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#### NOTE

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From:	Presidency
On:	28 October 2014
To:	Delegations

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Subject:	Draft Final report on the sixth round of mutual evaluations - "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters"
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On 22 June 2011, in line with Joint Action 97/827/JHA of 5 December 1997<sup>1</sup>, the Working Party on General Matters including Evaluations decided that the subject of the sixth round of mutual evaluations was to be " *The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters*".

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<sup>1</sup> Joint Action 97/827/JHA of December 1997 adopted by the Council on the basis of article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (OJ L 344, 15.12.1997).

Delegations will find enclosed the draft final report on the sixth round of mutual evaluations. This document encompasses the conclusions and recommendations contained in the previously prepared country specific reports, with emphasis put on general conclusions and recommendations.

The report will be presented to the GENVAL meeting of 30 October 2014. Following agreement in GENVAL, it is the intention of the Presidency to submit the report to COREPER at the end of November, if possible, and subsequently to the December JHA-Council.

Written comments, including concrete suggestions for amendments, are most welcome and should be sent to the Council Secretariat ([anne-cecilie.adserballe@consilium.europa.eu](mailto:anne-cecilie.adserballe@consilium.europa.eu)).

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**Final report on the 6th round of mutual evaluations on  
"The practical implementation and operation of the Council Decision  
2002/187/JHA of 28 February 2002 setting up Eurojust with a view to  
reinforcing the fight against serious crime and of the Council Decision  
2008/976/JHA on the European Judicial Network in criminal matters"**

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## 1. EXECUTIVE SUMMARY

1. More than three years has passed since the decision of GENVAL on 22 June 2011 to devote the sixth evaluation round to the practical implementation and operation in the Member States of the Decisions on Eurojust and the European Judicial Network (EJN) to the preparation of this final report.
2. In the meantime, on 18 July 2013, the Commission has submitted a proposal for a Regulation of the European Parliament and of the Council on the European Agency for Criminal Justice Cooperation (Eurojust)<sup>2</sup>.
3. The focus of this report is on general conclusions and recommendations, which will give inspiration to the Union and the Member States on how to reinforce the fight against serious organised crime in the European Union (EU). It emphasises the importance of implementation, exchange of information and enhancing operational aspects of Eurojust and the EJN.
4. Transnational organised crime is one of the major challenges jeopardising the creation of an area of freedom, security and justice. Countering this threat requires swift and wide-ranging action from all law enforcement and judicial authorities throughout the EU. Many forms of transnational crime are increasingly interrelated, and the need for improved cooperation in the field of organised crime is apparent, both at national and international level.

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<sup>2</sup> 12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 (COM(2013) 535 final).

5. As regards "*The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters*", the expert teams involved in the 28 evaluations have been able to review the national systems of the Member States. Specific country recommendations have been set out in the 28 individual reports. Additional general recommendations can still be made both to Member States and the EU, to develop the relevant systems. This report contains a number of recommendations to the Member States, the EU, its institutions and agencies and to Eurojust and the EJP, including the following key recommendations:

- Member States that have not yet done so should fully implement the consolidated Eurojust Decision, the Council Decision on the European Judicial Network as well as other EU instruments relating to mutual legal assistance in international judicial cooperation and on mutual recognition;
- All Member States should establish an ENCS and ensure its proper functioning;
- Member States should ensure sufficient staffing levels and a sufficient budget for all Eurojust national desks; a certain harmonisation of the powers of the national members is needed;
- In order to spare practitioners from spending too much time reflecting on whom to contact, Eurojust and EJP should issue general guidelines on the allocation of cases which could be supplemented by national guidelines;

- Judges should be more involved in mutual legal assistance (MLA) in most EU Member States; nevertheless they are rarely part of the national desks at Eurojust, and are not properly trained with regard to obligations stemming from e.g. exchange of information;
- The spontaneous exchange of information in line with Article 13, should be further enhanced. Member States should be encouraged to be proactive in providing information to Eurojust in order to be able to make use of its potential; Eurojust should simplify the Article 13 form and make it more user-friendly, since it is too complicated for the average practitioner in the Member States; Eurojust has to give appropriate feedback to judicial authorities on follow-up to their information;
- The issue of poor quality translations of EAWs and insufficient translation resources at national level were highlighted during the sixth Round of Mutual Evaluations. For this reason, the possibilities of setting up a dedicated translation unit at Eurojust for these purposes, which would be available to issuing authorities 24/7 should be explored.
- The need and possibility for developing/enhancing the cooperation with third states should be explored;
- Training and awareness raising for all practitioners involved in MLA should continue and be expanded.

More detailed explanations for these recommendations are set out in the report along with a number of other recommendations.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime<sup>3</sup>, Article 8(5)<sup>4</sup>, this reports attempts to summarise the findings and recommendations and to draw conclusions regarding the sixth mutual evaluation round.

In accordance with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to the practical implementation and operation of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>5</sup>, as amended by Decisions 2003/659/JHA<sup>6</sup> and 2009/426/JHA<sup>7</sup>, and of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network<sup>8</sup>, repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters<sup>9</sup>.

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<sup>3</sup> Joint Action 97/827/JHA of 5 December 1997 (OJ L 344, 15.12.1997, p. 7).

<sup>4</sup> Article 8(5): "*At the end of an evaluation exercise, the Council shall take appropriate measures*".

<sup>5</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 2.3.2002, p. 1).

<sup>6</sup> Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 245, 29.9.2003, p. 44).

<sup>7</sup> Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 138, 4.6.2009, p. 14).

<sup>8</sup> Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

<sup>9</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).



It was also agreed that the evaluation should go beyond simply examining the transposition of relevant European Union (EU) legislation and take a wider look at the subject matter<sup>10</sup>, seeking to establish an overall picture, be broad and interdisciplinary and not focus solely on Eurojust and the European Judicial Network (EJN). Rather it should focus on the operational aspects of their work and their contribution to facilitating criminal investigations and prosecutions in the Member States. In addition to cooperation with prosecution services, the evaluation should also encompass, for instance, how police authorities cooperate with Eurojust national members, how the national units of Europol cooperate with the Eurojust National Coordination System (ENCS) and how feedback from Eurojust is channelled to the appropriate authorities. The evaluation emphasised the operational implementation of all rules on Eurojust and the EJN. Thus, the evaluation also covered operational practices in the Member States as regards the first Eurojust Decision.

The questionnaire for the sixth round of mutual evaluations was adopted by GENVAL on 31 October 2011<sup>11</sup>. As agreed in GENVAL on 17 January 2012, Eurojust was also provided with a questionnaire. The questionnaire for Eurojust was adopted by GENVAL on 12 April 2012<sup>12</sup>. 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 EJN Secretariat was also involved throughout the process.

In accordance with Article 3 of Joint Action 97/827/JHA, experts with substantial practical knowledge in the field were nominated by Member States pursuant to a written request to delegations made by the Chairman of GENVAL on 15 July 2011. On each mission, three national experts took part in the evaluation. Other experts were also present, from the Commission, Eurojust and Europol that were invited as observers<sup>13</sup>. The General Secretariat of the Council coordinated and participated in the missions with two staff for each evaluation, prepared the process and assisted the experts.

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<sup>10</sup> 10540/08 CRIMORG 89.

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

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

<sup>13</sup> 5244/12 GENVAL 4 COPEN 7 EUROJUST 4 EJN 3.

The evaluation process followed the same pattern as the previous rounds: Following each evaluation visit a report was drafted which gave a factual description of some specific features of the national judicial system which could have/were likely to have an impact on the judicial cooperation in the domain under evaluation (relevant general matters, organisational and legal structures).

