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2008/976/JHA on the European Judicial Network in criminal matters"
REPORT ON IRELAND

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February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime
and of Council Decision 2008/976/JHA on the European Judicial Network in criminal
matters"**

REPORT ON IRELAND

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1. EXECUTIVE SUMMARY

- Ireland has a common - law legal system.
- Ireland has a single police force (An Garda Síochána) as well as specialised investigating agencies, which are solely and independently responsible for the investigation of crime and which conduct most summary prosecutions. There are no investigative magistrates in the Irish legal system.
- The Office of the Director of Public Prosecutions (ODPP) is a completely separate body, which is responsible for the prosecution of offences and which does not supervise or direct the Garda Síochána or any other investigating agency.
- The mutual legal assistance system in Ireland is small and highly centralised. The Central Authority is the Mutual Assistance and Extradition Division of the Department of Justice and Equality. Staffed by civil servants, rather than prosecutors or police officers, it acts on behalf of the Minister for Justice. The Central Authority has no role in the investigation or prosecution of "domestic" crime.
- The evaluation team considers that there is generally insufficient awareness and some degree of misconception amongst practitioners about the role of Eurojust, how Eurojust works, the role of the Eurojust National Coordination System (ENCS), and Member States' obligations under Article 13 of the Eurojust Decision.
- There is a need to raise awareness so that Ireland can consider the possibility of using Eurojust tools, such as coordination meetings and Joint Investigation Teams, and benefiting from Eurojust funding.

- The evaluation team notes that its visit may have served to raise awareness about Eurojust, its role and added value.
- The evaluators felt that Ireland has not made use of the possibilities offered by the EJN.

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2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997¹, a mechanism was established for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

On 22 June 2011, in line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided 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 crime², as amended by Decisions 2003/659/JHA³ and 2009/426/JHA⁴ and of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁵ repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters⁶.

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust and the European Judicial Network (EJN) themselves but rather on the operational aspects of their work 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 Europol National Units cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities.

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, pp. 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, pp. 4-7.

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

The evaluation deals with the operational implementation of all the rules on Eurojust and the EJM. Thus, it also covers operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experience from previous evaluations shows that Member States are in different positions regarding the implementation of the relevant legal instruments. The current evaluation procedure could also provide useful input to Member States that may not have implemented all aspects of the new Decision.

The questionnaire for the sixth round of mutual evaluations was adopted by GENVAL on 31 October 2011. As agreed in GENVAL on 17 January 2012, a questionnaire was also issued to Eurojust and that questionnaire was adopted by GENVAL on 12 April 2012. The answers to the questionnaire addressed to Eurojust were sent to the General Secretariat of the Council on 20 July 2012, and have been taken into account in drawing up this report.

The order of visits to the Member States was adopted by GENVAL on 31 October 2011. Ireland was the seventeenth Member State to be evaluated during this round of evaluations.

In accordance with Article 3 of the Joint Action, a list of experts was drawn up by the Presidency in the light of the evaluations to be carried out. The Member States nominated experts with substantial practical knowledge in the relevant field on the basis of a written request to delegations from the Chairman of GENVAL on 15 July 2011.

The evaluation teams are made up of three national experts, assisted by two officials members from the General Secretariat of the Council and observers. For the sixth round of mutual evaluations, GENVAL agreed with the proposal that European Commission, Eurojust and Europol should be invited as observers.

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The experts tasked with carrying out the evaluation of Ireland were: Ms Amandine Honhon (Belgium), Ms Ana Bučar Brglez (Slovenia) and Mr Ebrima I Chongan (United Kingdom). Two observers were also present: Mr Leif Goerts (Eurojust) and Ms Susana Fonte (Eurojust), together with Mr Michael Carlin and Mr Sławomir Buczma from the General Secretariat of the Council.

This report was drawn up by the team of experts with support from the General Secretariat of the Council, based on the findings of the evaluation visit to Ireland from 3 to 5 September 2013, together with Ireland's replies to the evaluation questionnaire.

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3. GENERAL MATTERS AND STRUCTURES

3.1. General information

3.1.1. *Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust*

Ireland has not amended its national legislation in order to comply with Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

According to the Irish authorities, there was no need to change the existing law. The Eurojust Decision has been implemented administratively.

3.1.2. *Council Decision 2009/426/JHA on the strengthening of Eurojust*

Ireland has not amended its national legislation in order to comply with 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 ("the Eurojust Decision").

However, Ireland does intend to amend the Criminal Justice (Mutual Assistance) Act 2008 with a view to explicitly stating that the National Member for Ireland may transmit requests for assistance to the Central Authority.

3.2. Implementation of the Eurojust National Coordination System

3.2.1. Eurojust National Coordination System (ENCS)

The ENCS was established with effect from 1 March 2011. According to the Irish authorities, no legislation was required.

The following authorities are included in the ENCS in Ireland:

- The ODPP
- The Garda Síochána
- The Department of Justice and Equality

In spite of its role in the investigation of offences with an international dimension and its extensive international cooperation, the Office of the Revenue Commissioners is not included in the ENCS.

Operating from the ODPP, the National correspondent for the ENCS is Eurojust's Deputy National Member for Ireland. His tasks have not been defined on any formal legal basis. The Irish authorities point out that the ENCS has never had to function operationally and so, the National correspondent's tasks have yet to crystallise.

Ireland operates an informal ENCS by electronic means.

The Irish authorities maintain that it has, so far, never had a genuine reason to convene a meeting. In practice, ENCS members are in communication, by email or by telephone. However, the evaluators were not certain that all the members of the ENCS were entirely aware of their roles and responsibilities within that system.

In some cases, Ireland has a nominated Departmental official as the contact point referred to in Article 12 of the Eurojust Decision and in other cases a designated government agency/office is used. For example, the Criminal Assets Bureau, which is headed by a Chief Bureau Officer who is responsible to the Garda Commissioner for the performance of the functions of the Bureau, has been designated as the contact point for the Asset Recovery Offices. Similarly, the Department of Justice and Equality has been designated as the contact point and National correspondent for the EJM⁷.

The ENCS members perform their tasks in the course of their "regular" work, so there has been no need to devote time exclusively to ENCS duties.

3.2.2. National correspondents

The following authorities are included in the ENCS and perform the tasks of National correspondent:

- The ODPP (National correspondent for Eurojust and National correspondent for terrorism matters),
- The Garda Síochána (National correspondent for terrorism matters, EJM contact point, National experts for the JIT Network, Genocide Network contact point, Asset Recovery Offices contact point, Network against Corruption contact point), and
- The Department of Justice and Equality (National correspondent for the EJM, EJM contact point).

⁷ According to the information provided by Eurojust, the most recent *fiches suédoises* (updated as on 28 February 2014), contain one named person as Contact Point for the Genocide Network, but no named persons (only designated government agencies/office) neither as Contact Points for the EJM, nor as Contact Points for the Network against Corruption, nor Contact Points for the Asset Recovery Office.

3.2.3. Operation of the ENCS and connection to the CMS

The ENCS is not connected to the CMS.

3.2.4. Cooperation of the ENCS with the Europol national unit

The ENCS can liaise with the Europol national unit through the Irish National Member to Eurojust. The ENCS is still at an embryonic stage and other liaisons have yet to develop.

According to the Irish authorities, the CMS is designed to support accessibility for internal Eurojust users only. Therefore, it is expected that additional changes will be required to the CMS as well as to the surrounding technical infrastructure once the requirements have been finalised and the preferred approach by a Member State has been selected. Once a secure technical connection has been established between Eurojust and Ireland, the national authorities can be informed about the types of access available.

