training is supplemented by a specific seminar on international criminal cooperation aimed at drawing attention to all the cooperation networks and instruments that exist in the European context. All this is besides the regular training in the Judicial School based on the case-study approach, which continues to address the subject as it comes up in the context of cases.

As to in-service training of judges and magistrates, one or two sessions are annually offered regarding Eurojust and international cooperation in criminal matters.

Court clerks also receive specialist courses on international judicial cooperation, and each year there is a day devoted to the international cooperation network, in which various participants in cooperation take part, pooling their experience.

The Eurojust National Member and Deputy have taken part in numerous training days and promotional events relating to Eurojust. Over the past two years these have included the following: Meeting with the President of the Superior Court of Justice and the senior judges of Orihuela, Denia, Alicante, Benidorm, Valencia and Elche (16 February 2012) on asset recovery, coordination and information exchange with Eurojust

- Visit to the Judicial School of Barcelona (27 September 2012) with a presentation on "Eurojust: a new way to investigate"
- Information session on Eurojust in the economic crime section of the public prosecutor's office of the Provincial Court of Madrid
- Initial training programme for public prosecutors (7 and 8 October 2012)
- Annual meeting of the Spanish Judicial Network for International Judicial Cooperation (REJUE) (17 and 18 October 2012)
- Meeting of the network of public prosecutors specialising in international legal cooperation (5 and 6 November 2012)
- Annual meeting of the public prosecutors' international cooperation network (13 June 2013), with a paper on "*Coordination with Eurojust. Reciprocal information transfer. Help from delegates to participants in coordination meetings."*
- Annual meeting of delegated anti-drugs prosecutors (14 June 2013), with a paper on the new system for information exchange with Eurojust
- RESEJ annual meeting, October 2013
- Eurojust marketing seminar attended by 90 judges and prosecutors from the field, from Gibraltar, Cadiz, Ceuta and the Costa del Sol as well as police and customs officials (18 and 19 April 2013)
- Initial training programme for judges, on the reality and the added value of Eurojust (11 November 2013).

Although the various training sessions offered to them have proven to be of very good quality, practitioners (in particular investigating judges) seem to face difficulties to attend in-service training activities, which are not mandatory.

8.1.2. Other measures

- Long-term stays (three months) organised by the EJTN; three prosecutors have taken part since late 2012.
- Short-term stays organised and funded by the EJTN; so far one prosecutor has taken part and, in late 2012, one magistrate.
- Annual report of the National Member for 2012, published on the Ministry of Justice website (http://www.mjusticia.gob.es).

The National Member duly reports to his national authorities on the various strategic projects launched by Eurojust, sending the information and request for cooperation (initially, generally a matter of filling in forms) via the Ministry of Justice, the General Council of the Judiciary (CGPJ) and the Public Prosecution Service.
Strategic reports are distributed to the participating authorities and those to whom it may be relevant, without prejudice to publication on the Eurojust web page.

8.2. Specific training for National Members and EJN contact points

As regards the National Member and Deputy, no specific training is given, as specialisation and experience in judicial cooperation in criminal matters is a requirement for being appointed.

As regards the EJN contact points, there is a preference for participation in training activities on criminal judicial cooperation, which extends to the members of the experts' networks. In this training activity particular emphasis is placed on the yearly meetings of the networks, which facilitate updating of their members' training.

8.3. Conclusions

- Spanish authorities offer continued training in cooperation in criminal matters and this is of a high quality. It seems however that practitioners don't make wide use of this, presumably because of their workload and training being mostly optional. The evaluation team does not have the impression that the training possibilities actually reach all the practitioners throughout Spain who are involved in judicial cooperation in criminal matters.

- The team feels that may be a need to further raise awareness of benefits that Eurojust and EJN can bring.

9. GENERAL OBSERVATIONS

9.1. Overall assessment

For Spain, Eurojust and the European Judicial Network and the decentralised experts' networks that support it provide the added value of direct communication between authorities, which is a challenge for the Spanish judicial authorities, because there are pronounced language barriers in Spain.

The decentralised nature of the experts' networks, along with the co-existence of three different networks, brings the institutional toolkit closer to the user.

The multiplicity of tools and their decentralised character in its turn poses the challenge of coordinating them, a complex one given the diversity of the organisations to which those involved in cooperation belong. In that context, Regulation 1/2005 on ancillary aspects, adopted by the CGPJ, already refers to the role of coordinating REJUE, taken on by the CGPJ's "technical bodies", in relation to the Eurojust Unit, the international judicial cooperation network of the public prosecution service and all national and international institutions, organisations and departments that have roles in terms of international judicial assistance. At the same time, the development of a national coordination system will help achieve this objective.

9.2. Further suggestions from Spain

Overcoming the negotiations on the proposed Eurojust Regulation and the Regulation on a European Public Prosecutor's Office will create a new situation in which Spain may expect greater homogeneity and operational efficiency, with the College being freed from administrative tasks. Nationally, the Regulation will update the rules governing the status of the Eurojust National Member, without prejudice to any additional provisions needed. Spanish authorities acknowledged there is no need to wait for the adoption of the above mentioned regulation to be approved before taking advantage of the possibilities for regulatory progress offered by Law 16/2006 to set up a real national coordination system and, insofar as the requirements of law are not affected, the national rules referred to in the 2008 Eurojust Decision.

They also considered necessary to clarify, from a legislative point of view, the impact of the declaration of secrecy of proceedings on participation in coordination meetings and, in general, on the duty of cooperation with Eurojust.

They further suggested that there must be an increase in coordination between the resource offered by Eurojust and those of the EJN, in particular, with many bilateral and less complex cases being diverted to the latter, thereby allowing Eurojust — particularly as busy an office as the Spanish one — to better handle complex multilateral and bilateral cases and to properly monitor and assess outcomes.