The first evaluation mission was conducted in Sweden between 7 and 10 May 2012. The final evaluation mission took place in Portugal two years later between 14 and 16 May 2014. All 28 evaluation missions have resulted in detailed reports on the individual Member States. These evaluation reports have subsequently been discussed in GENVAL, adopted and de-classified<sup>14</sup>. All reports are available on the Council's website and publicly accessible.

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<sup>14</sup> Sweden: 13666/1/12 REV 1; Lithuania: 15372/2/12 REV 2; Belgium: 17898/2/12 REV 2; Estonia: 17899/2/12 REV 2; Slovakia: 17900/2/12 REV 2; Denmark: 7249/2/13 REV 2; Finland: 7989/2/13 REV 2; Hungary: 10251/2/13 REV 2; Austria: 11351/2/13 REV 2; France: 10249/2/13 REV 2; Malta: 13683/2/13 REV 2; Netherlands: 13681/2/13 REV 2; Poland: 13682/2/13 REV 2; UK: 15844/1/13 REV 1; Germany: 6996/1/14 REV 1; Italy: ST 15858/1/13 REV 1; Romania: 7772/1/14 REV 1; Latvia: 6998/1/14 REV 1; Czech Republic: 9331/1/14 REV 1; Slovenia: 9334/14; Bulgaria: 11005/1/14 REV 1; Cyprus: 12855/14; Greece: 12857/14; Spain: 11004/2/14 REV 2; Ireland: 6997/14; Portugal: 14330/14; Croatia: 14329/14; Luxembourg: 14701/14 (not yet issued).

This document reflects the conclusions and recommendations contained in the previously prepared country specific reports<sup>15</sup>. It should be noted, however, that due to the long-lasting character of the evaluation, the country reports do not always reflect the current state of play<sup>16</sup> - the required follow-up report after 18 months often show that a number of recommendations have been followed.

Many of the recommendations contained in the national reports relate to the unique system and set-up in individual countries. However, some common issues deserve highlighting with a view to contributing to the further development of the systems in the Member States.

The recommendations are not ranked in order of importance, but mainly follow the structure of the country specific reports.

GENVAL invites COREPER to forward this report to the JHA Council to take note of its conclusions and recommendations and, in accordance with Article 8(3) of the Joint Action, take such action as it considers appropriate. It should be recalled that the procedure laid down in Article 8(3) envisages that the Council, if it sees fit, may address any recommendations to the Member State concerned, and may invite it to report back to the Council on the progress it has made by a deadline to be set by the Council.

GENVAL further proposes that after the report is presented to the JHA Council, it should be forwarded to the European Parliament for information in accordance with Article 8(4) of the Joint Action.

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<sup>15</sup> The country reports were produced right after the visit to the Member States. Changes, e.g. the completion of implementation of legislation, may have happened after that, which is not reflected in the country reports. The follow-up to the evaluation reports, due 18 months after the adoption, should reflect the amendments made. At the time of the discussion of the report in GENVAL, Member States often announced (future) changes to follow recommendations made in their individual report.

<sup>16</sup> As the first three countries to be evaluated, Sweden, Lithuania and Belgium have sent in updated information following the recommendations in the sixth round as outlined in docs. 10149/14 GENVAL 34 EUROJUST 101, 14142/14 GENVAL 58 EUROJUST 175/14 and 14143/14 GENVAL 59 EUROJUST 176.

### 3. LEGISLATIVE FRAMEWORK

Eurojust was set up by Council Decision 2002/187/JHA to reinforce the fight against serious organised crime in the European Union. In 2008 a wide reform of the Eurojust Decision was put into place in order to strengthen Eurojust.<sup>17</sup> The transposition deadline for the consolidated Eurojust Decision was 4 June 2011.

The Lisbon Treaty, which entered into force on 1 December 2009, introduced new possibilities to enhance Eurojust's efficiency in fighting against serious organised crime. Article 85 of the Treaty on the Functioning of the EU (TFEU) explicitly recognises Eurojust's mission of supporting and strengthening coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases. Article 85 TFEU also provides for Eurojust's structure, operation, field of action and tasks to be determined by regulations adopted in accordance with the ordinary legislative procedure.

In July 2013, the Commission submitted to the European Parliament and the Council a package consisting of a proposal for a Regulation on the establishment of the European Public Prosecutor's Office (EPPO), and a proposal for a Regulation on the establishment of the European Agency for Criminal Justice Cooperation ("Eurojust")<sup>18</sup>.

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<sup>17</sup> Council Decision 2009/426/JHA of 16.12.2008 (OJ L 138, 4.6.2009, p. 14).

<sup>18</sup> 12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 (COM(2013) 535 final).

The proposal for a Regulation on the establishment of Eurojust is currently being discussed in the Council Working Party on Cooperation in Criminal Matters (COPEN). The new legal framework for Eurojust will be adopted by means of a Regulation and, thus, will be binding in its provisions and directly applicable in the Member States. This report could provide information which could be taken into account in these negotiations.

In addition, discussions on the Eurojust reform have taken place in the framework of a number of seminars since 2010<sup>19</sup>.

During the evaluation some deficiencies in the implementation of the current framework became evident. The transformation of the Eurojust Decision into a Regulation in accordance with the TFEU provides an opportunity to ensure that certain aspects of the functioning of Eurojust are harmonised.

This new Regulation attempts to streamline Eurojust's functioning and structure in line with the Lisbon Treaty, and it introduces major changes in the structure and governance of the Agency as well as addresses the complaints of national members about the need to reduce their administrative responsibilities enabling them to focus on the operational tasks, thus increasing Eurojust's efficiency.

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<sup>19</sup> Such as the Strategic Seminar "*Eurojust and the Lisbon Treaty. Towards more effective action*" (Bruges 20-22 September 2010), the Eurojust-ERA Conference "*10 Years of Eurojust: Operational Achievements and Future Challenges*", The Hague, 12-13 November 2012. In addition, Eurojust's future was discussed at the special informal meeting of the Council at the occasion of Eurojust's tenth anniversary, in February 2012.

#### 4. KEY FINDINGS

Practitioners interviewed in all 28 Member States in general have a very positive view of possibilities offered by Eurojust in relation to the cooperation and coordination in serious cross-border criminal cases. Eurojust and the EJM are both seen as facilitators for more efficient investigations and prosecutions and as central points for information, and increasingly included in the day-to-day work of practitioners and central authorities across most Member States when it comes to cases with potential cross-border implications. The mere existence of Eurojust and the EJM has had a tremendous effect in bringing practitioners from various Member States together, creating networks of law enforcement professionals and judicial authorities, bridging the EU's wide variety of legal systems and traditions, leading to successful operational results within the fight against organised crime and terrorism. In particular instruments such as Joint Investigation Teams (JITs) and coordination meetings (including their financing via Eurojust) are considered to be of great value for an effective, coherent and well coordinated approach to cross-border crime and due to the fact that practitioners from courts, prosecution services, police and other investigating bodies from all countries involved are present to discuss and plan further actions to be undertaken. Serious cross-border crime continues to increase and combating it effectively will require ever more concerted efforts<sup>20</sup>. The added value of Eurojust in coordinating complex cases and facilitating the completion of legal assistance in delicate situations has been fully acknowledged by practitioners met during the evaluations.

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<sup>20</sup> 1 533 cases in 2012 and 1 576 cases in 2013 according to Eurojust Annual Report 2013 (8151/14 EUROJUST 67 CATS 46 EJM 41 COPEN 98 COSI 27).