3.3. National desk at Eurojust

3.3.1. Organisation

The Irish desk at Eurojust is made up of one National Member and one administrative assistant, both based at Eurojust. The Deputy National Member is based in Ireland, at the ODPP.

3.3.2. Selection and appointment

The National Member is nominated by the Director of Public Prosecutions.

The ODPP assesses candidates on the basis of written applications. Following its assessment, the ODPP selects a candidate who, at the time of application, must be serving as an established professional officer of the ODPP in a grade the pay scale of which equals or exceeds that of Principal Officer, and who must hold a professional legal qualification.

Professional legal competence is the most important competence required. This competence is demonstrated by proven experience of effectively managing legal caseloads. If the workload of Eurojust permits, the person appointed may be required to handle ODPP files in his or her capacity as an ODPP officer.

The National Member may not engage in private practice and may not be connected with any outside business that could interfere with the performance of official duties. Scrutiny of the National Member is performance oriented, interactive and ongoing.

3.3.3. Powers granted to the national member

3.3.3.1. General powers

The National Member's powers are not contained in any piece of legislation or administrative document. At the time of appointment, the National Member is informed in writing of his or her powers and duties.

The present National Member for Ireland is nominated by the Director of Public Prosecutions and is endowed with all the regular powers that the Prosecution of Offences Act 1974 attributes to a professional officer of the ODPP. He or she may be, *inter alia*, directed by the Director of Public Prosecutions to perform the Director's functions which include directing the preferral, continuation or withdrawal of criminal charges, in accordance with the Guidelines for Prosecutors.

The National Member has no investigative or judicial powers. There is a division of powers between An Garda Síochána (and other specialised investigative agencies) and the ODPP. This is a fundamental aspect of the Irish criminal law system. Accordingly, the powers referred to in Articles 9c and 9d of the Eurojust Decision are not granted to the National Member, and Article 9e (1)(b)(i) of the Eurojust Decision applies. However, the National Member may submit a proposal to the national authorities competent for the carrying out of such powers.

The National Member has no power to authorise or coordinate controlled deliveries. This is a matter for An Garda Síochána. Therefore, An Garda Síochána mostly uses law enforcement channels, but often liaises also directly with foreign prosecutors.

An Garda Síochána is expected to liaise with the National Member.

With regard to Article 9b of the Eurojust Decision, where the National Member is informed by another Eurojust national desk that an MLA request is to be issued to Ireland, the National Member sends an email to the Irish Central Authority informing them that an MLA is expected and underway. However, formally, the MLA request addressed to Ireland must, under Irish law, be sent directly to the Central Authority and not through the National Member for Ireland. According to the Irish authorities, there are plans to amend the law on mutual legal assistance to specifically allow the National Member to transmit requests for assistance to the Irish Central Authority.

Other tasks and powers of the National Member include following up, with his or her Eurojust counterparts, on requests made by the Central Authority regarding delays or obstacles to questions raised concerning the execution of outgoing MLA requests and EAWs and vice versa, when the delays or queries concern incoming MLA requests and EAWs; assisting with processing Garda Síochána requests for coordination or requests from his or her Eurojust counterparts for coordination between prosecutors in serious cross border cases, and acting as a highway of communication between authorities in two or more Member States or simply introducing the relevant parties and, having ensured that lines of communication are open, taking no further part.

A representative of the Office of the Director of Public Prosecution suggested to the evaluation team that, given the structure of the Irish criminal justice system, it might be beneficial to have a member of An Garda Síochána as Eurojust Deputy National Member for Ireland.

3.3.3.2. Access to national databases

The National Member has no direct access to national investigative databases because under the Irish common - law system this is a function for law enforcement authorities. This means that if a national desk at Eurojust requests the National Member for Ireland to check whether an investigation, which may relate to a particular case ongoing in the requesting Member State, is underway in Ireland the National Member for Ireland has to ask An Garda Síochána for such information.

The Irish Liaison Bureau at Europol has indicated that, in relation to requests involving checks on national Garda Síochána databases, requesting Member States should be referred to their national bureau at Europol, which can access the secure information exchange network.

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

Access to the CMS is granted by the National Member to an administrative assistant in a limited way.

With regard to external access to the CMS, Irish national authorities do not have access to the CMS. The Irish authorities explained that technical implementation of a pilot project concerning a Virtual Private Network (VPN) connection with Ireland had commenced but had not proved possible to complete. ODPP had done substantial work on the project with Eurojust but then disengaged as it felt that the project was at an early stage, preferring to await further developments.

The setting up of a VPN tunnel between Eurojust and ODPP is complex. According to the Irish authorities, a connection would be established in order to provide secure email exchange and secure access to the Eurojust CMS. The objective would be to create a secure email tunnel. The time and expense involved in setting a VPN connection up with Eurojust would be considerable. If other Member States implement successful, working VPN connections, Ireland may reconsider the matter. However at present, VPN does not appear to be necessary for the effective discharge of business.

3.4. EJM contact points

3.4.1. Selection and appointment

In Ireland, EJM contact points are drawn from the Central Authority for Mutual Assistance (Mutual Assistance and Extradition Division, Department of Justice and Equality) and from An Garda Síochána (Crime Policy and Administration Unit at Garda Headquarters).

Contact points are assigned from areas related to mutual legal assistance.

Although public prosecutors deal with criminal cases with an international dimension, the ODPP has not nominated an EJM contact point.

3.4.2. Practical operation of the EJM contact points in Ireland

The contact points drawn from the Central Authority for Mutual Assistance (Mutual Assistance and Extradition Division, Department of Justice and Equality) have no function in relation to the investigation and prosecution of crime. As most contact points have been drawn from the same division and are already in close contact with each other, it has not been necessary to arrange specific meetings or assign specific tasks.

The Central Authority for Mutual Assistance (Mutual Assistance and Extradition Division) is responsible for ensuring that the information on the EJM website in relation to Ireland is regularly updated.

The evaluation team noted that no practical use is made of the EJM website, not even in relation to EAW requests. ODPP officials dealing with EAW requests have their own list of contacts and consult the National Member for Ireland when necessary.

3.5. Conclusions

3.5.1. Formal (legislative) implementation process

- The Irish authorities informed the evaluators that they have implemented the Eurojust Decisions informally and administratively because of the common-law system and that enabling legislation is not required.

- With regard to the Eurojust National Member's powers under Article 9b of the Eurojust Decision, it was noted that this remains a grey area, despite there being practically no major difficulties. There are plans to amend the law on mutual legal assistance to specifically provide for, and as a result put beyond any doubt, the possibility that the National Member may transmit requests for assistance to the Irish Central Authority. However, no timetable has been given for this amendment.

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

- Ireland has a single police force (An Garda Síochána) as well as other specialised investigating agencies, which are solely responsible for the investigation of crime and which also conduct most summary prosecutions.
- An Garda Síochána may consult the ODPP as it considers necessary for legal advice when deciding how to carry out their investigations. However, An Garda Síochána is an independent authority from the prosecution service and the DPP has no power to direct the Garda in their investigations.
- The Director may advise investigators in relation to the sufficiency of the evidence to support nominated charges and the appropriateness of charges or in relation to legal issues arising in the course of an investigation. While the DPP is not responsible for the conduct of investigations she is free to indicate what evidence could be required to sustain a prosecution.