In their view, emphasis needs to be placed on the activities and mechanisms that facilitate awareness among Spanish judges, prosecutors and court clerks of the assistance opportunities that Eurojust offers — not just through training but also via the use of periodical information channels relating to the activities and products developed by Eurojust. Besides the information provided by Eurojust's web page, periodic personalised communications sent to the email accounts of judges, prosecutors and court clerks would bring the institution and, especially, the delegation and its members closer to its end users, whom it is Eurojust's *raison d'être* to serve. That virtual information should be supplemented by periodic meetings in those areas of Spanish territory in which the requirements for cooperation are most intense.

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

The views requested coincide and require that a prominent place, such as in this concluding response, be reserved for the need to allow for the funding of a third participant, at least in exceptional cases, bearing in mind the particular nature of the Spanish approach to investigations and the geographical distances involved.

Spain also underlined that the judicial nature of Eurojust must not obscure the strong need for flexible and continuous cooperation with Europol, as far as possible avoiding operational meetings within Europol when the case has already reached the judicial stage, voiding of content any subsequent coordination meeting that might be held within Eurojust.

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 Spain has been able to satisfactorily review the system in Spain.

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

10.1. Recommendations to Spain

Spain should:

1. Expedite the on-going legislative procedure concerning implementation of the 2008 Eurojust Decision and ensure its practical implementation as a matter of priority; commit clear timelines for adoption of the required legislation (*cf.3.2, 3.6.1*);

2. Reflect on the respective role, powers and obligations of all MLA actors in Spain (National Desk, National Correspondents, ENCS, EJN contact points, domestic networks, prosecution service, investigating judges, court clerks etc.) and their relation to each other, and provide clarity to other Member States on this in order to simplify judicial cooperation with Spain and reduce gaps and overlaps, in particular after the new law has entered into force (*cf. 3.1, 5.2, 5.3, 6.3, 6.4*);

3. Set up the ENCS without delay so as to comply with the related requirement of the Eurojust Decision; organise and make use of the ENCS to help unite the various competent bodies and professions; ENCS might be best placed, in particular, to enhance the cooperation between the domestic networks of practitioners specialised in the field of judicial cooperation in criminal matters, so as to facilitate interaction, strengthen information exchange and overcome the fragmentation of the sector, with a view to optimising overall efficiency (*cf. 3.1, 3.2, 3.3.1, 3.3.2, 3.6*);

4. Ensure the continued practical implementation of the reporting obligation contained in Article 13 of the Eurojust Decision; clarify whose responsibility (judge or prosecutor or Court clerk) it is to comply with Article 13, to the extent necessary after the adoption of the draft Bill, and when/how this should be done, so as to avoid duplication or failure to notify (*cf. 3.1, 3.6.4, 4.3*);

5. With a view to tackling the structural overload of the Spanish National Desk at Eurojust, accelerate the planned appointment of an assistant to the National Member; consider strengthening the Desk even further by appropriate means (*cf. 3.4.1, 3.6.2*) ;

6. Reflect on whether the concerns expressed by some judicial and prosecutorial authorities as regards the powers of the National Member and the Deputy and their position within the Ministry of Justice have any impact on cooperation with Eurojust (*cf. 3.4.3.1, 3.6.2*);

7. To the extent not clarified by article 18 of the draft Bill, address the issue of confidentiality of information in the dealing of cross-border cases and in particular in view of coordination meetings (bearing in mind that Eurojust has started a pilot-project in which Member States involved make agreements on disclosure and confidentiality related to such meetings) (*cf. 3.3.2, 3.4.3.1, 4.2.2, 4.2.3, 5.2, 5.4, 7.3, 9.2*);

8. Ensure there is one coherent system in place whereby international LoRs to Spain can be effectively traced and monitored, if necessary by linking up the different registration systems (but preserving the principle of direct transmission); this would make the work of the National Desk easier and generate useful data (*cf. 3.1, 4.1.1, 4.3, 5.2*);

9. Given that continued training is not mandatory, consider how best to reach practitioners throughout Spain to promote awareness and provide information regarding international cooperation, Eurojust, EJN and JITs (cf. *4.2.1, 4.2.3, 5.7, 6.4, 7.3, 8.1, 8.2, 8.3*);

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

10. Member States should consider the Spanish "*Prontuario*" intranet, a comprehensive tool for MLA practitioners, as an example of best practice (cf. *3.1, 3.6.6, 6.3*);

11. Member States should encourage and assist national practitioners to ensure proper quality of the translation of outgoing letters of request with a view to speeding up and enhancing quality of the response to their needs (cf. *5.2*);

12. Member States should consider appropriate composition and resourcing of National desks at Eurojust to ensure optimum effectiveness and ease of communication with all actors in the field of judicial cooperation (cf. *3.4.1, 3.4.2*);

13. Member States should consider involving the National Member in the selection process of the collaborators of the national desk, if only by way of consultation on qualifications and profile, although this is not, stricto sensu, a legal obligation under the Eurojust Decision (cf. 3.4.2).

10.3. Recommendations to Eurojust/the EJN

Eurojust should:

14. Enhance the legal and practical information, assistance and guidance given to practitioners in relation to JITs, including during coordination meetings (cf. *5.7, 7.2, 7.3*);

15. Address the needs of Member States regarding attendance at or involvement in coordination meetings by appropriate means whether by videoconference or through exploring other options (cf. *5.4, 5.7*);

16. Consider how to maximise the usefulness of coordination meetings (e.g. it is best practice to use Level 2 meetings initially to assess if a Level 3 meeting is required), to set specific objectives for meetings, to facilitate the exchange of information in advance of coordination meetings so initial enquiries can be carried out and Member States can ensure the correct people attend the meeting; encourage domestic authorities to provide feedback following attendance at coordination meetings (cf. *5.4, 5.7, 6.2.2*);

17. Ensure regular, speedy and quality update of the information provided by the EJN tools, in particular the Atlas (*cf. 6.3.4, 6.4*);

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

6th Round of Mutual Evaluations
Practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters
(3-7 February 2014)