After more than ten years of existence both Eurojust and the EJM seem to be well incorporated as part of the system of mutual legal assistance (MLA) in international judicial cooperation. Eurojust also assists competent national authorities in issuing and executing European Arrests Warrants (EAWs). Dealing with cross-border issues on a purely bilateral level by means of MLA can be seen as much less efficient than trying to tackle a case with the help of Eurojust and to focus on possible cross-border aspects from the beginning of a case. However, there is still a need to further operationalise procedures and to improve cooperation both at national and international level to overcome a certain reluctance to forward cases to Eurojust out of fear of additional work, demands on administrative capacity and a perceived limitation of the liberty of decision-making, and sometimes lack of knowledge about Eurojust and/or the EJM, especially at practitioners' level. International investigations often take a long time, and can involve a large amount of resources, in terms of time, manpower and financial means. Many Member States seem to be struggling to strike the right balance between what they can achieve compared to the costs, even if involvement of Eurojust and/or the EJM is likely to lead to enhanced investigation and possible convictions.

## 5. RECOMMENDATIONS

### 5.1 GENERAL MATTERS AND STRUCTURES

#### **Legislation and other rules applicable to Eurojust and the EJN. The transposition into national law**

The evaluation visits showed that a number of Member States had still not transposed the consolidated Eurojust Decision 2002/187/JHA<sup>21</sup> despite the transposition deadline: 4 June 2011. A number of laws/bills transposing the consolidated Eurojust Decision were being processed during and immediately following the evaluation visits with the 6th mutual evaluation round also providing a strong incentive to complete the formal implementation of Council Decision 2009/426/JHA. However, many Member States have only partially transposed it. Therefore, as stated in many individual country reports and in line with the Council Conclusions on the Eurojust Annual Report 2013<sup>22</sup>, adopted by the JHA-Council in June 2014, the first recommendation of this report is:

#### **RECOMMENDATION No. 1**

**a) Member States who have not yet fully transposed the consolidated Eurojust Decision - deadline 4 June 2011 - into their legislation should do so without delay.**

**b) When completing the transposition, Member States are encouraged to take into account the recommendations set out in this report which could provide useful input and facilitate the implementation of the consolidated Eurojust Decision.**

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<sup>21</sup> As amended by Decision 2003/659/JHA (OJ L 245, 29.9.2003, p.44) and Decision 2009/426/JHA (OJ L 138, 4.6.2009, p. 14).

<sup>22</sup> 8942/2/14 REV 2 COPEN 120 CATS 60 EUROJUST 81 EJN 47.



Some Member States have not deemed it necessary to adopt specific legislation/legal or statutory provisions in order to bring their national law into conformity with the Council Decisions 2002/187/JHA and 2009/426/JHA, but refer to their general legislation and guidelines on international judicial cooperation. Others still have taken a "mixed approach", implementing the Decisions partly by legislation and partly by administrative measures which made it more complicated to verify compliance. By taking account of Member States different approaches in implementing legislation generally and acknowledging that the Decisions have been adequately implemented in practice, this was deemed acceptable in many cases. However, in order to give visibility to Eurojust and the EJNI, to ensure that all practitioners, including courts/judges are aware of the obligations under the Council Decisions and for reasons of clarity, it was recommended to several countries to introduce specific legislative measures or amend existing legislation on international legal assistance in criminal matters, to include explicit references to Eurojust and the EJNI. In several Member States the legal status of a Council Decision was not clear to practitioners or even to Ministries of Justice (MoJ). The new Regulation will hopefully clarify this uncertainty.

## **RECOMMENDATION No. 2**

**In cases where no specific legislation has been deemed necessary to implement the Eurojust Decisions, Member States should consider making specific reference to Eurojust and the EJNI in any future legislation on MLA cooperation [e.g. in connection with the implementation of Directive 2014/41/EU (EIO)<sup>23</sup>]. This will provide clarity and visibility to Eurojust and the EJNI as well as ensure that all stakeholders are fully aware of the obligations arising from the consolidated Eurojust Decision.**

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<sup>23</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

Member States are recommended to strengthen their efforts in the field of international judicial cooperation, in particular, for those that have not yet done so, by ratifying the Convention of 29 May 2000 on Mutual Assistance<sup>24</sup>, entered into force on 23 August 2005, and the Protocol thereto.

### **RECOMMENDATION No. 3**

**Member States are encouraged to ensure ratification of the Convention of 29 May 2000 on Mutual Assistance which entered into force on 23 August 2005, and the Protocol thereto, as well as fully implementing other EU instruments relating to mutual legal assistance in international judicial cooperation, such as for instance Council Decision 2005/671/JHA of 20 September on the exchange of information and co-operation concerning terrorist offences<sup>25</sup>.**

### **Implementation of the Eurojust National Coordination System (ENCS)**

Prior to the evaluation visits, Member States were asked to update their national fact sheets ("*fiches suédoises*").

The objective of the ENCS is to create a link at national level between Eurojust, the EJM and other European Networks. ENCS should improve the coordination of work carried out by the main key players in the area of judicial cooperation in criminal matters. The ENCS should comprise all the relevant competent authorities and provide a forum for sharing information on specific cases, current developments and good practice. One of the main functions of the ENCS is to facilitate the carrying out of tasks of Eurojust in the Member States, to foster coordination between contact points for Eurojust, Terrorism, EJM, Joint Investigation teams (JITs), Warcrimes, Asset recovery, Corruption at national level, and in general to increase the information exchange between Eurojust and national authorities. According to Article 12(5)(d) the ENCS shall maintain close relations with the Europol national unit. The members of the ENCS should be connected to the national part of the CMS according to Article 12(6).

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<sup>24</sup> OJ C 379, 29.12.2000, p. 7.

<sup>25</sup> OJ L 253, 29.9.2005, p. 22.

The evaluation showed, that several Member States have still not designated national correspondents and set up the system as required by Article 12 of the Eurojust Decision. In other Member States the ENCS has been formally set up, but is still not fully operational. Member States who had not yet established the ENCS were asked to explain their intentions. Those Member States who have implemented Article 12 have done it in different ways, determining compositions of the ENCS and a varying number of contact points to be involved in the ENCS. Some have implemented the ENCS as per Article 12, others have extended it to include all EJM contact points or other specialised authorities so as to increase its efficiency.

The delay in the setting up of the system has an impact on several other tasks/requirements of the Decision. Overall this means that international cooperation in many Member States is still very centralised with requests passing through MoJs and/or prosecution or police services. As a result, tasks such as information sharing (Article 13), ensuring the appropriate distribution of cases to EJM or Eurojust and the necessary assistance to the Eurojust national members in identifying the relevant authorities for the execution of requests for judicial cooperation and mutual recognition become more difficult.

A document from the EJM Secretariat on "*The European Judicial Network's Perspective on the Eurojust National Coordination System*" was circulated to Member States through COPEN and GENVAL on 20 October 2014. The objective of the paper is to provide EU institutions, Member States, Eurojust and the EJM with a practitioner's perspective on the implementation of the ENCS: best practices and practical examples of application of legislation Results from the sixth round of mutual evaluation have been used as one of the sources of information.

