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

REPORT ON PORTUGAL

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REV 1**

**RESTREINT UE/EU RESTRICTED**

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**REPORT ON PORTUGAL**

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## **1. EXECUTIVE SUMMARY**

- The on-site visit to Portugal allowed the evaluation team to get acquainted with the main relevant legal instruments and the criminal cooperation system in Portugal in quite a short time frame. The efforts of the organising authorities to make the visit successful were remarkable and the active involvement of the deputy national member of Eurojust was particularly helpful. The team was able to meet with remarkably competent and dedicated practitioners and to obtain accurate replies to its questions. It notes, however, that in addition to representatives of the Ministry of Justice, the Prosecution Service, the Judicial Police and the General Council of the Judiciary, it would have been useful to hold interviews with some judges as well as with representatives of the Centre for Judicial Studies.
- The general feeling of the evaluation team regarding the operation of practical cooperation between Eurojust, the EJM and the competent national authorities is positive. A solid knowledge of the subject by the prosecutors and police officers interviewed was observed, as well as appropriate communication between them and with the national desk at Eurojust. Personal contacts are in general smooth and informal, allowing rapid exchange of information and facilitating mutual assistance.
- The transposition of the revised Eurojust Decision into Portuguese law was completed by Law 20/2014 of 15 April 2014. Although the current law looks comprehensive and very satisfactory overall, the evaluation team was not in a position to assess its practical application and functioning.
- Current Portuguese law provides the national member with a wide range of judicial powers that goes beyond those provided for in the consolidated Eurojust Decision (hereafter EJD). Such powers may allow the national member, when acting as the competent national authority, to provide appropriate assistance to his national authorities and those of other Member States.

- Appointment criteria have been altered by Law 20/2014, which should not divert Portuguese authorities from their long-standing practice of appointing high-ranking and experienced prosecutors to the main positions of the national desk.
- The Portuguese desk has suffered from periods of vacancy in various positions; in particular, the post of national member has been vacant since November 2013. During the visit the team was informed that the appointment procedure was on-going. At the time of issuance of this draft report the position is still vacant. It should be noted, however, that the current deputy national member does a very good job despite these circumstances.
- The active and accurate exchange of information with Eurojust on terrorism matters is worth mentioning.
- The obligation under Article 13 of the Eurojust Decision entered into force as part of Law 20/2014. The Eurojust template is now available on the Prosecution Service website; as in many Member States, practitioners seem generally reluctant to use this form, which is considered not to be "user-friendly" enough.
- The team was informed that the ENCS was in place *de facto* prior to the adoption of Law 20/2014. The system was officially created by the said law and is now in a position to adopt its internal rules with a view to smooth operation. Portugal has given the national member of Eurojust the role of Head of the ENCS, a decision which should be assessed in the future.
- Portugal has played a vital role in the establishment and development of the EJM and its tools; this has resulted in the remarkable knowledge and mastery of their tasks by the EJM CP who works at the central authority (Prosecutor General's Office – PGR) and other CPs. It is worth mentioning that the latter are heads of the main operational departments of the Prosecution Service, which obviously helps with dissemination of the correct information and the proper operation of the EJM at national level.

- The Portuguese judiciary is, by law, involved in criminal investigations and thus in MLA to a much lesser extent than prosecution services. As a consequence judges seem, in general, to have little awareness of the tasks and responsibilities of the EJM and Eurojust and to be quite far removed from their daily functioning. This general impression of the evaluation team, although it was not challenged by Portuguese authorities during the on-site visit, could not be assessed by interviews of practitioners from the judiciary. The team however notes that the EJM Joint Action was transposed only by a Circular of the Prosecutor-General which is binding only for Public Prosecutors and not for courts and that, to date, no judge has been appointed as an EJM contact point; in the same way, no specific tools have been developed to raise their awareness of the EJM and Eurojust or to encourage their use by judges.
- The Portuguese authorities acknowledged the general need, both at law enforcement and criminal justice levels, to set up centralised databases/interoperability platforms in order to improve the overall effectiveness and efficiency of the system; the evaluation team was informed of on-going major IT projects aiming at making relevant data and files widely accessible to the competent authorities.
- The national central database of bank accounts, to which the Portuguese national member has access through request to the Banco de Portugal (Central Bank), is a very useful tool that can facilitate and speed up the execution of requests from other Member States.
- In general, Portuguese authorities and practitioners provided very positive feedback on the usefulness of the coordination meetings organised by Eurojust. Representatives of the Liaison Bureau at Europol are, as a rule, invited to these meetings.
- Portugal's experience with joint investigation teams is still limited (two JITs to date), but considered fruitful. The importance of Eurojust's support both for the setting up and funding of JITs has been underlined. Under Law 20/2014 the national member of Eurojust may participate in JITs with the agreement of national authorities, which makes the previous practice official. He has also, from now on, been granted the power to authorise and coordinate controlled deliveries.