DATE	TIME	ACTIVITY
Monday 3/2		Arrival of the evaluation team: Experts: - Mr Nicholas Franssen (Netherlands), Ministry of Justice, Law Enforcement Department - Mr JoãoCenteno (Portugal), Public Prosecutor - Ms Lynne Barrie (UK), Senior Procurator Fiscal Depute, Serious and Organised Crime Division, Crown Office and Procurator Fiscal Service, Edinburgh Council: - Mr Hans Nilsson - Ms Claire Rocheteau Commission: - Mr Jeroen Blommsma (DG Justice) Eurojust: - Mr Jesper Hjortenberg, National Member for Denmark - Ms Catherine Deboyser, Head of Legal Service
Tuesday 4/2	8.45-10.00	**Ministry of Justice** (San Bernardo 45 – Room 215) - Mr Fernando Román, Secretary of State for Justice - Mr Ángel Llorente, Director General for International Legal Cooperation and Religious Affairs - Ms Paula Mongé, Deputy Director General for International Legal Cooperation - Ms Ana Andrés, Deputy Director General for Justice Affairs in the EU and IIOO - Mr Juan Valterra, Legal Advisor, Deputy Direction General for Justice Affairs in the EU and IIOO - Mr Francisco Jiménez-Villarejo, National Member for Spain - Ms María Poza, Deputy to the National Member - Ms Teresa Gálvez, National Correspondent - Mr Vicente González, National Correspondent for Terrorism
	10.15-11.45	**General Council for the Judiciary** (Marqués de la Ensenada 8) [1] - Mr Carlos Lesmes, President of the Supreme Court and President of the General Council for the Judiciary - Mr José Luis Terrero, Secretary General of the General Council for the Judiciary - Ms Ana Murillo, Head of the Cabinet of the President of the Supreme Court and President of the General Council for the Judiciary - Mr Fernando Grande-Marlaska, Member of the General Council for the Judiciary and President of the Criminal Court of the *Audiencia Nacional* - Ms Nuria Diaz Abad, Member of the General Council for the Judiciary - Mr José Miguel García Moreno, Senior Judge, Head of Section, International Relations Department, Spanish General Council for the Judiciary - Ms Carmen Rodríguez-Medel, Senior Judge, Head of Section, International Relations Department, Spanish General Council for the Judiciary

[1] Evaluation team accompanied in Madrid by FJV, MP, PM and AA.

	12.15-13.45	**Ministry of Interior.** Centro Policial de Canillas (Julián González Segador s/n) - Mr Luis Hernández Hurtado, Comisario, Head of the Europol National Unit ("Unidad Nacional de Europol", UNE) - Mr Félix López López , Inspector-Jefe, Head of the Operative Coordination Section at the UNE - Mr Eduardo Talavera Balandín, Inspector-Jefe, Seconded National Expert at Eurojust - Ms Miriam Fernández Hungría, Inspectora, Head of the Analysis Group at the UNE
	14.00-15.30	Lunch at the Ministry of Interior
	16.00-17.30	**General Prosecution Office** (Ortega y Gasset 57) Special Prosecution Office against Corruption and Organised Crime - Mr Luis Rodríguez Sol, Prosecutor - Mr Alejandro Luzón, Prosecutor International Cooperation Unit - Ms Rosana Morán, Senior Prosecutor for International Criminal Cooperation - Mr Jorge Espina, Prosecutor - Ms María de las Heras, Prosecutor
	18.30-20.00	Guided walking tour. Departure from the hotel.
Wednesday 5/2	9.30 – 10.45	**National High Court ["Audiencia Nacional"]**(Prim 12) - Mr Fernando Grande-Marlaska - Ms Manuela Fernández Prado, Senior Judge, Criminal Court - Mr José Ricardo de Prada, Senior Judge, Criminal Court - Mr Ángel Hurtado, Senior Judge, Criminal Court - Mr Santiago Pedraz, Senior Judge, Dean of the Central Examinig Courts - Mr José Miguel García Moreno - Ms Carmen Rodríguez-Medel
	10.45-12.00	Prosecution Office at the National High Court - Mr Javier Zaragoza, Senior Head Prosecutor - Mr Vicente González Mota, Prosecutor - Ms Ana Noé, Prosecutor - Mr Juan Antonio García Jabaloy, Prosecutor - Mr Daniel Campos, Prosecutor - Mr Pedro Martínez Torrijos, Prosecutor - Mr Jorge Espina
	12.15-13.15	**General Prosecution Office** (Fortuny 4) Anti-Drugs Special Prosecution Office - Mr José Ramón Noreña, Anti-Drugs Senior Head Prosecutor - Ms Carmen Baena, Prosecutor - Ms Paloma Conde-Pumpido, Prosecutor - Mr Pedro Pérez Enciso, Prosecutor - Mr Jorge Espina
	13.15-13.30	**General Prosecution Office** - Mr Eduardo Torres-Dulce, Prosecutor General - Ms Rosana Morán - Mr Jorge Espina
	14.00-15.30	Lunch.