#### **RECOMMENDATION No. 4**

- a) All Member States should establish an ENCS and ensure all the necessary legislative and administrative procedures concerning its operation once it is in place, making sure that its role is properly defined and that it can function effectively. In addition, Member States should report back on the practical implementation and operation of the ENCS, in particular with regard to the role of the national correspondent as responsible for the running of it, in the follow-up review of the individual reports to the sixth round (18 months after the adoption in GENVAL).**
- b) In order to ensure cohesion between the EJNI contact points and Eurojust national correspondents to strengthen the privileged relations between the EJNI and Eurojust and avoid the duplication of work, when establishing the ENCS, Member States should include all ministries/bodies dealing with cross-border judicial cooperation and consider widening the membership of the ENCS to include key senior stakeholders concerned with serious or organised crime.**
- c) The ENCS's should hold regular meetings to exchange information on cases involving international cooperation and extend the participation to the national desk and others, as appropriate.**
- d) Eurojust should continue providing support for the exchange of experience and best practices for the ENCS.**

## **National desks at Eurojust**

The composition of the national desks is set out in Article 2 of the Eurojust Decision which provides that Member States shall second one national member in accordance with its legal system, who is a prosecutor, judge or police officer of equivalent competence. A majority of the current national members have a background in the prosecution service. To ensure continuous and effective contribution to the achievement by Eurojust of its objectives, the national member shall be required to have his regular place of work at the seat of Eurojust.

The evaluation found that a few Member States, in particular the smallest Member States do not fulfil this last criterion mentioned and requested that it be reconsidered, due to both financial constraints and the fact that it was seen as unnecessary taking into account the limited number of cases.

The Council Decision also specifies that each national member shall be assisted by one deputy and by another person as an assistant. The deputy and the assistant may have their regular place of work at Eurojust. More deputies or assistants may assist the national member and may, if necessary and with the agreement of the College, have their regular place of work at Eurojust<sup>26</sup>.

Member States should regularly assess the allocation of resources to the National Desk in relation to its workload and, if necessary, consider making use of the possibilities to appoint assistants or seconded national experts to the National Desk. In view of a high workload of certain national desks, some Member States have been requested in the individual country reports to nominate a

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<sup>26</sup> Figures from 2013 show that pt. 25 out of the 28 Member States are posted in the Hague, 19 have deputy national members, 9 of which are posted in the Hague. 18 Member States have assistants, eleven of which work in the Hague and finally were eleven Seconded National Experts (SNEs) posted to the Hague in 2011, according to Eurojust Annual Report 2013 (+ evaluation visits).

deputy to the national member with regular place of work in the Hague. Furthermore, in some Member States the legislation only allows for prosecutors to be appointed. This, however, excludes judges from becoming national members which may in individual cases not be an optimal solution.

All national members are, without prejudice to the Eurojust Decision, subject to the national laws of the EU country which appointed them. The minimum length of the term of office is four years, renewable.

According to Article 9(3), the national member shall have at least equivalent access to, or at least be able to obtain the information contained in the criminal records, the registers of arrested persons, the investigation and DNA registers as well as other relevant registers of his Member State which would be available to him in his role as a prosecutor, judge or police officer, whichever is applicable, at national level.

Most of the national members do not have a direct access to the existing relevant databases but all can at least obtain some needed information from national authorities on the basis of a specific request. Although the requested information is, in general, effectively transferred and within a reasonable time, it is clear that direct access to databases could widely facilitate the daily work of national desks.

Where the national member is not permanently posted in the Hague, the domestic case workload for the national member should be limited to enable the national member to better carry out his/her core functions as a national member at Eurojust. In addition, a number of national members pointed out the need to reduce the amount of time they have to devote to administrative matters (and workshops and seminars) by streamlining the work of the College in order to be able to concentrate on what should be their core business: operational work.

According to the Eurojust Decision, Article 28(2), *"The College shall elect a President from among the national members and may, if it considers it necessary, elect at most two Vice-Presidents"*.

However, the sixth evaluation round has shown that it is too big a burden to fill this dual function as a "normal" national member and as a (Vice)President - *"by their very nature, the roles of President and Vice-President are demanding and require full time dedication from the elected members"*<sup>27</sup>.

This was confirmed by a CATS-discussion on 16 September 2014 where CATS considered three questions posed by the Presidency regarding the status of the President and Vice-President. There was a clear position that the President or Vice-Presidents should not be granted status as EU officials and that the "one Member State one vote" rule should be retained. Delegates were more divided on the final question on whether a national member elected as President or Vice-President should be replaced, with some in favour, some opposed and others who wished to explore

alternative options such as bolstering the capacity of the national desks by seconding additional experts. On compensation the President suggested that a mixed model of compensation could be considered which received support from delegates. The Presidency concluded that the national desk of the National Member elected should be reinforced and a mixed model of compensation could be introduced. The Commission undertook to examine the alternatives for providing some form of compensation within the existing budget<sup>28</sup>. The matter is being discussed in the framework of the proposed Eurojust Regulation.

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<sup>27</sup> 12874/14 EUROJUST 150 EPPO 41 CATS 111 COPEN 211 CODEC 1763 (discussion paper to CATS of 9 September 2014).

<sup>28</sup> 13573/14 CATS 130.

#### **RECOMMENDATION No. 5**

- a) Since the workload of Eurojust is likely to further increase in coming years, and the cooperation to become more intense, Member States and the budgetary authorities of the Union, should ensure sufficient staffing levels and a sufficient budget for all desks. The status of national members and the operational capacities of National Desks should be strengthened; in line with the Eurojust Decision's spirit the national member should be able to access to the greatest possible extent national databases under the same operational conditions as national authorities can do.**
- b) To comply with Article 2a) of the Council Decision, all the national members shall have their regular place of work at the seat of Eurojust. The domestic workload for the national member should be limited to enable the national member to better carry out his core functions.**
- c) For the national desks with a heavy workload, it is advised that the deputy to the national member is also permanently based in the Hague.**

To ensure smooth cooperation, general exchange of views and experiences as well as early identification of common challenges, specific cases, current developments and good practice, regular meetings should be held between national authorities and the national desk at Eurojust, preferably at least twice a year. The national member should always be invited to meetings of the ENCS.



Concerning selection and appointment, setting out specific criteria in written guidelines for the selection process, as some Member States have done, ensures transparency. Many national authorities in Member States stressed the importance of nominating a person well-known and respected by national authorities, with a long-standing experience, adequate seniority/authority in the field of judicial cooperation in criminal matters and with international experience. Good personal relations seem to play a great role in the cross-border cooperation. The expertise and knowledge at having worked with or within Eurojust should be exploited to the fullest extent, e.g. by installing a "policy of continuity" with regard to staff employed at Eurojust to make sure that their expertise can be used in their following domestic assignments.

Many national members are required to provide a detailed report on all activities of the national desk to the Prosecutor-General twice a year.

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

The evaluation shows that the powers of the national members vary considerably from one desk to another. Some national members are not even provided with the ordinary, basic powers set out in Article 9b). In many cases, their powers need strengthening in national legislation in order to be able to ensure that the national members can fulfil the tasks of Eurojust, as set out in the Council Decision.

The system as laid down in the Council Decision is quite flexible and does not attempt to thoroughly harmonise powers. Member States can choose to go beyond the current provisions or make use of Article 9e). The derogation under 9e) is largely used, in particular with reference to (a) constitutional rules and/or (b) fundamental aspects of the criminal justice system: (i) regarding the division of powers between the police, prosecutors and judges, or (ii) regarding the functional division of tasks between prosecution authorities. One Member State refers to (iii) the federal structure of the Member State concerned.

A discussion at CATS on 16 September 2014 showed that a great majority of Member States prefer to keep the system as it is with all the flexibility that it offers. However, it seems that a certain harmonisation of powers is desirable as this would facilitate and increase the efficiency of the cooperation between national desks, in the interest of EU cooperation in criminal matters.