- The Office of the Revenue Commissioners, which is independent of An Garda Síochána, is an authority competent to investigate serious tax evasion, excise and cigarette smuggling offences. In relation to drugs offences they have shared competence with the Garda Síochána. Like An Garda Síochána, they present completed investigation files to the ODPP, which then decides on prosecution.
- The ODPP is a completely independent body, which is responsible for the prosecution of all offences, prosecuted in the name of the DPP. The ODPP does not supervise or direct An Garda Síochána or any other law enforcement agency in the performance of their investigative functions. The ODPP decides whether or not to prosecute on the basis of the file submitted by An Garda Síochána or any other law enforcement agency.
- In serious crimes, the Garda and other agencies send a file to the DPP and the DPP decides whether or not to prosecute the suspect. Only the DPP can direct trial on indictment in the Circuit, Central or Special Criminal Court. In less serious crimes, the Garda make the decision pursuant to the authority delegated to them by the DPP, but whoever makes the decision, the prosecution is still taken in the name of the DPP who has the right to tell the Garda how to deal with the case.
- There are no investigative magistrates in the Irish legal system.

3.5.3. *The national desk at Eurojust*

- The Irish desk at Eurojust is made up of a National Member based at Eurojust, a Deputy National Member based at the ODPP in Dublin, and an administrative assistant based at Eurojust.
- The powers of the National Member are not contained in any piece of legislation or administrative document. At the time of appointment, the National Member is informed in writing of his or her powers and duties.

- The Eurojust National Member for Ireland is nominated by the Director of Public Prosecutions and is endowed with all the regular powers that the Prosecution of Offences Act 1974 attributes to a professional officer of the ODPP.
- The National Member has no investigative or judicial powers. There is a division of powers between the Garda Síochána (and other specialised investigative agencies) and the ODPP. This is a fundamental aspect of the criminal law system. Accordingly the powers referred to in Articles 9c and 9d of the Eurojust Decision are not granted to the National Member and Article 9e(1)(b)(i) of the Eurojust Decision applies. However, the National Member may submit a proposal to the national authorities competent for the carrying out of such powers.
- The evaluators think that there is a demonstrable need for better coordination between the Irish desk and law enforcement authorities. Ireland could consider all the possibilities offered under Article 2(1) of the Eurojust Decision.

3.5.4. Implementation of the ENCS

- Ireland operates an informal ENCS by electronic means. However, there are no internal instructions or guidelines on the assignment of members to the ENCS or on the role of the ENCS.
- Ireland has opted for a centralised system composed of representatives from the Central Authority, the Director of Public Prosecutions and An Garda Síochána but thus far the Irish authorities are yet to convene a meeting. Having regular meetings would help clarify responsibilities and the role of the ENCS.

- An appointment of named persons as the contact points referred to in Article 12 of the Eurojust Decision could facilitate cooperation within the ENCS.
- Taking into account the important role of the Office of the Revenue Commissioners in the investigation of offences with an international dimension and its extensive international cooperation, the evaluators recommend the Office to be included in the ENCS.

3.5.5. Connection to the CMS

- So far, no connection to the CMS has been established between Irish competent authorities and Eurojust. The Irish authorities have pointed out that a very limited number of ENCS members would have access to the CMS.
- With regard to Article 12(5)(a) of the Eurojust Decision, the National correspondent for Eurojust has noted that it has not yet been necessary to access the CMS.
- The view was expressed to the evaluation team that Ireland is not in any way missing out by not having established a connection to the CMS, and that this matter is unimportant compared to other urgent matters that Ireland has to deal with.
- The evaluation team notes that the National Member is a professional officer from the Directing Division in the ODPP. When an external connection to the CMS is established, the relevant Irish authorities in conjunction with the National Member, will decide which ENCS members will have access to the CMS.

3.5.6. *EJN*

- EJN contacts points are designated from the Central Authority for Mutual Assistance of the Department of Justice and Equality and from the Garda Síochána.
- Despite the fact that prosecutors are involved in mutual legal assistance, the ODPP has not nominated a National correspondent for the EJN or contact point for the EJN.
- The Central Authority is responsible for the EJN, which includes maintaining and updating the information on the EJN website. However, it is not significantly involved in the EJN.
- In practice, it has to be noted that the EJN website is not really used by practitioners. For example, the professional officers of the ODPP dealing with EAW requests have developed their own list of contacts and consult the Eurojust National member for Ireland where necessary.
- The evaluators think that appointing the professional officer from the ODPP who deals with EAW's and extradition requests from Ireland to other countries as an EJN contact point would allow for more direct contact between EJN contact points from other Member States and Ireland.
- Moreover, the EJN website is not used for the purpose of issuing EAWs. Where there is a legal issue, the competent authority contacts the Eurojust National Member for Ireland. Where that issue is a practical matter, such as checking if a requested person has stayed in a requested country, it contacts Europol.

4. EXCHANGE OF INFORMATION

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

4.1.1. Databases relevant for the information exchange with Eurojust

The Mutual Assistance and Extradition Division of the Department of Justice and Equality has a database of mutual assistance requests and a database of European arrest warrants and these can be consulted if required.

PULSE (Police Using Leading Systems Effectively) is the national computer system used by An Garda Síochána. PULSE contains information about:

- recording crime
- processing of prisoners
- traffic management
- progression of criminal cases through the courts, including the outcome
- firearms licensing
- driver's licences
- insurance
- character vetting

The PULSE system must follow the rules of the Garda code of practice on data protection. This means that information can only be put on the system for a clearly stated purpose and there must be control over who can see the information.

According to the Irish authorities, providing Eurojust with the specific type of information stored in the above-mentioned data bases is problematic in light of Article 19 of the Eurojust Data Protection Rules. That Article, which deals with the right of information of data subjects, reads as follows:

1. In the context of the operational work of Eurojust, data subjects shall be provided with information as to the processing, as soon as it is apparent that the provision of this information to the data subject would not undermine:

- (a) the fulfilment of Eurojust tasks in reinforcing the fight against serious crime; or*
- (b) national investigations and prosecutions in which Eurojust assists; or*
- (c) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in clauses (a) and (b); or*
- (d) the rights and freedoms of third parties.*

2. Recourse to the cases enumerated in paragraph 1 shall be recorded in the temporary work file related to the case, mentioning the basis for the decision which has been taken by the National Member(s) responsible for this file.

The Irish authorities believe that Article 19 of the Eurojust Data Protection Rules refers to Eurojust's obligation to proactively inform data subjects of the fact that their personal data are being processed. However, that general obligation is subject to the exceptions listed. Eurojust is required to provide such information “as soon as it is apparent” that the exceptions do not apply.

Article 19(2) of the Eurojust Data Protection Rules refers to the obligation to record in the temporary work file that the case has been considered and that a decision has been taken either to inform the data subject or, where an exception applies (which will be often the case), not to inform. Data subjects include victims, witnesses, suspects and accused persons.

The Irish authorities pointed out that a single email attaching or copying a letter of request for mutual assistance, an EAW or a simple informative communication requesting or supplying information, could contain the personal data of several data subjects. Certain correspondence could identify hundreds of such subjects and over any given year, the number would be so great that even a small desk at Eurojust could not comply with the letter or the spirit of the law.

It was also pointed out that the information that Eurojust receives from the Member States is primarily owned by the Member States' investigative and prosecutorial authorities, which would be unlikely to cooperate with Eurojust if such information was disseminated by Eurojust in the manner envisaged by the rule.

The Official Secrets Act, 1963 may be relevant in an Irish context:

- 4. (1) A person shall not communicate any official information to any other person unless he is duly authorised to do so or does so in the course of and in accordance with his duties as the holder of a public office or when it is his duty in the interest of the State to communicate it.*
- (2) A person to whom subsection (1) applies shall take reasonable care to avoid any unlawful communication of such information.*

Taking into account internal regulations, Ireland is of the opinion that proportionate use of the information stored in data bases should be considered.