	16.00-17.00	**Meeting with contact points of the judges, prosecutors and judicial clerks international cooperation networks** (San Bernardo 62)[1] Judges: REJUE - Mr Ignacio Ubaldo González, Criminal Court nº 20 Madrid - Mr Pablo Ruz, Central Examining Court nº 5 of the *Audiencia Nacional* - Mr Eloy Velasco, Central Examining Court nº 6 of the *Audiencia Nacional* - Ms Carmen Rodríguez-Medel Prosecutors: - Ms Rosana Morán - Ms Ana Sanz, Prosecutor for International Cooperation at Madrid Prosecutor's Office - Ms Ana Noé - Mr Jorge Espina Judicial Clerks: RESEJ - Ms Carmen de Troya - Ms María José Cañizares
	17.00-18.00	**Meeting with contact points of the EJN, JITs, Genocide, Asset recovery and Corruption networks** (San Bernardo 62) - Ms Paula Mongé, EJN - Mr Javier Gómez de Agüero, Advisor, Cabinet of the Secretary of State for Justice, Genocide - Ms María José Cañizares, EJN - Ms Carmen Rodríguez-Medel, EJN and JITs - Ms Rosana Morán, EJN - Ms Carmen Baena, EJN and JITs - Mr Alejandro Luzón, EJN and Corruption - Ms Dolores López, Anti-Drugs Prosecutor, AR - Mr Jorge Espina, EJN - Mr José Andrés Pérez López, Centro de Inteligencia contra el Crimen Organizado, Ministry of Interior, AR - Mr Francisco Javier González Ibáñez, Comisaría General de Policía Judicial, Ministry of Interior, JITs - Mr Ignasi Muntané Rodriguez, Comisaría General de Información, Genocide
Thrusday 6/2	8.30	Departure to Barcelona[2] (AVE 03083). Arrival: 11.15
	12.00-13.30	**Meeting at the "Ciudad de la Justicia"** (Fiscalía Provincial de Barcelona Avda. Gran Vía Corts Catalanas nº 111.- Edificio F Planta nº 11) - Ms Rosana Morán - Ms Ana Magaldi, Barcelona Head Prosecutor - Mr Juan Echevarría, Barcelona Deputy Head Prosecutor and Coordinating Prosecutor for International Cooperation at Barcelona Prosecutor's Office - Mr Ignacio Monreal, Prosecutor for International Cooperation at Tarragona's Prosecutor's Office - Mr Emilio Sánchez Ulled, Prosecutor for International Cooperation, and Anticorruption Delegate Prosecutor in Barcelona - Gerardo Cavero, Anticorruption and Antidrug Delegate Prosecutor in Barcelona - Ms Ana Gil, Prosecutor - Mr Pedro Castro, Prosecutor - Mr Diego Vilafañe, Prosecutor

1 FJV, MP, PM and AA will also participate.
2 Evaluation team accompanied in Barcelona by FJV and MP.

	14.00-15.30	Lunch
	16.00-17.30	**Meeting at the "Ciudad de la Justicia"** - Ms José Manuel Sánchez Siscart, Judge, Audiencia Provincial, Tarragona. [He will make a presentation on the web page www.prontuario.org, an online tool managed by the Ministry of Justice, the General Prosecution Office and the General Council for the Judiciary in order to facilitate international judicial cooperation in Spain]. - Ms Elisabeth Castelló, Judge, Examinig Court nº 33 Barcelona - Mr José Villodre, Judge, Juzgado de Primera Instancia e Instrucción nº 7 Vilanova i la Geltrú (Barcelona) - Ms Carmen Rodríguez-Medel
	19.25	Departure to Madrid (AVE 03190). Arrival: 21.55
Friday 7/2	11.00-12.30	**Wrap up session** (San Bernardo 62) - Mr Ángel Llorente - Ms Paula Mongé - Ms Ana Andrés - Ms Gemma del Rey - Mr José Miguel García Moreno - Ms Carmen Rodríguez-Medel - Mr Jorge Espina - Mr Francisco Jiménez-Villarejo - Ms María Poza - Ms Teresa Gálvez
	12.30-13.00	Cocktail

ANNEX B: PERSONS INTERVIEWED/MET

Meetings 4 February 2014

Venue: Ministry of Justice

Person interviewed/met	**Function/Organisation represented**
Mr Fernando Román	Secretary of State for Justice
Mr Ángel Llorente	Director General for International Legal Cooperation and Religious Affairs
Ms Paula Mongé	Deputy Director General for International Legal Cooperation
Ms Ana Andrés	Deputy Director General for Justice Affairs in the EU and IIOO
Mr Juan Valterra	Legal Advisor, Deputy Direction General for Justice Affairs in the EU and IIOO
Mr Francisco Jiménez-Villarejo	National Member for Spain at Eurojust
Ms María Poza	Deputy to the National Member at Eurojust
Ms Teresa Gálvez	Eurojust National Correspondent
Mr Vicente González	Eurojust National Correspondent for Terrorism matters

Venue: General Council for the Judiciary

Person interviewed/met	**Function/Organisation represented**
Mr Carlos Lesmes,	President of the Supreme Court and President of the General Council for the Judiciary
Mr José Luis Terrero	Secretary General of the General Council for the Judiciary
Ms Ana Murillo	Head of the Cabinet of the President of the Supreme Court and President of the General Council for the Judiciary
Mr Fernando Grande-Marlaska	Member of the General Council for the Judiciary and President of the Criminal Court of the *Audiencia Nacional*
Ms Nuria Diaz Abad	Member of the General Council for the Judiciary
Mr José Miguel García Moreno	Senior Judge, Head of Section, International Relations Department / General Council for the Judiciary
Ms Carmen Rodríguez-Medel	Senior Judge, Head of Section, International Relations Department / General Council for the Judiciary

Venue: Ministry of Interior

Person interviewed/met	**Function/Organisation represented**
Mr Luis Hernández Hurtado	Comisario, Head of the Europol National Unit ("Unidad Nacional de Europol", UNE)
Mr Félix López López	Inspector-Jefe, Head of the Operative Coordination Section at the UNE
Mr Eduardo Talavera Balandín	Inspector-Jefe, Seconded National Expert at Eurojust
Ms Miriam Fernández Hungría	Inspectora, Head of the Analysis Group at the UNE

Venue: General Prosecution Office

Person interviewed/met	**Function/Organisation represented**
Mr Luis Rodríguez Sol	Prosecutor / Special Prosecution Office against Corruption and Organised Crime
Mr Alejandro Luzón	Prosecutor / Special Prosecution Office against Corruption and Organised Crime
Ms Rosana Morán	Senior Prosecutor for International Criminal Cooperation
Mr Jorge Espina	Prosecutor at the International Cooperation Unit
Ms María de las Heras	Prosecutor at the International Cooperation Unit

Meetings 5 February 2014

Venue: National High Court (*Audiencia Nacional*)