## 2. INTRODUCTION

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

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

The evaluation aims to be broad and interdisciplinary and not to focus on Eurojust and the European Judicial Network (EJN) only but on operational matters in the Member States. This is taken 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

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

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

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

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

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

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

with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities. The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJM. Thus, the evaluation also covers operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experience from all evaluations shows that Member States will be in different positions regarding implementation of relevant legal instruments, and the current process of evaluation could provide useful input also to Member States that may not have implemented all aspects of the new Decision.

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

The order of visits to the Member States was adopted by GENVAL on 31 October 2011. Portugal was the 28<sup>th</sup> Member State to be evaluated during this round of evaluations.

In accordance with Article 3 of the Joint Action, a list of experts in the evaluations to be carried out has been drawn up by the Presidency. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request to delegations made by the Chairman of GENVAL on 15 July 2011.

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

The experts charged with undertaking the evaluation of Portugal were Mr Cédric Visart de Bocarmé (Belgium), Mrs Camelia Stoina (Romania) and Mrs Silvia Villa Albertini (Spain). Four observers were also present: Mr Francesco Lo Voi and Ms Laura Surano (Eurojust), Mr Andrea Marinelli (Europol) and Mr Dick Heimans (Commission), together with Mr Steven Cras and Ms Claire Rocheteau from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Portugal between 14 and 16 May 2014, and on Portugal's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

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### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. General information

Relevant features of the current organization of the Portuguese system can be described as follows.

#### The structure of criminal proceedings and dealing with international cooperation

The criminal procedure in Portugal includes three phases.

- The first phase, which is mandatory, is called *Inquérito* and is directed by the Public Prosecution Service (*Ministério Público*) assisted, whenever deemed necessary or useful, by police bodies. The intervention of a court is however mandatory under the Code of Criminal Procedure, to order or permit coercive or intrusive measures such as remand in custody, searches and interceptions, etc.

- The second phase, *Instrução*, will take place only upon request of the defendant, in the event of an indictment or of the victim in the event of closure of the case. This phase is under the direction of an investigating judge.

- The third phase is the trial phase.

In such a system the authority competent to issue and to execute an international LoR will be the authority in charge of the planned measure, depending on the procedural phase concerned.

In short,

- during the *Inquérito* a Portuguese prosecutor will request international cooperation and equally execute requests that, in the requesting country, occur during the investigative phase of the proceedings; whenever a requested measure is under court jurisdiction the said prosecutor will seek authorisation before executing it;

- the competent court will be the issuing authority during the *Instrução* and trial phases and will execute LoRs issued at the trial phase in the requesting State.

Territorial jurisdiction as a general rule lies with local courts. Important exceptions to this are:

- DCIAP, a central investigation and prosecution department, is competent nationwide for dealing with the most serious and complex cases, including for issuing and executing related LoRs;

- DIAP's, the district investigation and prosecution departments, may centralise the execution of an incoming LoR issued during the investigation phase in the requesting State which involves measures in different local courts of the same district.

The Prosecution Service and the Central Department for Criminal Investigation and Prosecution (DCIAP)

Like many other national systems the Portuguese judicial cooperation system in criminal matters is prosecution-centred, so as to take due account of the major involvement of prosecution authorities in the pre-trial phase of criminal proceedings.

The Prosecution Services are headed by the Prosecutor-General of the Republic of Portugal. They include a Central Department for Criminal Investigation and Prosecution (DCIAP), in charge of coordinating and directing the prevention and investigation of violent, highly organised and complex crime and, at district level, four departments (the "DIAPs" of Lisbon, Porto, Coimbra and Évora) heading the local prosecution offices.

1. DCIAP has legal jurisdiction throughout national territory for the most serious crimes, in particular sexual crimes against children committed with the use of computer devices or disseminated through them, when communicated by another State or by international organisations, crimes against peace and humanity, terrorist organisations and terrorism, crimes against state security, except electoral crimes, most drug trafficking cases, money laundering, corruption, embezzlement and corrupt economic participation in a transaction, fraudulent insolvency, maladministration in economic units of the public sector, fraudulent receipt or embezzlement of subsidies, grants or credit, economic or financial offences committed as part of organised crime, in particular by using information technology, and economic or financial offences on an international or transnational level.