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

The evaluation team was told that the Mutual Assistance and Extradition Division has been appointed as a competent body to collect and transmit to Eurojust information specified in Article 13(5) to (7) of the Eurojust Decision.

This information should be supplied to the Mutual Assistance and Extradition Division by the ODPP (Article 13(7a) of the Eurojust Decision) and by An Garda Síochána regarding Article 13(5) of the Eurojust Decision (setting up of JITs) and Article 13(7)(b) of the Eurojust Decision (controlled deliveries).

The Mutual Assistance and Extradition Division, being the central authority, keeps statistics of incoming and outgoing MLA and EAW\extradition cases. This information together with the above mentioned information gathered from the other authorities and supplied to the Division, can be transmitted to the National Member.

The information is supplied to the National Member on an annual basis rather than on a “live” case-by-case basis. So far, no information referred to in Article 13 of the Eurojust Decision has been transmitted to Eurojust.

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

Two national terrorism correspondents have been designated, one from the Garda Síochána and one from the ODPP.

An Garda Síochána is the national competent authority for this process. It sends the information required under Articles 2(1), 2(3)(a) and 2(4) of the 2005 Council Decision, via Europol channels, as part of the information collection process for Europol's annual EU Terrorism Situation and Trend Reports (TE-SAT).

For the purposes of the TE-SAT reports, the Garda Síochána sends Europol quarterly updates, in a format specified by Europol which does not contain any personal data. The Garda Síochána reviews this information annually in advance of publication of TE-SAT in order to ensure accuracy.

In addition, the ODPP sends reports to Eurojust concerning prosecutions and convictions in terrorist cases.

The evaluation team learned that, under Article 13(4) of the Eurojust Decision, the National Member forwards information on terrorism cases (approximately 18 cases a year involving explosives) to the Case Analysis Unit at Eurojust.

4.1.4. Channels for information transfer to Eurojust

According to Irish authorities, a situation requiring transmission under Article 13 of the Eurojust Decision has not yet arisen in Ireland.

If the National Member receives relevant Article 13 information from the Deputy National Member or from An Garda Síochána, it can easily be entered in the CMS. The relevant information may be furnished to the National Member by hand, mail, email or fax.

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

No cases have been reported to date.

4.2. Feedback by Eurojust

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

In practice, the Mutual Assistance and Extradition Division has little formal interaction with Eurojust but is in regular contacts with the National Member. According to the Irish authorities, communication between Eurojust and the relevant authorities in Ireland has been generally satisfactory.

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

Irish investigative authorities reported little formal interaction with Eurojust.

In the opinion of the evaluators, this could be why representatives of the Office of the Revenue Commissioners as well as from An Garda Síochána, appeared to be insufficiently aware of the role of Eurojust, of the added value Eurojust could bring to their investigations, and of the fact that they could communicate directly with the National Member for Ireland.

The Office of the Revenue Commissioners is a specialised agency for the investigation of tax, excise and, to some extent, drugs offences. The perception of the representatives met was that the Office of the Revenue Commissioners is "out of the loop" in relation to Eurojust. However, they were keen to increase their awareness of these matters.

The same could be said of the representatives of An Garda Síochána met by the evaluation team. The Garda representatives did not appear to be entirely aware or sufficiently informed of Ireland's reporting obligations under Article 13 of the Eurojust Decision.

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

In light of the low level of formal interaction with Eurojust, Ireland has no suggestions for improving information exchange.

4.2.4. The E-POC project

Ireland does not participate in the E-POC IV project.

4.3. Conclusions

- The Irish authorities reported that guidance to relevant agencies on the obligation of the Member State to exchange information in accordance with Article 13 of the Eurojust Decision had been issued in 2009 and 2011. However, the evaluation team was not able to have an insight into their content. Moreover, according to the information provided this obligation has been limited only to An Garda Síochána (which excludes other actors who might be involved in international cooperation, e.g. the Office of the Revenue Commissioners in JITs).

- Ireland has not submitted any Article 13 notifications to Eurojust. From an Irish perspective, situations requiring notification of information under Article 13 of the Eurojust Decision have not arisen.
- The evaluation team was also informed by representatives of the Irish Central Authority that information under Article 13 of the Eurojust Decision should be transmitted to the Irish Central Authority by the various competent and independent agencies in Ireland, and then forwarded to Eurojust, usually on an annual basis.
- The law enforcement representatives met by the evaluation team appeared to be insufficiently aware of the role of Eurojust and of the added value that Eurojust could bring to their investigations.
- The evaluation team was told that Ireland's privileged partner is Europol. It was pointed out that, from an Irish perspective, owing to the division of powers, the fact that the National Member (a prosecutor) has no investigating powers and that the Irish investigating agencies are completely independent from the ODPP, Europol is the agency responsible for gathering and exchanging information.
- The evaluators observe that there is a need for Ireland to better coordinate exchange of information between its competent authorities and Eurojust.
- Besides lack of awareness of an obligation to exchange of information on Article 13 of the Eurojust Decision is the perceived obstacle by the Irish authorities that information exchange could weaken the data protection of information gathered by national authorities.

5. OPERATIONAL ASPECTS

5.1. Statistics

The Irish authorities do not keep statistics on contacts between Irish authorities or on contacts with Eurojust. No body has been tasked with collecting such statistics.

The Irish National desk at Eurojust keeps statistics on cases where Ireland requests assistance from other Member States and where other Member States request assistance from Ireland.

The statistics provided by Eurojust show that in 2012 Ireland was involved in 17 cases, all of which were bilateral. No multilateral cases were registered. Up to 28 February 2013, 2 bilateral cases were registered.

The same statistics show that in 2012 Ireland was registered as a requesting country in 17 cases and as a requested country in 43 cases. Up to 28 February 2013, 9 cases were registered in which Ireland was a requested country and 2 in which Ireland was a requesting country.

In 2012, while Ireland did not request to convene any coordination meetings, it was invited to attend 3.

5.2. Practical experience in relation to Eurojust

The Irish National desk assists the national authorities in operational cases in accordance with the objectives of Eurojust as set out in Article 2 of the Eurojust Decision. National desk policies ensure a common approach to file management and case progression.

The National desk members advise and assist their respective national authorities but in accordance with the structure of the Irish criminal justice system, the National desk does not and cannot order or instruct national authorities.

All types of cases can be referred to Eurojust, at any stage of proceedings, in order to facilitate contact with the competent authority of the Member State/s which can assist in resolving a specific issue.

The members of the Irish desk are experts on MLA frameworks. Queries and problems that can arise in international cases, due to an understandable lack of knowledge regarding the law and procedure of another Member State, can be easily answered and overcome through contact with Eurojust, over and above the assistance afforded via the EJM contact points. The assistance of the Irish desk can take many forms, clarification of what is possible via formal MLA, and how to frame a request, for example.

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

In general, the EJM is used for exchanging information on a practical level. EJM contact points are drawn from the Central Authority for Mutual Assistance and from An Garda Síochána and are assigned from areas dealing with mutual legal assistance.

The National Member follows up with Eurojust counterparts on requests made by the Central Authority of the Department of Justice and Equality and on obstacles or delays in answering questions concerning the execution of incoming mutual legal assistance requests or European Arrest Warrant requests. There are no special procedures or preconditions in national legislation with regard to the means, manner or content of communication between national authorities and the National Member. As explained to evaluators, communication is informal and ongoing.