Person interviewed/met	**Function/Organisation represented**
Mr Fernando Grande-Marlaska	President of the Criminal Court of the Audiencia Nacional
Ms Manuela Fernández Prado	Senior Judge, Criminal Court
Mr José Ricardo de Prada	Senior Judge, Criminal Court
Mr Ángel Hurtado	Senior Judge, Criminal Court
Mr Santiago Pedraz	Senior Judge, Dean of the Central Examining Courts
Mr José Miguel García Moreno	Senior Judge, Head of Section, International Relations Department / Spanish General Council for the Judiciary
Ms Carmen Rodríguez-Medel	Senior Judge, Head of Section, International Relations Department / Spanish General Council for the Judiciary

Venue: Prosecution Office at the National High Court

Person interviewed/met	**Function/Organisation represented**
Mr Javier Zaragoza	Senior Head Prosecutor / National Court
Mr Vicente González Mota	Prosecutor / National Court
Ms Ana Noé	Prosecutor / National Court
Mr Juan Antonio García Jabaloy	Prosecutor / National Court
Mr Daniel Campos	Prosecutor / National Court
Mr Pedro Martínez Torrijos	Prosecutor / National Court
Mr Jorge Espina	Prosecutor / International Cooperation Unit

Venue: General Prosecution Office

Person interviewed/met	**Function/Organisation represented**
Mr José Ramón Noreña	Anti-Drugs Senior Head Prosecutor
Ms Carmen Baena	Anti-drugs Prosecutor
Ms Paloma Conde-Pumpido	Anti-drugs Prosecutor
Mr Pedro Pérez Enciso	Anti-drugs Prosecutor
Mr Jorge Espina	Prosecutor / International Cooperation Unit

Venue: General Prosecution Office

Person interviewed/met	**Function/Organisation represented**
Mr Eduardo Torres-Dulce	Prosecutor General of Spain
Ms Rosana Morán	Senior Prosecutor for International Criminal Cooperation
Mr Jorge Espina	Prosecutor / International Cooperation Unit

Venue: Ministry of Justice

Person interviewed/met	**Function/Organisation represented**
Mr Ignacio Ubaldo González	Network of Judges (REJUE)
Mr Pablo Ruz	Network of Judges (REJUE)
Mr Eloy Velasco	Network of Judges (REJUE)
Ms Carmen Rodríguez-Medel	Network of Judges (REJUE)
Ms Rosana Morán	Network of Prosecutors
Ms Ana Sanz	Network of Prosecutors
Ms Ana Noé	Network of Prosecutors
Mr Jorge Espina	Network of Prosecutors
Ms Carmen de Troya	Network of Judicial Clerks (RESEJ)
Ms María José Cañizares	Network of Judicial Clerks (RESEJ)

Venue: Ministry of Justice

Person interviewed/met	**Organisation represented**
Ms Paula Mongé	EJN
Mr Javier Gómez de Agüero	Genocide network
Ms María José Cañizares	EJN
Ms Carmen Rodriguez-Medel	EJN / JITs Network
Ms Rosana Morán	EJN
Ms Carmen Baena	EJN / JITs Network
Mr Alejandro Luzón	EJN / Corruption
Ms Dolores López	ARO network
Mr Jorge Espina	EJN
Ms María José Cañizares	EJN
Mr José Andrés Pérez López	ARO Network
Mr Francisco Javier González Ibáñez	JITs network
Mr Ignasi Muntané Rodriguez	Genocide network

Meetings 6 February 2014

Venue: Prosecution Office of the Province of Barcelona

Person interviewed/met	**Organisation represented**
Ms Rosana Morán	Senior Prosecutor for International Criminal Cooperation
Ms Ana Magaldi	Barcelona Head Prosecutor
Mr Juan Echevarría	Barcelona Deputy Head Prosecutor and Coordinating Prosecutor for International Cooperation / Barcelona Prosecutor's Office
Mr Ignacio Monreal	Prosecutor for International Cooperation / Tarragona's Prosecutor's Office
Mr Emilio Sánchez Ulled	Prosecutor for International Cooperation, and Anticorruption Delegate Prosecutor in Barcelona
Mr Gerardo Cavero	Anticorruption and Antidrug Delegate Prosecutor in Barcelona
Ms Ana Gil	Prosecutor
Mr Pedro Castro	Prosecutor
Mr Diego Vilafañe	Prosecutor

Venue: *"Ciudad de la Justicia"*

Person interviewed/met	**Organisation represented**
Mr José Manuel Sánchez Siscart	Judge, Audiencia Provincial, Tarragona
Ms Elisabeth Castelló	Judge, Examinig Court nº 33 Barcelona
Mr José Villodre	Judge, Juzgado de Primera Instancia e Instrucción nº 7 Vilanova i la Geltrú (Barcelona)
Ms Carmen Rodríguez-Medel	Senior Judge, Head of Section, International Relations Department, Spanish General Council for the Judiciary

Meetings 7 February 2014

Venue: Ministry of Justice (Wrap-up session)

Person interviewed/met	**Organisation represented**
Mr Ángel Llorente	Director General for International Legal Cooperation and Religious Affairs
Ms Paula Mongé	Deputy Director General for International Legal Cooperation
Ms Ana Andrés	Deputy Director General for Justice Affairs in the EU and IIOO
Ms Gema del Rey	Cabinet of the Secretary General for Justice Administration
Mr José Miguel García Moreno	Senior Judge, Head of Section, International Relations Department / General Council for the Judiciary
Ms Carmen Rodríguez-Medel	Senior Judge, Head of Section, International Relations Department / General Council for the Judiciary
Mr Jorge Espina	Prosecutor / International Cooperation Unit
Mr Francisco Jiménez-Villarejo	National Member for Spain at Eurojust
Ms María Poza	Deputy to the National Member for Spain at Eurojust
Ms Teresa Gálvez	Eurojust National Correspondent