2. DCIAP will also conduct investigations by decision of the Prosecutor-General of the Republic of Portugal in cases where the criminal activities take place in two or more judicial districts and centralized direction of the investigation is justified by the seriousness or the complexity of the case. International cooperation in DCIAP is dealt with by specialised teams to which LoRs are distributed according to their field of competence.

Since DCIAP is the competent authority for most of the cases involving serious international crime, it is thus the major Portuguese player when it comes to Eurojust. It should be noted that the Director of DCIAP is appointed as Eurojust national correspondent for terrorism matters and EJM contact point; DCIAP also hosts a contact point for joint investigation teams.

### Courts

As regards the courts, little information was provided. The evaluation team had the impression that practitioners within the judiciary are kept rather far from the practical operation of MLA and international judicial cooperation. Those who were met acknowledged that in this domain judges may rely on the initiative, advice or assistance of their local prosecutor.

The relatively low number of cases where judges are directly concerned, the high competence, experience and commitment of MLA daily practitioners and the quality of personal relations between actors may to some extent compensate for these disadvantages.

However, involving competent judges more, e.g. by designating one or more judges as EJM contact points, setting up specific tools giving them direct access to relevant information, developing regular awareness-raising measures and targeted compulsory training, etc., would encourage them to make use of judicial cooperation tools, in particular Eurojust and the EJM and would help the system to work well overall.

## Police Services

Among the various Portuguese police bodies that may deal with criminal investigations, the three most important operate at national level include: *Polícia de Segurança Pública* (PSP), which maintains public order and investigates ordinary and non-organized crime and crimes in urban areas, and *Guarda Nacional Republicana* (GNR), which has similar responsibilities in the areas not covered by PSP.

The major police player in the domain under evaluation is *Polícia Judiciária* (PJ), which is under the remit of the MoJ and, from the criminal investigation point of view, acts under the direction of Public Prosecutors. It liaises with courts and prosecutors and carries out investigations on their behalf. PJ operates across national territory to combat serious, organised and/or international crime, with specific responsibility for crimes with a higher level of complexity.

PJ is also responsible for operating the Interpol National Bureau and the Europol National Unit for the purposes of its own missions and of information exchange within the framework established by law. There is a specific "International Cooperation Unit" in charge of such tasks.

## Databases

- Currently there is no central database in Portugal for the different police bodies. An interoperability platform (Integrated criminal intelligence system, PIIC) is being implemented to allow reciprocal direct access and searches in the respective databases of the police bodies in accordance with their needs and missions. PIIC will be of great interest both for criminal investigations at national level and for international cooperation in criminal matters.

- Circulars from the Prosecutor-General's Office in 2002 and 2004 introduced an obligation. According to Circulars 4/2002 and 4/2004 Public Prosecutors should communicate to the Prosecutor-General's Office all MLA and EAW requests directly sent to and received from other Member States authorities. All this information is recorded in a Public Prosecution Service case management tool (with no direct access for the national desk). According to Circular 4/2004 and 15/2004, Eurojust shall be informed of all EAWs issued by the Portuguese authorities. Regarding LoRs and on the communication to Eurojust, the regime of Circular 7/2006 applies.

It seems that the Prosecutor-General's Office database does not allow a comprehensive overview of the situation. Outgoing LoRs are usually sent directly by the competent authority, except in cases where prosecutors channel them via Prosecutor-General's Office for translation purposes or when the assistance of Eurojust or the EJM is needed. When it comes to incoming LoRs given that each competent entity has a separate database for pending cases under its jurisdiction, it may sometimes turn out to be difficult to locate an MLA request.

- The HABILUS program, covering workflow for the cases in the courts and prosecutor's offices, is useful, however. The system is not considered as a database, but nevertheless helps to track existing files; it is good that the same file number is used from the police to the court stage.

### **3.2. Formal implementation of Council Decisions 2002/187/JHA, 2009/426/JHA and 2008/976 JHA**

Portugal has recently transposed Council Decision 2009/426 JHA of 16 December 2008 on the strengthening of Eurojust, through Law 20/2014 amending Law 36/2003.

The Portuguese authorities explained that the aforesaid Law 20/2014 is part of a more ambitious project of judicial reform that seeks to improve the effectiveness and efficiency of the judicial system as a whole and which will involve among others, the following measures:

- Increase in the number of departments at territorial level responsible for criminal prosecution, which will mean that more prosecutors and courts/judges will be involved;
- Increased training in criminal cooperation for new members of the system;
- Update of the Portuguese "Atlas" according to the new structure.