#### **RECOMMENDATION No. 6**

**In order to ensure as efficient a co-operation as possible, Member States should ensure that the national member is granted with as many powers as possible to enable him to fulfil the tasks of Eurojust. In many Member States, the national member retains the powers he has within the national system. This has the advantage that the national member knows which powers he has. It however has the disadvantage that the powers are linked to person and not to the function which it could be if the powers were defined by national law.**

#### **EJN contact points**

The EJN is positively viewed by practitioners, in particular because it offers a "level playing field". The contact points serve as active intermediaries enabling direct contacts between competent judicial authorities without any involvement from a central authority, increasing the speed which is crucial in the most urgent cases.

Provided that there are no insurmountable language barriers, the system of contact points considerably facilitates a dialogue with foreign counterparts. The network of judicial contact points was set up under Joint Action 98/428/JHA, replaced by Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. Today there are approximately 300 national contact points throughout the 28 Member States enabling direct communication between authorities. In addition, a number of contact points have been established with third countries, and the very idea of the EJN has been replicated in other parts of the world, e.g. Iber RED (the Iberoamerican network of international legal cooperation) in South America.

Member States should reflect on possibilities to reduce the normal workload of EJM contact points so as to allow them to devote sufficient time to assume their tasks as EJM contact points. In most Member States the tasks are performed along with regular tasks as magistrates, prosecutors, etc., and the evaluation showed that this sometimes was difficult to combine. Data and statistics should be collected by the Member States on the number and the type of cases handled by the EJM contact points in order to get a clear view of the caseload and to implement necessary measures when there is a need to strengthen the capacity of the EJM contact points.

Occasional national meetings between EJM-contact points to exchange information and best practices should be held in Member States that have a number of them.

#### **RECOMMENDATION No. 7**

**Member States should make sure that the number of appointed EJM contact points is sufficient, that the language skills of those appointed are satisfactory, and that the contact points have the capacity to perform their tasks as EJM contact points along with their regular duties and tasks. The lists of contact points should be updated at all times.**

Roles and responsibilities of the Member States in relation to the updating of data available through the EJM tools, in particular as regards the electronic Atlas for MLA-requests, the validity of which was questionable according to some Member States, and the EAW Atlas of which the main sections are translated into all of the official languages of the Union. The EJM Website provides in its "Fiches belges" an overview of relevant national legislation regarding investigative measures in the field of MLAs. This information should regularly be revised and updated.

#### **RECOMMENDATION No. 8**

**a) The combined role of EJM contact points and members of the Eurojust national desk as practised by some Member States will automatically improve the cooperation and should be considered by other Member States.**

**b) Member States should bear in mind the relevance of appointing judges and other officials working with MLA, such as police and customs officials as EJM contact points as well.**

**c) Development/use of written guidelines for the nomination and functioning of EJM contact points in line with the Guidelines for the Selection of Contact Points of the EJM<sup>29</sup>, stipulating the skills and experience required is essential. Continuity of "office" should be maintained.**

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<sup>29</sup> 16235/07 EJM 40 COPEN 174.

## 5.2 EXCHANGE OF INFORMATION

### **Organisation of the exchange of information from judicial and/or law enforcement authorities to Eurojust**

Article 13 of the Council Decision introduces an obligation for Member States to exchange information with Eurojust, at least including the information referred to in its paragraphs 5, 6 and 7<sup>30</sup>. To assist the national authorities with this obligation to transmit information to Eurojust pursuant to Article 13(5)-(7) in a structured manner Eurojust developed a template in June 2011, which was transmitted to all Member States.

The evaluation showed that Member States' experience with Article 13 varies considerably. More than half of the Member States had not yet fully implemented the Article at the time of the evaluation visit, and in general only little awareness existed among practitioners of the obligations therein. Those who knew about Article 13 still did not systematically transfer the relevant information in a structured way; a number of them asked for a more "user-friendly" template. It appears that the project EPOC ((European Pool against Organised Crime) V could help in this respect, but the financing of the project seems uncertain.

Article 13 notifications from Member States still represent only a small percentage of the information reported to Eurojust. According to Eurojust's statistics, a total of 72 notifications were registered in the CMS in the period May 2011 to April 2012. A notification can be registered under two or more paragraphs of Article 13; a majority of notifications are registered under Article 13(6)(a), serious crimes. It should be stressed that both Eurojust and Europol have sophisticated computer systems in place, including for the analysis of large volumes of crime data, and well-trained staff to perform the task.

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<sup>30</sup> List referred to in Article 13(10) setting out the minimum types of information to be transmitted, where available to Eurojust pursuant to Article 13(5), (6) and (7), annexed to the 2009 Eurojust Decision.

The quality of such analyses depends on the data which is provided. The timely dissemination of relevant and quality data to Eurojust will promote better analysis results and could provide a valuable assistance in complex cross-border cases. Member States should be encouraged to be proactive in providing information to Eurojust in order to be able to make use of this potential.

#### **RECOMMENDATION No. 9**

- a) Member States are reminded about the important obligation to provide Eurojust with all information required. Member States should make use of the Article 13 template to send information to Eurojust in a structured way (Article 13(11)) to optimise the taking into account and to ensure the best use of the data provided. Member States should increase practitioners' awareness of the potential benefits and clarify the requirements of Article 13 by issuing practical guidelines at national level.**
- b) The obligation to transmit information to Eurojust in accordance with Article 13(5) to (7) of the Eurojust Decision should be transposed into national law, ensuring that it also applies to courts.**
- c) Eurojust should promote the added value of Article 13 and simplify the Article 13 form, making it more user-friendly, since it is too complicated for the average practitioner in the Member States. On the basis of the experience gained from the practical implementation of Article 13 to date, Eurojust should take a look into the possible evolutions of the Article 13 form, with a view to encourage practitioners to notify all relevant information in a structured way.**
- d) In connection with the ongoing negotiations on the new Eurojust Regulation, consideration should be given to simplifying the current requirements of Article 13 which a number of Member States regard as quite convoluted. In addition to reflecting on how to stimulate the exchange of information with Member States. The automatic exchange of information, notably through the EPOC V project, should be further explored.**

### **Feedback by Eurojust**

According to Article 13a of the Eurojust Decision, "*Eurojust shall provide competent national authorities with information and feedback on the results of the processing of information, including the existence of links with cases already stored in the Case Management System*".

Most Member States reported "*no experience*" with regard to this article during the evaluation visits when asked about their experience with this Article. Others replied "*not yet implemented*", "*no statistics available*" or "*no cases*". A number of Member States claimed a lack of feedback from Eurojust.

### **RECOMMENDATION No. 10**

**Eurojust should acknowledge receipt of any notification under Article 13 and provide systematic feedback as to the existence or otherwise of a "hit" as early as possible.**

According to its reply to the questionnaire, Eurojust "*does not hold a statistical overview of the information sent to competent national authorities under Article 13a. Eurojust routinely provides operational and strategic information and feedback to these authorities. Information and feedback are provided mostly informally via direct contact between the national Member, deputy National Member and Assistants, and the authorities of his/her Member State*". I... *The nature and extent of the feedback provided by Eurojust depends on the amount, timing and contents of the information which the national authorities exchange with Eurojust pursuant to Article 13. It also depends greatly on the state of implementation of the Eurojust Decision in Member States.*" Consequently Eurojust expects to expand the extent and nature of its feedback as a result of an increase in case-related information received from national authorities pursuant to Article 13, in particular paragraphs (1) and (5)-(7).