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	SPANISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CMS	-	Case Management System (Eurojust)
COPEN	-	Working Party on Cooperation in Criminal Matters
CGPJ	*Consejo General del Poder Judicial*	General Council of the Judiciary
CoE	-	Council of Europe
EAW	-	European Arrest Warrant
EJN	-	European Judicial Network
EJTN	-	European Judicial Training Network
ENCS	-	Eurojust National Coordination System
EPOC	-	European Pool against Organised Crime
FGE	*Fiscalia General del Estado*	State Prosecutor's Office
GENVAL	-	Working Party on General Matters including Evaluations
JIT	-	Joint Investigation Team
LoR	-	Letter of Request
MLA	-	Mutual Legal Assistance
OCC	-	On Call Coordination system
OLAF	*Office européen de Lutte Anti-Fraude*	European Anti-Fraud Office
RESEJ	*Red Española de Secretarios Judiciales en Cooperación Jurídica Internacional*	Spanish Network of Court clerks for International Legal Cooperation
REJUE	*Red judicial española de cooperación judicial internacional*	Spanish Judicial Network for International Judicial Cooperation

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	SPANISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
TE-SAT	-	Europol's EU Terrorism situation and Trend Report
SIS	*Système d'Information Schengen*	Schengen Information System
SIReNE	-	Supplementary Information Request at the National Entry
SNE	-	Seconded National Expert

ANNEX D

SUMMARY OF EJN CONTACT POINTS ACTIVITIES

COUNTRY: ESPAÑA

YEAR: 2011

REPORT SUBMITTED BY (name of the national correspondent): Dª ROSA ANA MORAN MARTINEZ

1. TYPE OF INTERVENTION

Type of intervention	Requested by	Figures
Provide information on foreign law	National authorities	50
	Foreign authorities	64
Provide assistance during the preparation of a MLA request	National authorities	221
	Foreign authorities	20
Provide assistance during the execution of a MLA request	National authorities	3
	Foreign authorities	54
Provide assistance in cases of delay of the execution of a MLA request	National authorities	123
	Foreign authorities	65
Provide assistance during the preparation of a EAW	National authorities	50
	Foreign authorities	7
Provide assistance during the execution of a EAW	National authorities	3
	Foreign authorities	26
Provide assistance during the preparation of a freezing order	National authorities	6
	Foreign authorities	0

Provide assistance during the execution of a freezing order	National authorities	0
	Foreign authorities	0
Provide assistance in other procedures	National authorities	13
	Foreign authorities	38

Please specify the assistance in other procedures:

If any other activity (e.g., national EJN contact points meetings, regional EJN meetings, participation in training or information meetings)
Please specify: In 2011 we have organised with the EJN support a national meeting wich took place in Murcia from 17th to 20th of October.

2. SCOPE OF ACTIVITY

Type of crime	Figures
Serious form of criminality (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.)	303
Other	440

3. SUPPLEMENTARY INFORMATION ON THE TYPE OF THE REQUESTING AUTHORITY

Type of authority	Figures
Eurojust National Member	61
Other national authorities	209
Foreign authorities	311
Other EJN contact point	162

SUMMARY OF EJN CONTACT POINTS ACTIVITIES

COUNTRY: SPAIN

YEAR: 2012

REPORT SUBMITTED BY (name of the national correspondent): Ms Rosa Ana Morán Martínez

IMPORTANT NOTE: these figures reflect the activity carried out by all Spanish contact points belonging to the Ministry of Justice, Judicial Power and Prosecution Service

1. TYPE OF INTERVENTION

Type of intervention	Requested by	Figures
Provide information on foreign law	National authorities	**63**
	Foreign authorities	**34**
Provide assistance during the preparation of a MLA request	National authorities	**265**
	Foreign authorities	**30**
Provide assistance during the execution of a MLA request	National authorities	**24**
	Foreign authorities	**53**
Provide assistance in cases of delay of the execution of a MLA request	National authorities	**140**
	Foreign authorities	**63**
Provide assistance during the preparation of a EAW	National authorities	**57**
	Foreign authorities	**10**
Provide assistance during the execution of a EAW	National authorities	**3**
	Foreign authorities	**21**

Provide assistance during the preparation of a freezing order	National authorities	**0**
	Foreign authorities	**2**
Provide assistance during the execution of a freezing order	National authorities	**0**
	Foreign authorities	**1**
Provide assistance in other procedures	National authorities	**16**
	Foreign authorities	**65**

Please specify the assistance in other procedures:

- To provide assistance concerning the temporary transfer of persons in custody, provided that articles 6.8 a) of 2000 Convention and 11 of 1959 Convention state that such resquests shall be made through the Central Authorities of Member States.
- Identity Authority for Project Cooperation.
- Request for report on prisoner.

If any other activity (e.g., national EJN contact points meetings, regional EJN meetings, participation in training or information meetings)
Please specify:
Participation in the following meetings:

- **Seminar *Confiscation and Organised Crime: Procedures and Perspectives in International Judicial Cooperation* organized by Eurojust and held in Palermo (Italy) on 21 and 22 May 2012.**
- ***Tenth OLAF Conference of Fraud Prosecutors (Coperation of a future European Public Prosecutor's Office with National Prosecution Services)*, organized by OLAF and held in Berlin (Germany) on 7, 8 and 9 November 2012.**

- **National Expert in the activity *Simultaneous Seminar Sets: EAW and MLA Simulations*, organized by the EJTN (*European Judicial Training Network*) and held in Madrid on 18, 19 and 20 April 2012.**
- **National Expert in the activity *EJTN Criminal Project II "Obtaining and transferring evidence in criminal matters between Member States in view of securing its admissibility"*, organized by the EJTN (*European Judicial Training Network*) and held in Barcelona on 29 and 30 November 2012.**
- **Regular internal coordination meetings between EJN contact points of the three institutions (Ministry of Justice, General Council of the Judiciary and the General Prosecutor's office).**
- **National EJN contact points meeting in order to provide guidelines for the Spanish practitioners**
- **A Multidisciplinary Approach to Organised Crime: Administrative Measures, Judicial Follow-up, and the Role of Eurojust.**
- **Training courses for judges, prosecutors in criminal cooperation matters.**