Moreover the total number of local jurisdictions, instead of the existing 231, will be grouped together in 23 new jurisdictions. This might allow a beneficial concentration of the execution of LoRs.



1. Concerning Eurojust Decisions, the relevant legal and statutory provisions are the following (the most important in bold):

- **Law 36/2003, of 22 August 2003**, establishing the rules for the implementation of **Council Decision 2002/187/JHA** and regulating the status and powers of the national member;
- Circular of the Prosecutor-General's Office 5/2004, of 18 March 2004, designating the Director of the Central Department for Criminal Investigation and Prosecution as the national correspondent for Eurojust for terrorism matters;
- Circular of the Prosecutor-General's Office 15/2004, of 18 November 2004, on the direct communication of an European Arrest Warrant to the national member of Eurojust;
- **Circular of the Prosecutor-General's Office 7/2006**, of 27 March 2006, on communications and cooperation proceedings with Eurojust;
- Decree-Law 127/2010, of 30 November, amended, which approves, updates and consolidates the regime of specialized personnel of the Ministry of Foreign Affairs;
- **Law 20/2014, of 15 April 2014, amending Law 36/2003**, pursuant to **Council Decision 2009/426/JHA**.

2. Concerning Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network as well as Council Decision 2008/976/JHA adopted on 16 December 2008 and repealing the Joint Action, no transposing legislation was considered necessary.

**Circular of the Prosecutor-General's Office 6/2000, of 5 June 2000, on the European Judicial Network**, implemented the Joint Action; this circular is binding for prosecutors, but not for courts.

3. Some other legal instruments that, although not amended in order to implement the Eurojust or EJM Decisions, provide for the complete legal framework of international cooperation:

- **Law 60/1998, of 27 August, approving the Public Prosecution Statute;**
- Law 104/2001, of 25 August, amending Article 145 of Law 144/99, of 31 August on international judicial cooperation in criminal matters;
- Decree of the President of the Republic 53/2001, of 16 October, on the ratification of the Convention on Mutual Legal Assistance in Criminal Matters between the European Union Member States, signed in Brussels on 29 May 2000;
- Law 37/2008, of 10 August, approving the organic law of the *Polícia Judiciária* ;
- Law 53/2008, of 29 August, on Internal Security;
- Law 74/2009, of 12 August, approving the legal framework applicable to the exchange of data and criminal information between law enforcement authorities of the Member States of the European Union and transposing into national law Council Framework Decision 2006/960/JHA of 18 December;
- Law 73/2009, of 12 August, setting out the conditions and the proceedings that have to be followed to ensure interoperability between the information systems of the criminal police bodies.

### **3.3. Implementation of the Eurojust National Coordination System**

#### *3.3.1. Eurojust National Coordination System (ENCS)*

Law 36/2003 as amended by Law 20/2014 regulates the system in full compliance with the provisions of Article 12 of Council Decision 2009/426 JHA of 16 December 2008 on the strengthening of Eurojust.

The Eurojust national coordination system ensures the coordination of the work carried out by correspondents and contact points in order to facilitate the exercise, at national level, of Eurojust tasks, in particular by:

- ensuring that the case management system receives information related to Portugal in an efficient and reliable manner;
- assisting in determining whether a case should be dealt with the assistance of Eurojust or of the European Judicial Network;
- assisting the national member to identify relevant authorities for the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
- maintaining close relations with the Europol National Unit.

Article 12 of Law 20/2014 lays down the authorities designated within the ENCS in Portugal. The Eurojust national coordination system is composed of:

- the national member of Eurojust;
- the national correspondent for Eurojust;
- the national correspondent for Eurojust for terrorism matters;
- the national correspondent for the European Judicial Network and another contact point of the European Judicial Network;
- the contact points of the network for joint investigation teams;

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- the contact points of the network in respect of persons responsible for genocide, crimes against humanity and war crimes, set up by the Decision 2002/494/JHA of 13 June 2002;
- the contact points of the network against corruption set up by Decision 2008/858/JHA of 24 October 2008;
- the coordinator of the Assets Recovery Office.

It should be noted that the national member of Eurojust has been added to the list of authorities laid down by the EJD to make up the ENCS, and given powers "*to run the system*" (i.e. acts as a coordinator heading the ENCS), while the national correspondent is given responsibility for "*the functioning of the ENCS*" in formal accordance with the terms of the EJD. According to Portugal's representatives, this choice, which is rather rare, if not unique, among Member States, was made with a view to facilitating internal coordination and a quick and smooth exchange of information in both directions; such a choice clarifies an aspect that the Eurojust Decision leaves open, and has the advantage of strengthening the functional ties between the ENCS and the national delegation at Eurojust.