In addition, general or strategic feedback are given through reports on strategic projects, among others such as the Eurojust Annual Reports and the strategic projects *on enhancing the work of Eurojust in drug trafficking cases*<sup>31</sup> and *on trafficking in human beings*<sup>32</sup>, etc..

### **Access by the national desk to the Case Management Systems (CMS)**

In accordance with Article 16 of the Eurojust Decision, Eurojust has established a Case Management System (CMS) composed of temporary work files and an index which contain personal and non-personal data. The proper functioning of the CMS is an important basis for the work of Eurojust, which undertakes ongoing efforts to improve it.

National members, their deputies and their assistants, ENCS persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6) and authorised Eurojust staff may, for the purpose of achieving Eurojust's objectives and within the limits provided for in Articles 16, 16a and 16b, have access to personal data processed by Eurojust/the restricted part of the CMS system.

Access to the CMS by ENCS members has not been implemented by a number of Member States due to the fact that considerable technical changes need to be made to in the CMS application to facilitate the access.

### **RECOMMENDATION No. 11**

**a) Eurojust and the Member States should speed up the implementation of access at national level to the CMS. All ENCS members should have an easily accessible connection to the CMS.**

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<sup>31</sup> 11483/12 COSI 45 ENFOPOL 193 CORDROGUE 45 COPEN 143 CRIMORG 77 (Eurojust report collecting the results of the "Strategic project on enhancing the work of Eurojust in drug trafficking cases).

<sup>32</sup> 17004/12 GENVAL 90 DROIPEN 176 JAIEX 119 RELEX 1099 JAI 854 COSI 127 EUROJUST 108 (Eurojust Strategic Meeting on Trafficking in Human Beings - Outcome Report).



**b) The technical conditions for giving access to the CMS to national members of new Member States of the EU should be in place from the date of accession to the EU.**

EPOC IV started on 1 April 2009 and in March 2012, involving Eurojust and ten partners (eight Member States), receiving financial support from the Commission's ISEC programme. The EPOC software was introduced in 2004 as the Eurojust Case Management System. The project was a further evolution of the EPOC software to allow the exchange of information with national case management systems and the promotion of use in the Member States.

The Eurojust Decision 2009 consolidated the existing data protection regime at Eurojust by including in its text the content of a number of the provisions of the data protection rules regarding the processing of data in the CMS. Transmission to a third country or other international organisations are subject to specific rules, which requires among other things the specific consent to the transfer of data from the national member of the Member State being the "owner" of the information.

**RECOMMENDATION No. 12**

**The continuously increasing exchange of data (including exchange under Article 13 not (necessarily) requiring an immediate request for assistance/action) accentuates the need to ensure a robust data protection regime at Eurojust to facilitate this exchange.**

The evaluation established that few Member States has a secure connection between national authorities and Eurojust in place. Member States are encouraged to get a secure connection in place as soon as possible

**RECOMMENDATION No. 13**

**Member States should complete the necessary technical requirements as soon as possible to set up a secure connection with Eurojust.**

### 5.3 OPERATIONAL ASPECTS

#### Allocation of cases to Eurojust, the EJM or others

The evaluation findings suggest that there are difficulties in practice when determining whether a particular case should be directed to EJM or Eurojust. The basic guidelines are well-known: e.g. that Eurojust should be contacted of operational work in complex or very urgent cases, involving more than two Member States, the EJM being a more flexible structure with the aim of direct contacts without formalities between practitioners when dealing with less complex bilateral cases.

Several individual reports suggest that clear guidelines should be developed. A number of Member States have already developed internal guidelines and/or instructions on the distribution of cases between EJM and Eurojust. The answers received during the evaluation visits show that practitioners seem to choose a bit randomly: either the "instance" they know best - or with whom he has had good experience with previously.

EJM and Eurojust issued on 6 May 2014 a paper prepared by the EJM and Eurojust Task Force (JTF)<sup>33</sup> "*Assistance in International Cooperation in Criminal Matters for Practitioners - What can we do for you?*", discussed at an EJM plenary in Athens on 24 June 2014<sup>34</sup>. This paper also covers the use of the ENCS. This paper was distributed to the Council Working Party COPEN in June 2014 in connection with discussion on Article 25 and the accompanying recital (24) of the draft Regulation on Eurojust<sup>35</sup>. Member States (in the forum of CATS) were asked to pronounce themselves on whether the draft Regulation adequately clarified the respective roles of Eurojust and the EJM or if it should be developed further to include more specific guidance on when each entity should be used.

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<sup>33</sup> The JTF was set up in 2010 to focus on the consultation and complementarity between Eurojust and the EJM and to tackle problems encountered in the implementation of decisions.

<sup>34</sup> Paper of 6 May 2014 entitled: "*Assistance in International Cooperation in Criminal Matters for Practitioners. European Judicial Network and Eurojust - What can we do for you?*" with a number of useful links to the different websites included. This paper will, according to the EJM secretariat paper be translated into all EU languages and be available through the EJM and Eurojust websites.

<sup>35</sup> 11233/14 EUROJUST 118 EPPO 30 CATS 90 COPEN 175 CODEC 1517.

Following the discussion at the CATS meeting on 2 July 2014, it was concluded that there were mixed views on the issue, and that the introduction of new provisions in the operative part of the proposal for a Eurojust Regulation<sup>36</sup> going further than Article 25a of the current Decision - *"Eurojust and the European Judicial Network shall maintain privileged relations with each other, based on consultation and complementarity, ..."* did not seem to have sufficient support.

According to the reply from Eurojust to the questionnaire, they have *"developed a variety of practices according to the case: some National Desks routinely inform national authorities that the issue could have been addressed to the EJM; others make immediate referrals to EJM Contact Points; and yet others have established close contacts with their EJM Contact Points and EJM National Correspondents"*. Member States replies confirm this answer. Often authorities/practitioners use the "entity" they know best and which they have had good experiences with. In case of urgent or sensitive matters which normally should be dealt with by the EJM these are often better referred to Eurojust.

There is a general understanding that it is important only to address one entity in order not to create confusion and duplication of work.

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<sup>36</sup> 11797/14 EUROJUT 132 EPPO 36 CATS 102 COPEN 193 CODEC 1615.

#### **RECOMMENDATION No. 14**

**The paper produced jointly between Eurojust and the EJM should be "formalised", adopted and translated into all languages and used as the basis to develop national guidelines for which cases should be addressed to the EJM or Eurojust. Eurojust and the EJM should collect national practices and should seek to operationalise them at European level.**

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

Many national members indicated as a reply to the questionnaire and during the evaluation visits that they had a quite an informal way of working. They regularly received and made use of informal requests and the information received in most cases proved sufficient. Some (even) found the distinction between "formal" and "informal" artificial, especially practitioners from smaller Member States.

An essential part of the daily business is replies to requests received by phone or e-mail. Due to this informal nature of exchange of information, in general no statistics are kept by the national desks.

If the request concerns judicial authorities of another Member State, usually these would be addressed from one National desk to another that then subsequently will contact its national/domestic authorities.

#### **RECOMMENDATION No. 15**

**In order to render visible the workload, the character of the requests received, and the nature of the assistance provided, the national desks are invited to keep minimal statistics englobing the informal part of their daily work; a common approach shared by all national desks on this matter is advisable.**

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

Formal requests under Article 7 are in general not considered necessary due to the fact that most contacts on operational matters are direct and informal and more of a continuous dialogue between Eurojust national members and judicial authorities and law enforcement agencies. In the rare cases that Eurojust has acted as a college (less than ten times since 2002), it has been due to specific rules concerning the conduct of investigations (audit trails, etc., such as the demand for a formal written request).