2. SCOPE OF ACTIVITY

Type of crime	Figures
Serious form of criminality (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.)	**67**
Other	**86**

3. SUPPLEMENTARY INFORMATION ON THE TYPE OF THE REQUESTING AUTHORITY

Type of authority	Figures
Eurojust National Member	**8**
Other national authorities	**76**
Foreign authorities	**84**
Other EJN contact point	**36**

ANNEX E

SUMMARY OF EJN CONTACT POINTS ACTIVITIES

COUNTRY: SPAIN
YEAR: 2011
REPORT SUBMITTED BY: MINISTRY OF JUSTICE

1. TYPE OF INTERVENTION

Type of intervention	Requested by	Figures
Provide information on foreign law	National authorities	50
	Foreign authorities	27
Provide assistance during the preparation of a MLA request	National authorities	205
	Foreign authorities	14
Provide assistance during the execution of a MLA request	National authorities	0
	Foreign authorities	0
Provide assistance in cases of delay of the execution of a MLA request	National authorities	121
	Foreign authorities	37
Provide assistance during the preparation of a EAW	National authorities	45
	Foreign authorities	7
Provide assistance during the execution of a EAW	National authorities	0
	Foreign authorities	3
Provide assistance during the preparation of a freezing order	National authorities	6
	Foreign authorities	0
Provide assistance during the execution of a freezing order	National authorities	0
	Foreign authorities	0
Provide assistance in other procedures	National authorities	7
	Foreign authorities	5

Please specify the assistance in other procedures:

To provide assistance concerning the temporary transfer of persons in custody, provided that articles 6.8a) of 2000 convention and 11 of 1959 convention state that such requests shall be made through the Central Authorities of Member States.

If any other activity (e.g., national EJN contact points meetings, regional EJN meetings, participation in training or information meetings) Please specify: Regular internal coordination meetings between EJN contact points of the three institutions (Ministry of Justice, General Council of the Judiciary and the General Prosecutor's office).

2. SCOPE OF ACTIVITY

Type of crime	Figures
Serious form of criminality (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.)	48
Other	

3. SUPPLEMENTARY INFORMATION ON THE TYPE OF THE REQUESTING AUTHORITY

Type of authority	Figures
Eurojust National Member	20
Other national authorities	62
Foreign authorities	23
Other EJN contact point	48

COUNTRY: SPAIN

YEAR: 2012

REPORT SUBMITTED BY MINISTRY OF JUSTICE

1. TYPE OF INTERVENTION

Type of intervention	Requested by	Figures
Provide information on foreign law	National authorities	58
	Foreign authorities	25
Provide assistance during the preparation of a MLA request	National authorities	222
	Foreign authorities	17
Provide assistance during the execution of a MLA request	National authorities	0
	Foreign authorities	0
Provide assistance in cases of delay of the execution of a MLA request	National authorities	128
	Foreign authorities	31
Provide assistance during the preparation of a EAW	National authorities	52
	Foreign authorities	8
Provide assistance during the execution of a EAW	National authorities	0
	Foreign authorities	0
Provide assistance during the preparation of a freezing order	National authorities	0
	Foreign authorities	0
Provide assistance during the execution of a freezing order	National authorities	0
	Foreign authorities	0
Provide assistance in other procedures	National authorities	5
	Foreign authorities	4

Please specify the assistance in other procedures:

To provide assistance concerning the temporary transfer of persons in custody, provided that articles 6.8 a) of 2000 Convention and 11 of 1959 Convention state that such requests shall be made through the Central Authorities of Member States.

If any other activity (e.g., national EJN contact points meetings, regional EJN meetings, participation in training or information meetings) Please specify: Regular internal coordination meetings between EJN contact points of the three institutions (Ministry of Justice, General Council of the Judiciary and the General Prosecutor's office).

2. SCOPE OF ACTIVITY

Type of crime	Figures
Serious form of criminality (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.)	
Other	

3. SUPPLEMENTARY INFORMATION ON THE TYPE OF THE REQUESTING AUTHORITY

Type of authority	Figures
Eurojust National Member	
Other national authorities	
Foreign authorities	
Other EJN contact point	

ANNEX F

CGPJ - Statistics of activity / EJN Contact Point

2012	2013
CONSULTAS RECIBIDAS DE EUROJUST	
3	12
CONSULTAS ENVIADAS A EUROJUST	
6	11
DESPLAZAMIENTOS MIEMBROS CARRERA JUDICIAL A REUNIONES COORDINACIÓN	
24	36
REUNIONES COORDINACIÓN/FIRMAS ECI CELEBRADAS SEDE CGPJ	
1	3
COMUNICACIONES A ÓRGANOS JUDICIALES SOBRE ART. 13 DECISIÓN EUROJUST	
669	587
FORMULARIOS ART. 13 DECISIÓN EUROJUST	
9	5

ANNEX G

SUMMARY OF EJN CONTACT POINTS ACTIVITIES

COUNTRY: Spain - -
YEAR: 2009

REPORT SUBMITTED BY (name of the national correspondent):

IMPORTANT NOTE: these figures reflect the activity carried out exclusively by contact points belonging to the Prosecution Service

1. TYPE OF INTERVENTION

Type of intervention	Requested by	Figures
Provide information on foreign law	National authorities	3
	Foreign authorities	26
Provide assistance during the preparation of a MLA request	National authorities	10
	Foreign authorities	26
Provide assistance during the execution of a MLA request	National authorities	7
	Foreign authorities	109
Provide assistance in cases of delay of the execution of a MLA request	National authorities	5
	Foreign authorities (*)	18
Provide assistance during the preparation of a EAW	National authorities	2
	Foreign authorities	3
Provide assistance during the execution of a EAW	National authorities	
	Foreign authorities	23
Provide assistance during the preparation of a freezing order	National authorities	
	Foreign authorities	2
Provide assistance during the execution of a freezing order	National authorities	
	Foreign authorities	1

Provide assistance in other procedures	National authorities	
	Foreign authorities	1

Please specify the assistance in other procedures:

Recognition on the execution of the Court Judgment in Criminal Mater.