The Irish authorities have explained that EJM contact points (in particular the Central Authority) are in regular communication with the Irish National desk at Eurojust, and happily share the responsibility of responding to EJM requests for assistance.

There is no legal basis and there are no guidelines on the specific criteria for allocating cases. This is done on a case-by-case basis by agreement between the National Member and EJM contact points in the Central Authority.

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

Ireland reports that there has been generally good cooperation between national authorities and Eurojust when acting through its National Member.

If the scenarios envisaged in Article 6(1)(a) of the Eurojust Decision arise, the Irish National desk is obliged to interact with national authorities directly and to speak with the relevant prosecutor or investigator. The emphasis is not on formal written communications. Rather the focus, by both the Irish National desk and the relevant competent national authority, is on dialogue, discussion and a desire to reach consensus.

5.3.2. Requirements for cooperation between the Irish national authorities and Eurojust

No formal requirements or specific procedures are provided for by Irish national law. The ENCS contacts are the focal points within their respective organisations for those seeking advice on Eurojust. However, Ireland does not require contact with the National desk to be via the ENCS; rather it encourages direct contact from Irish prosecution and law enforcement practitioners.

The Irish authorities consider that the assistance of Eurojust is justified as regards MLA requests, if needed to obtain evidence, find a competent authority or get information on the rules of legal assistance of the other EU Member State.

5.3.3. Cases related to the powers exercised by the national member (Article 9)

While the National Member has powers of prosecution, he does not have full powers in accordance with Article 9b of the Eurojust Decision. The Irish authorities are in the process of considering possible amendments to national legislation with a view to fully empowering the national member in accordance with Article 9b. The National Member does not and will not have powers in accordance with Article 9c and 9d, for the reasons stated in Article 9e of the Eurojust Decision.

It was explained that the National Member does have a right to submit proposals to national authorities (police, ministry and prosecutors) in accordance with Article 9e of the Eurojust Decision.

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

Up to the date of the on-site visit, the Irish competent authorities had never been asked to perform any tasks under Article 7.

5.4. Practical experience related to coordination meetings

The evaluation team has noted that Eurojust and the Irish National desk in particular are seen as experienced and competent advisers. Their approach is pragmatic and relations between the national authorities and the Irish desk are easy and informal.

The Irish authorities consider that coordination meetings have added value in facilitating and/or clarifying substantive matters.

The ENCS does not play any significant role in coordination meetings in Ireland.

It appears from the statistics that few cases are attributed to Eurojust. Ireland did not feel any need to organise coordination meetings. The Eurojust National Member for Ireland invited the competent authorities (prosecutors and police) to participate in coordination meetings organised by other National desks.

The National Member for Ireland has been involved mainly in bilateral cases but has had contacts with other national desks in order to gather further information in relation to the extradition requirements of third states.

The Irish national authorities explained that, where coordination or cooperation with other Member States is needed at the investigation stage in cross border cases, contacts are made with Europol and OLAF. This is mainly because of the distinction of roles between prosecution and law enforcement authorities. The evaluators felt that there should be better communication between An Garda Síochána and the Revenue Commissioners and the National Member for Ireland, notwithstanding that the National Member for Ireland is a prosecutor.

However, the Irish experts expressed great concerns regarding the possible consequences of disclosure of information or documents shared between national judicial authorities in coordination meetings. It is felt that the national authorities (in this case An Garda Síochána) participating in coordination meetings *de facto* lose control of the information they provide. This could have adverse consequences, given that the national criminal law legislation of the country transmitting the case-related information might in fact preclude the disclosure of such information to any person who is not party to the relevant judicial procedure.

From an Irish perspective, the *erga omnes* principle enshrined in Regulation 1049/2001, whereby any citizen may request access to documents without stating reasons may conflict with the privacy of the parties to the cases and with the “right to know” principle. Therefore, it may cause serious difficulties when applied to documents exchanged in coordination meetings between the national authorities taking the initial steps in an investigation and prosecution. The Irish national authorities are concerned that coordination meetings are attended, not only by representatives of national authorities participating in specific investigations, but also by persons not directly involved in the investigations. However, the evaluators wished to point out that coordination meetings are attended by representatives of the National desks and national authorities, case analysis unit, translators when required and occasionally interns. The National desks involved decide on attendance. It must be stressed that there is a need for cooperation and collaboration in the fight against cross-border organised crime.

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5.5. Use of On-Call Coordination (OCC)

The entry into force of OCC has not resulted in any changes in the organisation of the National desk at Eurojust, the Mutual Assistance and Extradition Division or any other national authority.

The Eurojust National Member for Ireland is on call 24/7, 365 days a year. He has received no relevant calls since the entry into force of the rules on the OCC. Information about the OCC has been conveyed to the national authorities through direct contact with the relevant authorities and is to be found on the Eurojust website.

The Irish authorities do not expect the OCC to be of considerable added value to the national authorities, as the National Member has the powers of a national prosecutor only.

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

The evaluation team was informed by An Garda Siochana that their preferred choice is of cooperation in bilateral and multilateral cases is Europol through their national unit. They believe in police-to-police cooperation. The evaluators believe that Eurojust can bring some added value such as the funding of JITs.

5.7. Conclusions

- During the on-site visit, the evaluators discovered that An Garda Síochána and the Revenue Commissioners were not very aware of the full potential of Eurojust. However, one of the positive outcomes of the evaluation visit to Ireland, was that the national authorities' attitude towards cooperation with Eurojust has demonstrably changed. This impression was especially strong in the discussions with the Revenue Commissioners. However, discussions with representatives of An Garda Síochána suggested that there were some issues which prevented them from cooperating closely with and informing the National Member. Such issues could include the domestic division of powers between police and prosecutors.
- An Garda Síochána and the Revenue Commissioners are both involved in extensive international cooperation, which is mostly done via Europol, Interpol and OLAF but they should consider exploring the possibilities offered by Eurojust.
- Irish authorities take a pragmatic approach to the operational aspects of Eurojust where there is no doubt about the competences of the national authorities. However, it might be useful to improve knowledge and raise awareness about Eurojust among all national authorities with competences for the investigation and prosecution of criminal offences.
- Communication between the National Member and the EJM contact points is informal and voluntary, as is the exchange of information.
- The evaluators got the impression that case allocation is done by (more or less formal) agreement between the relevant authorities (the National Member and the Central Authority) in accordance with national legislation and established practice, which is very positive.
- The National Member for Ireland is not fully empowered with the ordinary powers required by Article 9b of the Eurojust Decision.

- The Irish ENCS is not active and its precise role and practical implications are not yet clear.
- The Irish National desk has not organised any coordination meetings. It has attended a small number of coordination meetings.
- The evaluation team detected lack of understanding amongst the Irish law enforcement representatives as to the added value that a coordination meeting, as a Eurojust tool, could bring to Irish investigations and prosecutions.
- Representatives of the Office of the Revenue Commissioners reported that they had not been involved in such coordination meetings and demonstrated an interest in learning more about them and about Eurojust's role.

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6. COOPERATION

6.1. Cooperation with EU agencies and others

In practice, Ireland has had no cases where cooperation between the ENCS and Europol national unit was necessary.

In the course of the on-site visit, the national authorities reported good cooperation with Europol (An Garda Síochána and the Revenue Commissioners), Interpol (An Garda Síochána) and OLAF (the Revenue Commissioners). They have appointed liaison officers (one in the UK, one in Spain – as most cases relate to those two countries) and consider that information that can be obtained through cooperation with these authorities more than satisfies their needs.

An Garda Síochána liaises directly with its counterparts, namely Europol liaison officers throughout the world and reported that they have a very good network of police officers.