With respect to Article 7(2) and (3), so far there is no experience. Conflicts of jurisdiction and recurrent refusals or difficulties concerning the execution of requests for judicial cooperation are in general prevented or solved at an early stage by way of informal consultations involving the national desks and the authorities concerned - or during coordination meetings or within JITs-cooperation. Internal guidelines for the application of Articles 7(2) and (3) have (however) been adopted by the College of Eurojust.

With reference to Article 8 of the Eurojust Decision, Eurojust has never received any notifications in cases where national competent authorities have decided not to comply with a formal request of Eurojust on the basis of Articles 6 and 7.

### **Practical experience related to coordination meetings**

Answers from Member States were identical: Coordination meetings are seen as a highly useful tool allowing practitioners (judicial representatives and law enforcement authorities) to direct exchange of information in (linked) investigations. Eurojust offers interpretation which is highly appreciated. Examples of good results achieved, "success stories", were presented during the evaluation visits, often by the local authorities who had been involved; cases where the cooperation had proved more efficient and much less time-consuming than "traditional" cooperation with Eurojust able to act as a facilitator. Eurojust may organise meetings to set up a common strategy and coordinate the actions of various national authorities (planning simultaneous arrests, searches, seizures of property). The possibility of gathering more relevant actors such as representatives of judicial authorities of third states, Europol and OLAF should be kept in mind. There has been a steady increase in the number of coordination meetings within the last five years (206 in total in 2013).

Some Member States expressed a wish to have more coordination meetings held "locally", outside the Hague, due partly to limited resources (currently Eurojust covers the costs of accommodation in the Hague and travel expenses for two participants from each Member State), but also due to the fact that holding regional meetings which often also include non-EU neighbouring countries, has many advantages. Regional meetings substantially contribute to making work on cases of international legal assistance easier, as a large number of these cases require cooperation with a certain number of nearby countries.

Another popular, but rather new tool, is the possibility to set up a coordination centre within Eurojust to coordinate simultaneous operations between judicial, police and, if need be, customs authorities. In many regular Eurojust coordination meetings, national authorities come to an agreement to conduct joint actions (seven in 2013). In most of these, the Europol mobile office or the Europol Liaison Bureaus were involved, in order to strengthen cooperation between the two agencies.

Concerning coordination meetings, many Member States expressed a wish for guidelines on the structure and the information exchange, for example they were unsure of whether summaries of outcomes of meetings were made and could be disclosed to prosecution and defence, etc. Work on this issue is ongoing with Eurojust.

## **RECOMMENDATION No. 16**

- a) **Eurojust should review the guidelines on coordination meetings, setting out the requirements for convening a coordination meeting, the planning, conduct and follow-up of such a meeting. This should also include a framework for the exchange of information and use thereof, taking into account the need to receive the consent from all parties, if the information is admissible in any legal proceedings in the Member States concerned, etc. In addition, the Guidelines on confidentiality and disclosure within the framework of coordination meetings, adopted by the College, should be adhered to.**
- b) **Apart from the use of regional meetings, the use of videoconferences could be considered as an alternative in cases where it is difficult to gather the relevant actors for coordination meetings and/or where resources are limited.**
- c) **Eurojust should ensure that an adequate follow-up mechanisms is put in place to monitor the use of coordination meetings and evaluate their outcomes.**

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

This function was set up in June 2011. The evaluation visits showed that a majority of Member States had never received requests from national authorities processed through the OCC, mainly due to the fact that they - meaning the national member/deputy/assistant and or EJM contact points - were already "on call" outside normal working hours and contactable via for instance national mobile numbers before the OCC was established. Only very few Member States expressed any enthusiasm about it.

OCC will be evaluated as well in the external evaluation of Eurojust to be decided in the course of 2014.

## **RECOMMENDATION No. 17**

**Taking as the point of departure that Eurojust should be reachable around the clock and able to intervene outside office hours in urgent cases, Eurojust should explore ways on how to best reach this target/requirement, bearing in mind the need to alleviate pressure on national members and give Member States the necessary flexibility.**

### Cooperation with EU agencies and others

Relations with Community or Union related institutions, bodies and agencies are regulated by Article 26: *"Insofar as is relevant for the performance of its tasks, Eurojust may establish and maintain cooperative relations with the institutions, bodies and agencies set up by, or on the basis of, the Treaties establishing the European Communities or the Treaty on European Union. Eurojust shall establish and maintain cooperative relations with at least: Europol; OLAF; the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex); the Council, in particular its Joint Situation Centre."*

Both at a strategic and an operational level, Eurojust has regular cooperation (meetings) with Europol<sup>37</sup>. Eurojust's casework benefitted from Europol's participation in 53 cases and 75 coordination meetings during 2013. The advantage of early exchange of information is clear from the casework cooperation with Europol. Eurojust is associated with most of the Europol's Analytical Work Files.

OLAF is essential in cases involving cross-border fraud, corruption and other crimes affecting the financial interests of the EU. Member State experiences in working with OLAF are however still limited. The operational cooperation between Eurojust and Olaf is regrettably still limited.

Concerning cooperation with FRONTEX, a Memorandum of Understanding with Eurojust was signed on 18 December 2013.

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<sup>37</sup> Eurojust will move to new premises in 2015, moving closer to Europol.



## **RECOMMENDATION No. 18**

**Awareness of existing EU legal tools, cooperation mechanisms and bodies needs to be increased among practitioners. Cooperation within the framework of Europol, Eurojust, the EJM and OLAF should be enhanced; their capabilities and potential added value for investigations need to be promoted and explained to practitioners, especially law enforcement officers and prosecutors.**

### **Cooperation with third states**

The Council Conclusions on the Eurojust Annual report 2013 welcome initiatives undertaken by Eurojust to develop cooperation with third states and other EU bodies. "*Notes, however, that Eurojust has not yet made use of the possibilities provided for in the Eurojust Decision to second a liaison magistrate to a third country, ...*". During the sixth evaluation round, a number of Member States confirmed the need/usefulness thereof.

Eurojust has contact points in around thirty third states, including Argentina, Brazil, India, Thailand, the Russian Federation and Ukraine. Furthermore, Eurojust has cooperation agreements in place with Norway, the USA, Iceland, Switzerland, the former Yugoslav Republic of Macedonia and Lichtenstein. In addition, liaison prosecutors from Norway and the USA are posted at Eurojust. A Memorandum of Understanding was concluded between the network Iber RED and Eurojust in December 2009 and was mentioned as very useful by a number of Member States.

Liaison Prosecutors and contact points were confirmed as valuable bridges to third States, a "one-stop shops" between Member States and third States in judicial cooperation in cases with links beyond the EU's borders.

### **RECOMMENDATION No. 19**

**In line with the Council Conclusions on the Eurojust Annual report 2013, Eurojust should examine further the possibility for posting liaison magistrates to some of the most relevant third countries, such as the Russian Federation and the USA.**

During the evaluation, member States which recently joined the EU underlined the usefulness of being connected as an observer to Eurojust and the EJN before joining the EU.

### **RECOMMENDATION No. 20**

**Candidate/acceding countries should be allowed to have a status as observers/post a liaison magistrate to Eurojust before joining the EU.**

### **Practical experience with Special Investigative Techniques**

Joint Investigative Teams (JITs) were widely used and in most Member States the number of JITs is increasing. Along with coordination meetings, JITs were seen as a very efficient and useful tool in cross-border investigations, increasingly used (102 JITs receiving financial support from Eurojust in 2013)<sup>38</sup>.