However, the evaluation team wonders whether this constitutes an optimal implementation of Article 12 of the Eurojust Decision. According to the spirit of the EJD, the purpose of the Eurojust national coordination system is to ensure, *at the internal level of national authorities*, the coordination of correspondents and contact points with a view to facilitating the carrying out of the core tasks of Eurojust. In this spirit the EJD anticipated that the national correspondent would be responsible for the functioning of the ENCS, which responsibility, in practice, can hardly be separated from "running" it. This additional task may increase the workload of the national member and divert him from his primary responsibilities; the support that the ENCS should provide for Eurojust as a whole might ultimately be reduced.

3.3.2. *National correspondents*

Eurojust national correspondents are:

- For general matters, a prosecutor exercising functions in the department for legal advice and judicial cooperation of the Public Prosecution Service, appointed by the Prosecutor-General of the Republic of Portugal;
- For matters related to terrorism, the director of DCIAP.

Without prejudice to direct contacts with the national member, all the competent national correspondents are deemed the privileged contact points of the national member. Their appointment is to be notified to Eurojust and to the General Secretariat of the Council.

3.3.3. *Operation of the ENCS and connection to the CMS*

The Portuguese national coordination system has now been set up officially and is up and running, although the Portuguese authorities stated that in practice the ENCS operated informally prior to the adoption of the implementing Law in 2014.

Under the said law, the national coordination system must approve its own internal rules, which still remains to be done.

The connection of the ENCS to the CMS is provided for by Portuguese law, however the secure connections that would allow national authorities to have access to the CMS are not operational yet.

*3.3.4. Cooperation of the ENCS with the Europol National Unit*

Law 20/2014 establishes that the national coordination system is to ensure the coordination of the work of the correspondents and contact points that are part of it, maintaining, in particular, close relations with the Europol National Unit. The evaluation team could verify that all conditions are met to fulfil this requirement in practice (see below).

**3.4. National desk at Eurojust**

*3.4.1. Organisation*

Law 36/2003 states that the Portuguese representation at Eurojust is ensured by the national member, who may delegate such task to a deputy. The national member is to be assisted by one or more deputies and by one or more assistants according to the needs of the Service. Like any other national desk, secretarial services for the Portuguese desk are provided by an administrative assistant from the Eurojust staff.

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In practice:

- the position of national member for Portugal has been vacant since November 2013. During the visit the evaluation team expressed concern at this, and the Portuguese reported that the appointment procedure was on-going and the post was to be filled soon;
- the position of deputy national member was vacant from March 2009 to April 2012, however a seconded national expert was posted to the desk between October 2007 and April 2012 (and was appointed deputy on that date);
- until now the Portuguese authorities have not felt the need to appoint an assistant. However, such an appointment is required by the EJD.

#### 3.4.2. *Selection and appointment*

The status of the national member is based on a set of rules contained in the following legal instruments:

- Law 36/2003, which determines, *inter alia*, the rules on appointment, competence and position within the Portuguese Public Prosecution Service - the national member is directly subject to the Public Prosecutor-General as regards the exercise of judicial jurisdiction throughout national territory;
- Decree-Law 127/2010 relating to the regime applicable to the specialized personnel of the Ministry of Foreign Affairs – members of the Eurojust desk attached to the Portuguese Permanent Representation to the European Union in the exercise of their functions abroad;
- The statute of the Public Prosecution Service, in particular as regards duties, rights and incompatibility matters, is applicable to the national member and the deputy member.

1. *The selection and appointment regime in place under Law 36/2003 prior to its amendment by Law 20/2014:*

- All members of the national desk are appointed, "on a service commission basis", by joint order of the Minister of Foreign Affairs and of the Minister of Justice.
- For statutory reasons, appointments of public prosecutors to such positions are also dependent upon authorization by the High Council of the Public Prosecution Service (*Conselho Superior do Ministério Público*).
- The national member is appointed upon a proposal from the Prosecutor-General of the Republic of Portugal, who, to such purpose, must consult the High Council of the Public Prosecution Service.
- Deputies and assistants are appointed upon proposal from the national member himself, also after consulting of the High Council of the Public Prosecution Service.
- The national member should be a high ranking public prosecutor (Deputy Prosecutor General); deputies and assistants may be public prosecutors or law graduates.
- All of them must, in any case, have spent more than 5 years in the performance of their duties.

2. *Changes introduced by Law 20/2014*

The new legislation has altered some of the relevant appointment criteria as follows.