Because of the division between investigation and prosecution in Ireland, the Eurojust National Member and the Europol liaison officer do not have a great deal of contact. Where a request from another national member refers to any information related to the investigation stage, the Eurojust National Member for Ireland has been asked to liaise with the International Cooperation Office of An Garda Síochána, which is based in Ireland.

The Revenue Commissioners regularly contact OLAF for coordination with regard to cross-border cases. However, there has been no interaction between OLAF and Eurojust.

6.2. Cooperation with third states

6.2.1. Policy with respect to the involvement of Eurojust

There is no special stated policy in Ireland regarding the involvement of Eurojust in cases involving third states. Ireland has most cases with Canada, the United States and Australia.

It was clear from the meetings with An Garda Síochána that there are well established channels for contacting Europol or competent law enforcement authorities in third countries.

However, the representative of the Office of the Revenue Commissioners informed the evaluation team that there is a need for coordination since they usually liaise with OLAF.

6.2.2. Added value of Eurojust involvement

The Irish authorities reported no cases involving third states where the involvement of Eurojust has brought any added value.

6.3. Practical experience of the EJM

6.3.1. Cooperation between the Irish member and the EJM

The Irish authorities reported that there is ongoing cooperation and communication between the National Member for Ireland and the EJM contact points at the Central Authority. Communication is by modern means (email, telephone etc.) and is effective.

The National Member informally receives requests or queries from other Irish colleagues and informally introduces the relevant colleagues from Ireland and abroad, without using the EJM foreign contact point.

The Irish authorities informed the evaluation team that because Ireland is a small jurisdiction, one official may have several functions including the EJM.

6.3.2. Resources allocated domestically to the EJM

The EJM contact points deal with requests in the course of their everyday work. They work with the resources allocated to them for the purpose of their core work.

No specific resources have been allocated for the performance of their tasks. However, given the low level of interaction with the EJM, this has not posed any significant problems.

6.3.3. Operational performance of EJM contact points

No separate statistics are kept on EJM requests. However, the Irish EJM contact points reported that they handle a small number of general requests, which are dealt with speedily.

The absence of broken-down statistics can be explained by the fact that EJM contact points are also the Central Authority for MLA. Therefore, it is not possible to separate requests received as EJM contact points from those received as Central Authority. The Irish authorities themselves have not had to seek assistance via the EJM.

An Garda Síochána also has an EJM contact point. However, the evaluators got the impression that the EJM is of little use to it. The ODPP on the other hand does not have a nominated EJM contact point. The ODPP representatives explained that they can get all the information they need through the Eurojust channel.

6.3.4. *Perception of the EJM Website and its tools*

The EJM website is useful for the Central Authority but the practitioners, *e.g.*, a prosecutor needing to contact a foreign prosecutor he or she does not know would sooner contact the National Member for assistance. The reason given for this is that Ireland has a very centralised system.

In the opinion of the representatives of the Central Authority, the EJM website is very informative and useful tool.

Prosecutors do not appear to use the EJM website. From an Irish angle, contact points in other Member States evolve naturally, in the course of the Irish practitioners' work. When a new “contact point” abroad is identified as a result of specific case, their details are added to a list that is then shared amongst the Irish prosecutors.

The main extradition prosecutor within the ODPP received an induction manual from his predecessor together with an electronic list of contact points. It was reported that in Ireland training is practically oriented.

In addition, the former National Member (current Deputy National Member) and the extradition prosecutor are based in the ODPP and the National Member is present in the same office in Dublin once a week. This provides continuity of experience in relation to cooperation with Eurojust.

6.4. Conclusions

- Representatives from An Garda Síochána reported that police-to-police channels were well established and that there was great awareness of the role of Europol.
- Representatives from the Office of the Revenue Commissioners informed the evaluation team that where there is a need for coordination they usually liaise with OLAF.
- The Irish authorities maintain that, as the information obtained in cooperation with law enforcement agencies is sufficient for their investigations, closer cooperation through Eurojust is not as relevant for them as it might be for other jurisdictions. The same goes for the use of the EJM.
- Irish EJM contact points are drawn from the Central Authority and the Garda Síochána.
- There are no judges or prosecutors as EJM contact points. As a matter of practice, Irish prosecutors do not directly contact EJM contact points in other Member States.
- Cooperation between the National Member for Ireland and the EJM contact points is informal but good. In practical terms, the National Member for Ireland informally receives requests or queries from other Irish colleagues and informally introduces colleagues from Ireland and abroad, without going through the EJM foreign contact point.
- From an Irish point of view, Eurojust's role is very important and the National Member for Ireland spends his time usefully and productively.

- Ireland believes that the EJM website is a very informative and valuable tool. Updating of information on the national system is a task for the EJM contact points in the Central Authority.
- Given that Ireland is a small country and has a very centralised system, this informal, less structured form of training appears to be efficient.

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7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

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

The legal basis for controlled deliveries is Chapter 4 of the Criminal Justice (Mutual Assistance) Act, 2008. The authorities competent to authorise or coordinate controlled deliveries are An Garda Síochána and the Office of Revenue Commissioners (for offences that fall under their jurisdiction).

The National Member, as prosecutor, is not empowered to authorise or coordinate controlled deliveries. The Eurojust National Member for Ireland indicated that it was not possible to coordinate from Eurojust controlled deliveries between Irish authorities and the other Member States.

The Irish national investigative authorities (including the Office of the Revenue Commissioners) reported that controlled deliveries were mostly, and successfully, carried out on the basis of the 1998 Convention on mutual assistance and cooperation between customs administrations and the 2000 Convention on mutual assistance in criminal matters between the Member States of the European Union. In such cases, the Revenue Commissioners call on OLAF or Europol to assist in coordinating controlled deliveries. National Member for Ireland is not informed.

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

According to the available statistics, Ireland has not participated in any joint investigation teams (JITs). However, representatives of the Office of the Revenue Commissioners reported that they were about to sign their first JIT.

An Garda Síochána indicated that they have parallel investigations with other jurisdictions and that they would coordinate with ODPP regarding who and where to prosecute without a need to consult Eurojust. The National Member does not participate and is not informed of JITs.

Irish national legislation on JITs (Criminal Justice (Joint Investigation Teams) Act 2004) establishes the Commissioner of An Garda Síochána as the competent authority for the purposes of establishing a JIT.

Prosecutors are not involved in establishing and operating JITs at any stage. Therefore, the Irish authorities do not see any added value in the participation of their Eurojust National Member in a JIT.

Moreover, during the on-site visit, the Irish authorities explained that there were several open issues with regard to the operation of JITs. They mentioned a specific case with one of the Member States where problems occurred due to the fact that different authorities were competent to make an agreement on a JIT. Irish authorities mentioned also that difficulties might arise in their national proceedings because of possible constitutional obstacles with regard to the admissibility of evidence obtained with a JIT.

7.2.1. Practical experience

To date, Ireland has not participated in a Joint Investigation Team, though it has been involved in conducting parallel investigations with other jurisdictions.

7.3. Other special investigative techniques (SITs)

So far, there has been no cooperation between Irish national authorities and Eurojust on SITs.