*According to Article 9f "National members shall be entitled to participate in joint investigation teams, including in their setting up, in accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union or Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, concerning their own Member State. However, Member States may make the participation of the national member*

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<sup>38</sup> 42 of which were new JITs and the remaining 60 were JITs from previous years), an increase from 62 in 2012. Eurojust provided financial support to 34 JITs in 2013, an increase compared to previous years.

subject to the agreement of the competent national authority. National members, their deputies or their assistants, shall be invited to participate in any joint investigation team involving their Member State and for which Community funding is provided under the applicable financial instruments. Each Member State shall define whether the national member participates in the joint investigation team as a national competent authority or on behalf of Eurojust".

A model agreement for setting up JITs was approved already in 2003<sup>39</sup>. This model was updated in 2010<sup>40</sup>, based upon the significant number of JITs set up since 2003, and bearing in mind the conclusions of the network of JIT experts and best practices.

Based on a proposal from the JIT Network Secretariat, the JITs Network last year approved the format and content of a JIT evaluation template<sup>41 42</sup>. The JIT evaluation is expected to improve and enhance the use and functioning of JITs in the Member States. A "JIT Network restricted area", accessible to appointed national experts as part of the Eurojust website, was launched in June 2013, and is meant to serve as a platform for communications between the experts and to support the sharing of knowledge, best practice and lessons learned.

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<sup>39</sup> OJ C 197, 12.7.2000, p.3.

<sup>40</sup> OJ C 70, 19.3.2010, p. 1.

<sup>41</sup> 7259/14 GENVAL 15 CRIMORG 24 EUROJUST 55 EUROPOL 64 EJN 37 COPEN 79 ENFOCUSTOM 34 (Conclusions from the 9th Annual meeting of the National Experts on Joint Investigation Teams held on 27 and 28 June 2013 in the Hague).

The evaluation form included questions, such as: How do you identify suitable cases for a JIT? How do you facilitate the opening of parallel investigations in the different countries involved prior to the setting up of the JIT? When the JIT is in place, how are intelligence and evidence exchanged? How are investigative measures coordinated and carried out? How is the admissibility of evidence ensured in the different countries? What added value does the JIT bring to the investigation and prosecution of the case?

<sup>42</sup> One Member State has developed a tailor-made model agreement that takes into account all particularities of the national legal framework as well as practical issues identified in previous experiences with JITs.

## **RECOMMENDATION No. 21**

- a) Eurojust should continue to further promote the use of JITs as a tool to assist investigations with a cross-border dimension and to raise awareness among specialised practitioners about the services that it can offer: identifying suitable cases for establishing JITs, provide useful legal and practical information, e.g. on national laws, practical obstacles and best practices, providing assistance in the drafting of JIT agreements and operational action plans and participating (the Eurojust national member) in JITs, not to mention a certain financial support and/or equipment, such as mobile telephones. The Member States are recommended to make wider use of JITs investigations and to invite OLAF as well as Europol to participate in JITs for cases related to the protection of the financial interests of the EU.**
- b) As for coordination meetings, differences in the field of disclosure and confidentiality rules at national level should be [made] clear prior to the setting up of a JIT.**
- c) The EU should continue promoting and facilitating use of JITs by the provision of funding through Eurojust. The possibility of financing third states participating in JITs should be clarified.**

The grant under the Prevention of and fight against Crime Programme (ISEC) expired in September 2013. Financing continued under Eurojust's regular budget.

Other Special Investigative Techniques (SITs) seemed to be used to a much lesser extent. Only a few national members have got the power to authorise and coordinate controlled deliveries in their Member State. In most Member States this competence is a judicial one (either prosecutors or courts); some Member State have given this power to the police.

### **Training and awareness raising**

Most Member States already provide comprehensive training and awareness raising on Eurojust and the EJM.

Training, including language training, should be available throughout the whole country, particularly in countries with a large geographical surface, ensuring that training and awareness is not only capital and/or central level based.

Eurojust training modules, long-term judicial traineeships provided to prosecutors and judges, secondments, including short-term modules at Eurojust are good examples of ways to enhance training.

Member States should secure a budget for language training for practitioners, in particular those involved in mutual legal assistance.

### **RECOMMENDATION No. 22**

**a) Member States should continue and enhance efforts in training and raising the awareness of judges, prosecutors and judicial police authorities about the respective competences and activities of Eurojust and EJM.**

**b) As part of this, those Member States who have not yet done so should set up of a dedicated national website (intranet for practitioners in judicial co-operation in criminal matters) which would bring together all relevant information on legal texts, instructions, guidelines and other available tools which would be useful. Information on Eurojust and the EJM should be disseminated, including the contact details for the national member, EJM contact points and the ENCS members.**

**c) All Member States should establish training curricula and enable and encourage colleagues to participate in such training. As far as possible, training should be conducted jointly, by all actors that have a role to play in the area of MLA.**

**d) Temporary exchanges of staff for training purposes should also be considered. Some Member States send seconded national experts to Eurojust for training purposes. Sending prosecutors to take part in short term secondments and traineeships at Eurojust has helped to increase awareness of the work of Eurojust at Member State level.**

**e) The EJM secretariat should address the deficiencies regarding the userfriendliness of the EJM website. EJM should keep the judicial tools available on the EJM website regularly updated, in particular the Judicial Atlas. EJM should provide training on e-tools available.**

### **RECOMMENDATION No. 23**

**The evaluation showed that "roadshows" and "promotion tours" are efficient ways of spreading the knowledge about the capacities and potential of Eurojust and the EJM used by many Member States. This should be continued.**

The issue of poor quality translations of EAWs and insufficient translation resources at national level were highlighted during the sixth Round of Mutual Evaluations<sup>43</sup>. For this reason, the possibilities of setting up a dedicated translation unit for these purposes at EU level, which would be available to issuing authorities 24/7 should be explored. Translators should be specialised in these matters and available mostly in urgent cases. This would facilitate the execution of EAW and MLA requests, increase the speed and assure correct terminology.

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<sup>43</sup> In 2013, 217 cases concerning the execution of EAWs were registered at Eurojust. Article 8(2) of the Framework Decision on the European Arrest Warrant provides that EAWs must be translated into the language of the executing Member State. Eurojust casework shows many instances of difficulties in understanding the translated documents received as well as problems meeting the costs of ensuring the timely translation of EAWs prior to being issued.

**RECOMMENDATION No. 24**

**a) Eurojust should examine the possibilities for providing translation in all languages of information contained in the EJN tools.**

**b) Eurojust should examine problems linked to the length and quality of translations of MLA requests.**

## 5.4 *GENERAL OBSERVATIONS AND FINAL REMARKS*

### **FOLLOW-UP TO EVALUATIONS**

Member States are reminded of the follow-up process that is inherent to the recommendation of every country report.

As stated in each country report, Member States should conduct a follow-up on the recommendations given in the report 18 months after the evaluation and report on progress to GENVAL (time of adoption of the report). At two consecutive GENVAL-meetings of 16 January and 20 March 213, delegations had a discussion on the follow-up to mutual evaluation reports, concluding that the current system and procedures in place should be kept with minor adjustments<sup>44</sup>.

It has appeared from this and from previous evaluation that Member States use them as an opportunity to take stock of the state of play domestically and to take actions to improve their system, the evaluation in itself providing an incentive.

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<sup>44</sup> 9154/1/13 REV 1 GENVAL 25.