- The national member must be a public prosecutor, i.e., it is no longer compulsory that he be a high-ranking public prosecutor;
- the incumbent may be appointed at any stage of his/her career i.e. no particular length of professional experience is required any more;



- the national member must be chosen from among a list of three Public Prosecutors (i.e. instead of one) proposed to the Minister of Foreign Affairs and to the Minister of Justice by the Prosecutor-General of the Republic of Portugal;
- Rules for the selection and appointment of deputies and assistants have been amended in the same vein, except that when acting as an appointing authority the national member, unlike the Prosecutor-General of the Republic of Portugal, will not have to submit more than one name to the appointing authorities.

Here the evaluation team feels the need to highlight as good practice the idea that a national member should by law be involved in the appointment of his/her colleagues.

However, it is regrettable that previous references to seniority or years of relevant professional practice have been deleted from the national law, in particular when it comes to the appointment of a national member or of a deputy national member.

The evaluation team therefore encourages the Portuguese authorities to continue their previous practice of appointing experienced prosecutors to these positions, with wide knowledge of international legal cooperation in criminal matters and sufficient professional practice in the field.

The team is also of opinion that it would be advisable to pre-define competence profiles for the selection of candidates for a position at the national desk.

In line with EJD requirements, the national member is to be appointed for a 4-year term, renewable, and his regular place of work is to be at the headquarters of Eurojust.

*3.4.3. Powers granted to the national member*

3.4.3.1. General powers

In accordance with Article 8 of Law 36/2003 implementing the 2002 Decision, the national member has powers throughout the whole of Portuguese territory regarding crimes under the jurisdiction of Eurojust, such as:

- To assist in the definition of forms and intervention methods in collaboration with the authorities of other Member States and prepare, follow up and execute legal assistance requests;
- To receive, and ensure compliance with, legal assistance requests issued by the authorities of other Member States related to information on legislation and the organization of the national legal system;
- to inform criminal police bodies and police forces, if necessary, so that interim measures may be adopted, whenever he or she acts in accordance with the provisions set out in Article 6(a)(i) of the Eurojust Decision, in urgent cases or whenever a delay in obtaining or preserving evidence may lead to substantial impairment;
- to issue additional legal assistance requests whenever specific action tacitly or generally contained in the initial request is concerned or whenever participation in joint investigation teams is involved, if the relevant Public Prosecution Service cannot act in time, in urgent cases or whenever a delay in obtaining or preserving evidence may lead to substantial impairment;
- to issue additional non-urgent legal assistance requests, at the request of the competent Public Prosecution Service, whenever specific actions tacitly or generally contained in the initial request are concerned or whenever participation in joint investigation teams is involved (in the conditions and in the cases referred to in Article 8(2)(b));

- to inform the competent Public Prosecution Service of action deemed important in order to improve the coordination of investigations and of criminal proceedings and cooperation between the competent authorities;
- to ask the Public Prosecution Service, the competent criminal police bodies and the administrative authorities for all the information necessary for the performance of the functions referred to in Article 6(b) of the Eurojust Decision, in particular as regards criminal acts and their perpetrators, the transnational dimension of criminal activities and investigations, the progress of investigations and cases and international legal cooperation requests;
- to access criminal records or any other information, under the same conditions as public prosecutors.

Moreover, the national member of Eurojust may participate in joint investigation teams, on the terms set forth in Article 13(12) of the Convention on mutual legal assistance in criminal matters between the European Union Member States, of 29 May 2000<sup>7</sup>, and, through a specific agreement related to the composition of the team, may request that investigations be carried out in accordance with paragraph 7 of the above mentioned Article.

As to action in relation to foreign authorities, the national member, on the terms set out in Article 10 of Law 36/2003, of 22 August, has the power to:

- Convey legal assistance requests issued by a Portuguese law enforcement authority within the scope of an investigation requiring Eurojust intervention in order to achieve coordinated action;

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<sup>7</sup> Ratified by the Decree of the President of the Republic 53/2001 and approved by Resolution of the Assembly of the Republic 63/2001, both of 16 October.

- in urgent cases or whenever a delay in obtaining or preserving evidence may lead to substantial impairment, transmit additional legal assistance requests for specific actions tacitly or generally contained in the initial request or whenever participation in joint investigation teams is involved, if the relevant Public Prosecution Service is not able to act in time;
- at the request of the relevant Public Prosecution Service, issue and convey additional legal assistance requests whenever specific actions, tacitly or generally contained in the initial request are concerned or whenever participation in joint investigation teams is involved;
- receive and comply with legal assistance requests issued by the authorities of other Member States related to information on legislation and on the organization of the national legal system;
- in urgent cases, receive mutual legal assistance requests related to crimes falling under the jurisdiction of Eurojust.