7.4. Conclusions

- The evaluation team met with representatives of An Garda Síochána, including representatives from the Interpol National Central Bureau, the Europol National Unit and the Mutual Legal Assistance and Extradition Unit, and the Office of the Revenue Commissioners, including representatives of the Prosecution Branch, National Intelligence Branch and Central Intelligence Unit.
- Irish authorities (the Revenue Commissioners) use controlled deliveries, but do not involve or inform Eurojust.
- The National Member has no powers regarding the setting up or participation in controlled deliveries or JITs. The evaluators felt that the National Member should be informed on the establishment of a JIT according to Article 13(5) of the Eurojust Decision and also a National Correspondent for JITs should be designated as part of the ENCS.
- An Garda Síochána has not been party to any JIT. However, it has conducted very high profile parallel investigations with the UK, such as in organised prostitution cases.
- Representatives from the Office of the Revenue Commissioners stated that they would soon be signing their first JIT, on the initiative of another Member State. They expect the funding will be provided by Eurojust that would inevitably involve the Irish National Member.

8. TRAINING AND AWARENESS RAISING

8.1. Promoting the use of Eurojust and the EJM

8.1.1. Training

The relevant bodies in Ireland have direct contact with the National Member for Ireland and according to the Irish authorities, are aware of the support available from Eurojust. Formal training or any kind of dissemination of information at central or local level does not appear necessary to the Irish authorities.

Regarding the dissemination of information on Eurojust or EJM projects to national bodies, the Irish authorities explained that the Eurojust National Member transmits all relevant documents generated by Eurojust to the relevant national authorities.

The contact points for Eurojust and the EJM are drawn from the ODPP, An Garda Síochána and the Department of Justice and Equality and, according to the Irish authorities, all relevant agencies are aware of the work of both bodies.

8.2. Specific training for national members and EJM contact points

The Irish authorities explained that EJM contact points assigned from the Mutual Assistance and Extradition Division are experienced in dealing with mutual legal assistance and there has not been a need for any formal training.

However the national member and contact points attend relevant conferences, meetings and seminars in order to keep abreast of legal developments.

8.3. Conclusions

- There is a lack of knowledge and especially awareness in Ireland regarding cooperation with Eurojust and the EJM.
- The evaluators were informed that no specific trainings for Irish officials have been organised with a view to explaining the role and possible use of Eurojust.
- However, the evaluators recommend that there should be more systematic approach to raise awareness and facilitate practical cooperation with Eurojust through seminars and training workshops. The evaluators also recommend the organisation of local meetings at which the National Member for Ireland would visit local authorities.
- The lack of awareness among competent authorities regarding the role and possible added-value of Eurojust in cross-border cases was a major concern to the evaluators.

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9. GENERAL OBSERVATIONS

9.1. Overall assessment

Eurojust and the EJM, as perceived by the Irish authorities on the basis of their common-law system, offer real added value in terms of support and provide a legal and logistical framework for further developing the European legal institutions.

While Eurojust has been of assistance in relation to the execution of requests for mutual legal assistance and EAWs, the Irish competent authorities' involvement with Eurojust is very limited. With regard to the execution of EAWs and extradition requests, Eurojust is considered to be a very useful tool. Where, for instance, Ireland does not have an extradition agreement with a third State, Eurojust can assist in establishing contact between Ireland and the relevant authorities in the third State to enable them negotiate a one-off extradition agreement on a reciprocal basis. Other examples were provided regarding the execution of EAWs.

The evaluators believe that there is a need for cooperation and collaboration in the fight against cross-border organised crime. Therefore, the Irish authorities should make full use of the opportunities offered by Eurojust in coordinating cross-border investigations and prosecutions.

While the involvement of the Mutual Assistance and Extradition Division with both bodies is limited, the presence of a Eurojust National Member for Ireland, based in Eurojust, has certainly been of assistance in relation to requests for mutual assistance and EAWs.

9.2. Further suggestions from Ireland

The Irish authorities invoked the Eurojust Annual Report for 2012 to highlight the fact that the June 2011 deadline for bringing national law into conformity with the 2009 Eurojust Decision has not been met. By the end of 2012, only 12 Member States had fully implemented the Eurojust Decision (seven legislatively and five administratively), four Member States had partially implemented the decision, and based on information received from Member States, 11 had not yet implemented it.

This suggests that one of the reasons for the lack of implementation is that the powers are often contrary to some of the fundamental principles of the criminal justice systems regarding the division of powers between police, prosecutors and judges.

Eurojust and Europol are seen as privileged partners in the fight against serious crime.

Europol has the capacity and infrastructure to collate and analyse criminal information in a specialised way.

A greater understanding of the differences between civil- and common-law systems may be useful in developing mechanisms which are genuinely respectful of the differences between the various criminal justice traditions in the EU.

A one-size-fits-all approach may not always be practical or desirable.

9.3. General observations from the evaluation team

The evaluation visit to Ireland was prepared by the Irish authorities with great care and was well organised. The choice of authorities visited and persons invited for interview was appropriate.

The evaluators were given the opportunity to speak with a large number of persons from the Central Authority and law enforcement who were able to share their experience and opinions freely. The evaluation team was given a good realistic overview of the use of the EJM and Eurojust in Ireland taking into account the size of the country. The presence of the Eurojust National Member for Ireland during the visit brought undeniable added value to the visit.

There has been an informal division of responsibilities between the law enforcement authorities and the prosecutions service regarding the implementation of the Eurojust and EJM Decisions. This does not provide for a clear distinction of powers and obligations and could lead to misunderstandings about the role of particular stakeholders, with respect to the exchange of information, for example. Therefore, in the opinion of evaluators, the Irish authorities need to be more active in coordinating cooperation with Eurojust and the EJM, in particular regarding obligations specified in Article 13 of the Eurojust Decision.

The evaluation team recognises that Ireland operates the common - law where there are separate functions between law enforcement and prosecutors. Notwithstanding this, the Irish authorities need to coordinate for the full practical implementation of the Eurojust and the EJM Council Decisions.

The evaluators felt that insufficient awareness or misconceptions among practitioners may be also a reason for limited cooperation with both Eurojust and the EJM.

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10. RECOMMENDATIONS

The expert team has been able to satisfactorily review the practical implementation and operation of the Eurojust and EJM Decisions in Ireland. The working principles and legal framework of the Irish system are robust and functioning and the various players know their roles and responsibilities.

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

The evaluation team thought it fit to make a number of suggestions for the attention of the Irish 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 Ireland

Ireland should:

1. Ensure the implementation into national law of the National Member's powers by way of an amendment to existing mutual legal assistance legislation (at least those specified in Article 9b of the Eurojust Decision); (cf. 3.1.2, 3.3.3.1 and 3.5.1)
2. Consider all the possibilities offered under Article 2(1) regarding the composition of the National Desk; (cf. 3.3.3.1, 3.3.3.2 and 3.5.3)
3. Consider the possibility of clearly defining all ENCS-related tasks and assigning those tasks to ENCS members, to facilitate communication between the stakeholders involved in cooperation with Eurojust; (cf. 3.2.1 and 3.5.4)

4. Consider the possibility of representatives of the Office of the Revenue Commissioners becoming members of the ENCS. There should be a policy of appointing named persons as ENCS contact points and correspondents; (cf. 3.2.1 and 3.5.4)
5. Take steps to establish a connection between the Irish system and the CMS; (cf. 3.2.3 and 3.5.5)
6. Consider appointing a national EJM correspondent and/or contact point from the ODPP; (cf. 3.4.1, 3.5.6, 6.4.3 and 6.5)
7. Ensure that the provisions of the Eurojust Decision are sufficiently and clearly implemented as Ireland would see best fit. This will clarify Ireland's obligations as well as the roles of the various practitioners, competent authorities and Eurojust; (cf. 3.5.1, 3.5.4, 3.5.5, 4.3)
8. Ensure the exchange of information between the national authorities and Eurojust as stipulated in Article 13 of the Eurojust Decision and encourage them to provide such information on a case-by-case basis, instead of an annual basis; (cf. 4.1.2, 4.1.5 and 4.3)
9. Promote cooperation with the EJM and circulate existing Eurojust publications, available on the Eurojust webpage and intranet (through the National Member) and elsewhere; (cf. 6.4.1, 6.4.3 and 6.5)
10. Raise awareness of the role of Eurojust among An Garda Síochána and other investigating bodies to allow Ireland to consider the possibility of using Eurojust tools, such as coordination meetings and Joint Investigation Teams, and benefiting from Eurojust funding; (cf. 5.4, 5.7, 6.2 and 6.5).