Participation in all:

In some cases connection was offered between EJN contact points and IberRED contact points.

If any other activity (e.g., national EJN contact points meetings, regional EJN meetings, participation in training or information meetings)

Please specify:

- Contact Points meetings : **2 training meetings of net word contacts points**.
- National Correspondents meetings: 30 the meeting of EJN -23-febrero 2009
- EJN Tools Correspondents Meetings
- EJN Task Force/Informal Working Group Meetings

Coordination meeting organised by Eurojust to transfer a proceeding to the UK, November 2009.

Eurojust marketing seminar : October 2009

Eurojust Counter –Terrorism Seminar, The Czech Republic, 4 and 5 May 2009.

Providing prosecutors with the necessary tools to fight against criminal activites "

18 september 2009, General Prosecutor's Office in Madrid, Spain.

The European Prosecutor's office, 13-16 October 2009. A Coruña, Spain

"UNODC Global Network meeting, Viena 11 November,

Stocklolm Prosecutor's at Nacional Court, 26 November, Madrid, Spain

2. SCOPE OF ACTIVITY

Type of crime	Figures
Serious form of criminality (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.)	21
Other	38

3. SUPPLEMENTARY INFORMATION ON THE TYPE OF THE REQUESTING AUTHORITY

Type of authority	Figures
Eurojust National Member	15
Other national authorities	1
Foreign authorities	17
Other EJN contact point	27

SUMMARY OF TOTAL EJN CONTACT POINTS ACTIVITIES

YEAR: 2010

COUNTRY: SPAIN

IMPORTANT NOTE: these figures reflect the activity carried out exclusively by contact points belonging to the Prosecution Service

1. TYPE OF INTERVENTION

Type of intervention	Requested by	Figures
Provide information on foreign law	National authorities	30
	Foreign authorities	22
Provide assistance during the preparation of a MLA request	National authorities	30
	Foreign authorities	17
Provide assistance during the execution of a MLA request	National authorities	7
	Foreign authorities	119
Provide assistance in cases of delay of the execution of a MLA request	National authorities	4
	Foreign authorities	25
Provide assistance during the preparation of a EAW	National authorities	15
	Foreign authorities	4
Provide assistance during the execution of a EAW	National authorities	5
	Foreign authorities	25

Provide assistance during the preparation of a freezing order	National authorities	-
	Foreign authorities	3
Provide assistance during the execution of a freezing order	National authorities	3
	Foreign authorities	7
Provide assistance in other procedures	National authorities	-
	Foreign authorities	4

Please specify the assistance in other procedures:

. Request sentenced by a Court in Portugal.
. Request of cooperation with EEUU.
. Request from RJE Germany to contact with IBER-RED Perú.
. Information request from Eurojust, re:meeting held about "Sander case".
. Art. 21 1959 Convention.
. Transfer of condened persons.
. Extradition procedures.

If any other activity (e.g., national EJN contact points meetings, regional EJN meetings, participation in training or information meetings)

Please specify:

Contact Points meetings

2 training meetings of net word contacts points

34 plenary meeting of the EJN, Madrid 21-22 June 2010

.

Eurojust Strategy Money laundering seminar in Granada, May 2010

- National Correspondents meetings
  . Córdoba 125 y 28 October 2010, international network of Spanish prosecutors.
- EJN Tools Correspondents Meetings: NONE
- EJN Task Force/Informal Working Group Meetings: none

2. SCOPE OF ACTIVITY

Type of crime	Figures
Serious form of criminality (as identified in Article 2 of the Joint Action: organised crime, corruption, drug trafficking, terrorism, etc.)	69
Other	110

3. SUPPLEMENTARY INFORMATION ON THE TYPE OF THE REQUESTING AUTHORITY

Type of authority	Figures
Eurojust National Member	26
Other national authorities	38
Foreign authorities	69
Other EJN contact point	22
Liaison Magistrates	32

ANNEX H

Spanish National Desk statistics

✓ **2013 figures**

The national member for Spain registered before the college **59** cases in 2013, which means an increase of 7 cases (13.5%) compared to 2012. According to these figures the updated of the caseload increase by an average of 34.10% in the last five years (2009-2013).

As a requested country, 239 cases were opened towards Spain, increasing in 23 the number of cases (10.6% compared to 2012). In fact the ES Desk was once more, like in 2011, the most requested delegation in Eurojust.

Considering the total number of cases registered in Eurojust Spain was involved in 2013 in the 19% of all of them.

✓ **Profile of cases**

Bilateral/multilateral: Despite the profile of the ES cases are mainly bilateral, in 2013 the number of multilateral cases increased in 2013 in 11 cases. Which mean san percentage of 137,50% compared to 2012.

Countries involved:

ES as requesting in 2013:

- 15 case towards NL
- 12 case towards FR
- 10 case towards DE
- 8 case towards UK
- 6 case towards IT
- 6 case towards BE

ES as requested in 2013:

- 25 cases from IT
- 22 cases from PT
- 16 cases from FR
- 16 cases from DE
- 15 cases from NL
- 14 cases from DK

✓**Recommendations or requests made by the National Member under Article 6 in 2013:**

Art. 6.1(a)ii.- TRANSFER OF JURISDICTION TO SPAIN (4 recommendations)

Art. 6.1(a)ii.- TRANSFER OF JURISDICTION TO ANOTHER COUNTRY (3 recommendations)

Art. 6.1(a)vii.- REQUEST TO TAKE ANY OTHER MEASURE JUSTIFIED FOR THE PROSECUTION (1 recommendation)

✓**Coordination meetings in 2013:**

In 2013 the Spanish desk participated in 58 coordination meetings.

✓**Coordination Centres**

The Spanish Desk did participate before the February 2014 in 6 CC.

(2) 2011

(1) 2012

(1) 2013

(2) 2014 (January)