The national member is also the competent authority for the purposes set out in Council Regulation (EC) No 1073/1999 and (EURATOM) No 1074/1999 on the investigations carried out by OLAF.

From the set of powers referred to above, it is clear that, in 2003, the Portuguese legislator assigned more powers to the national member than was required in Council Decision 2002/187/JHA setting up Eurojust.

To comply with Decision 2009/426/JHA the national member has been granted additional powers introduced by Law 20/2014 and he can now:

- receive, forward, facilitate, follow up and provide supplementary information in relation to the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
- in the event of partial or inadequate execution of a judicial cooperation request, ask the competent judicial authority for additional measures in order for the request to be fully executed.

In agreement with the competent national judicial authority or at its request, and on a case-by-case basis, the national member may also exercise the following powers:

- to issue and complete requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
- to execute, in national territory, requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
- in the scope of a specific investigation, order investigative measures deemed necessary at a coordination meeting organised by Eurojust in which the competent national authorities are invited to participate;
- to authorise and coordinate controlled deliveries.

#### 3.4.3.2. Access to national databases

The national member has access to criminal records and to any other information under the same conditions as public prosecutors.

Issues of a technical nature related to communications security have held up direct access to national databases; however, access to the information contained in them has been obtained indirectly, without any difficulty. Direct access to the Prosecutor-General's Office secure website is also available.

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

All the members of the Eurojust National Desk have access to the CMS.

Requests for access are subject to the national member's authorization and are executed by the administration services. The criteria followed in the attribution of access clearance take into account operational reasons and the needs of the service.

**3.5. EJM contact points**

*3.5.1. Selection and appointment*

In Portugal there are six contact points within the Prosecution Service and a tools correspondent at the Ministry of Justice.

It was decided to appoint public prosecutors as EJM CPs, to take due account of the fact that under the Portuguese procedural system are the Public Prosecutors who leads criminal investigations.

The location of the EJM CPs fits in very well with the structure and organization of the prosecution service:

- one is the Director of DCIAP, responsible for investigating serious and organized crime with national competence;
- four are directors of the respective DIAPs covering investigations in the districts of Lisbon, Porto, Coimbra and Évora;
- one is a Public Prosecutor at the central authority that, in Portugal, is the Prosecutor-General's Office (PGR).

The tools correspondent works at the Directorate General for Justice Policy of the MoJ. He has been involved in the practical implementation of the Joint Action and in particular in the design of the EJM website and tools. Although mainly dealing with IT issues and the development of EJM tools, he is also responsible for maintaining and updating the information contained in the Atlas. He does not attend the meetings convened by the Network in the more recent years due to the fact that invitations letters were not received.

During the on-site visit the evaluation team was impressed by the professionalism of the practitioners acting as EJM CPs, both at national and regional levels. It was also appreciated that, since five of the six CPs were heads of the respective prosecution structures in charge of international cooperation they were, as such, responsible for the proper functioning of the EJM and, at the same time, they could delegate EJM CP operational tasks to several of their officials in case of need.

The team, however, felt there might be a need to appoint an EJM contact point within the judiciary, to specifically address the needs of courts and judges. This suggestion was made when meeting with members of the High Council for the Judiciary, who welcomed it. It was acknowledged that most judges, for obvious reasons linked to their legal culture, would prefer to contact one of their colleagues to obtain information and to use tools especially designed for the judiciary. It is worth mentioning that the High Council for the Judiciary hosts an EJM CP service acting in civil matters, which seems to function very well and could serve as a model for a similar structure for criminal matters.

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3.5.2. *Practical operation of the EJM contact points in Portugal*

In practice, contact points do whatever is necessary. Whenever a new instrument is adopted and new responsibilities are created, contact points meet and exchange information. Usually coordination is the job of the contact point at the central authority (the Prosecutor-General's Office - PGR) which shares information with the other CPs and gathers information from them whenever necessary. Each contact point intervenes when the question raised corresponds to the territorial jurisdiction of the DIAP which he/she heads (Lisboa, Porto, Coimbra and Évora) while the CPs at DCIAP and at the central authority act nationwide.