11. Consider adopting internal guidance, either legislatively or administratively, and providing tailored training aimed at law enforcement agencies on, inter alia:

- i) the role of Eurojust,
- ii) Eurojust's added value,
- iii) Eurojust's role in JITs,
- iv) Eurojust's involvement with certain networks such as CARIN (Camden Assets Recovery Interagency Network) and relations with other EU agencies such as Europol and OLAF,
- v) Eurojust's relations with third States [Liaison Magistrates posted at Eurojust, Contact Points for Eurojust, Cooperation Agreements];
- vi) Member States' reporting obligations under Article 13 of the Eurojust Decision,
- vii) the powers of the National Member under Article 9b of the Eurojust Decision; (cf. 8.1.1 and 8.3)

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

1. The Member States should consider consulting the Irish Central Authority with regard to the drafting of MLA requests and EAW prior to their issuance; (cf. 3.3.3.1)
2. The Member States should take into account that in the case of a very centralised system such as exists in Ireland, an informal and less structured form of training may be efficient; (cf. 6.4.4)

10.3. Recommendations to Eurojust/the EJM

1. Eurojust should consider promoting its role and the added value it brings to coordinating investigations and/or prosecutions of a cross-border nature, in particular in relation to coordination meetings; (cf. 5.4 and 5.7)

2. Eurojust should consider the possibility of organising local meetings at which the National Member for Ireland would visit local authorities aiming at raising awareness on matters related to cooperation with Eurojust and its role in cross-border cases amongst investigators; (cf. 8.1.1 and 8.3)

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

2 - 5 September 2013

Programme for visit to Ireland

Monday, 2 September

Afternoon: Arrive in Dublin
18:30: Pre evaluation meeting (Evaluators only)

Tuesday, 3 September

09:45 – 10:00 *Pick-up at Hotel*
10:00- 12:30 Department of Justice & Equality – welcome and overview¹
12:30 – 13:30 *Lunch (Soup and Sandwiches)*
13:30-14:00 *Transfer to the Criminal Courts of Justice*
14:00-16:00 Visit to the Criminal Courts of Justice, Dublin
16:00 -16:30 *Walk to Garda Headquarters*
16:30 – 18:00 An Garda Síochána – Irish Police Force²
18:00 – 18:30 *Transfer to Hotel to freshen up*
19:00 – 21:00 Dinner (venue to be confirmed)

¹ Meeting with representatives from the Central Authority for Mutual Assistance, the Drugs & Organised Crime Division, An Garda Síochána, and the Office of the Director of Public Prosecutions (including Ireland's national member at Eurojust).

² Meeting with Garda representatives from the Interpol National Central Bureau, the Europol National Unit, and the Mutual Legal Assistance & Extradition Unit

Wednesday 4 September

09:30 -10:00 *Pick-up at Hotel for transport to the ODPP*

10:00 – 13:00 Office of the Director of Public Prosecutions¹

13:00 -14:00 *Lunch*

14:00 – 14:30 *Transport to the Office of the Revenue Commissioners*

14:30 – 17:00 Revenue Commissioners²

17:00 – 17:30 *Transport to Hotel*

Thursday 5 September

09:45 – 10:00 *Pick-up at Hotel – Walk to Department*

10:00 -11:30 Department of Justice & Equality – Wrap up meeting

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¹ Meeting with representatives from the Office of the Director of Public Prosecutions (including Ireland's national member at Eurojust)

² Meeting with representatives from Prosecutions Branch, National Intelligence Branch and Central Intelligence Branch

ANNEX B: PERSONS INTERVIEWED/MET

Meetings 3 September 2013

Venue: **Department of Justice and Equality**

| Person interviewed/met | Organisation represented |
|-------------------------------|---|
| Deirdre Meenan | Drugs and Organised Crime Division |
| Ursula Stapleton | Drugs and Organised Crime Division |
| David Fennell | Mutual Legal and Extradition Division |
| Mary O'Regan | Mutual Assistance and Extradition Division |
| Anne Vaughan | Mutual Assistance and Extradition |
| Robert Sheehan | National Member at Eurojust |

Venue: **Criminal Courts of Justice**

| Person interviewed/met | Organisation represented |
|-------------------------------|---------------------------------|
| Noel Rubotham | Court's Service |
| Brian Battelle | Court's Service |
| Robert Sheehan | National Member at Eurojust |

Venue: **An Garda Síochána**

| Person interviewed/met | Organisation represented |
|-------------------------------|---------------------------------|
| John Gilligan | Detective Chief Superintendent |
| Andrew Waters | Detective Superintendent |
| Fergus Healy | Chief Superintendent |
| Eamon O'Loughlin | Detective Sergeant |
| John Fitzgerald | Detective Sergeant |
| Tom Whiteacre | Sergeant |
| Peter Foley | Detective Sergeant |

Meetings 4 September 2013

Venue: **Office of the Director of Public Prosecutions**

| Person interviewed/met | Organisation represented |
|-------------------------------|---------------------------------|
| Jarlath Spellman | Prosecutor |
| Robert Sheehan | National Member at Eurojust |

Venue: **the Office of the Revenue Commissioners**

| Person interviewed/met | Organisation represented |
|-------------------------------|---------------------------------|
| Mick Beagan | Prosecutions Branch |
| Mick McGill | Central Investigations Branch |
| Richie Trimble | National Intelligence Branch |

Meetings 5 September 2013

Venue: **Department of Justice and Equality**

| Person interviewed/met | Organisation represented |
|-------------------------------|---------------------------------------|
| Deirdre Meenan | Drugs and Organised Crime Division |
| Ursula Stapleton | Drugs and Organised Crime Division |
| David Fennell | Mutual Legal and Extradition Division |
| Robert Sheehan | National Member at Eurojust |

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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

| LIST OF ACRONYMS, ABBREVIATIONS AND TERMS | IRISH OR ACRONYM IN ORIGINAL LANGUAGE | IRISH OR ACRONYM IN ORIGINAL LANGUAGE | ENGLISH |
|---|---------------------------------------|--|--|
| CMS | <i>CMS</i> | Case Management System | Case Management System |
| EAW | <i>EAW</i> | European Arrest Warrant | European Arrest Warrant |
| EJN | <i>EJN</i> | European Judicial Network | European Judicial Network |
| ENCS | <i>ENCS</i> | Eurojust national coordination system | Eurojust national coordination system |
| MLA | <i>MLA</i> | Mutual Legal Assistance | Mutual Legal Assistance |
| OCC | <i>OCC</i> | On-call Coordination | On-call Coordination |
| ODPP | <i>ODPP</i> | Office of the Director of Public Prosecution | Office of the Director of Public Prosecution |
| PULSE | <i>PULSE</i> | Police Using Leading Systems Effectively | Police Using Leading Systems Effectively |
| TE-SAT | <i>TE-SAT</i> | The EU Terrorism Situation and Trend Report | The EU Terrorism Situation and Trend Report |
| VPN | <i>VPN</i> | Virtual Private Network | Virtual Private Network |