**3.6. Conclusions**

3.6.1. *Formal (legislative) implementation process*

- By Law 20/2014 amending Law 36/2003, Portugal completed the transposition of the consolidated Eurojust Decision into its national law. The legal implementation appears to be particularly fair. However, since Law 20/2014 was only been adopted very recently, it was not possible to assess its practical operation.
- The EJM Joint Action was only implemented by a Circular from the Prosecutor General's Office of June 2000 and no internal instrument was adopted after the entry into force of the EJM Decision.

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*3.6.2. The National Desk at Eurojust*

- The overall impression from the on-site visit is that Eurojust, and the Portuguese desk in particular, are well appreciated and considered very helpful by the practitioners (prosecutors, policemen and officials from the MoJ) met during the evaluation visit.
- As a general practice the Portuguese Desk is composed of a national member, a deputy national member, both based at Eurojust headquarters, and one administrative assistant who is part of Eurojust's staff; according to national legislation other deputies and assistants may be appointed additionally if needed.
- However, since November 2013 the post of national member has been vacant; despite the Portuguese authorities' assurances during the on-site visit the post is not filled as of 7 September 2014; the amount and quality of the work done by the national desk, despite this vacancy, is worth mentioning.
- Rules applicable to the appointment of the members of the national desk were altered by Law 20/2014. For no apparent reason there are now no minimum pre-selection rules and criteria except being a prosecutor.
- The Portuguese national member is by law involved in the appointment of his/her deputies and assistants, which is deemed to be good practice.
- The range of powers initially granted the national member by Law 36/2003 was already wider than required in Council Decision 2002/187/JHA; Law 20/2014 has increased them, in full compliance with and going beyond the amended Eurojust Decision.

- The national member has access to all national registers and databases available to any other national prosecutor through direct access via Prosecutor General's Office (VPN connection).

### 3.6.3. *Implementation of the ENCS*

- Law 20/2014 introduces a provision on the ENCS in compliance with the Eurojust Decision. However, since the ENCS was set up by law very recently, it was not possible to evaluate its practical operation.
- According to the implementing law the national member is part of the ENCS and in charge of "running" it. Although this may, as stated by the Portuguese authorities, reinforce the operational ties between the ENCS and the national desk at Eurojust, some aspects would need to be clarified in practice and the choice made assessed in the future. It is not clear:
  - What will be the respective roles of the national member and the national correspondent for Eurojust in terms of coordination of the system,
  - What impact this additional responsibility may have on the regular tasks to be carried out by the national member in accordance with EJD.
- The Director of DCIAP has been appointed as national correspondent for Eurojust for terrorism matters, which, among other measures taken in this field, ensures very efficient cooperation with Eurojust in practice.

*3.6.4. Implementation of Article 13 of the Eurojust Decision*

- Article 13 has recently been fully transposed into law; proper practical implementation will now depend, in particular, on the dissemination of relevant information and appropriate tools to all practitioners involved.

*3.6.5. Connection to the CMS*

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

*3.6.6. EJN*

- Six EJN contact points are in place within the prosecution service; they are adequately distributed according to the legal system and are very active.
- No Contact Point has been appointed within the judiciary, a deficiency which should be remedied.
- A tools correspondent is employed at the Ministry of Justice.

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#### 4. EXCHANGE OF INFORMATION

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

New provisions were inserted by Law 20/2014 to regulate the exchange of information. The obligations arising from the EJD are fulfilled by the Portuguese law.

- There is a general obligation for competent national authorities to exchange with Eurojust all the information required for the performance of its tasks.
- The competent Public Prosecutor for the investigation must also inform the national member of:
  - Cases related to the type of crimes falling within the scope of Eurojust competences;
  - All cases directly involving at least three Member States and in relation to which requests for, and decisions on, judicial cooperation have been transmitted to at least two Member States;
  - The setting-up of joint investigation teams as well as of their results.
- The national member must also be informed of:
  - Cases where conflicts of jurisdiction have arisen or are likely to arise;
  - Controlled deliveries affecting at least three States, at least two of which are Member States;
  - Repeated difficulties in, or refusals regarding the execution of requests for, or decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

The national authorities are not obliged to supply the information set out in the previous paragraphs if, in a particular case, to do so would harm essential national security interests or would jeopardise the safety of individuals.

The national member may, without prior authorisation, exchange information necessary to carry out the tasks of Eurojust with other national members of other Member States or with the national competent authorities.

On his side, pursuant to Portuguese law, the national member must provide the competent national authorities with information and feedback on the results of the processing of the information transferred, including the existence of links with cases already stored in the case management system. In addition, whenever a competent national judicial authority requests Eurojust to provide it with information, the national member must convey the information requested in the time required by such entity.

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

Law 20/2014 lists the types of registers that the national member of Eurojust has access to in the course of his/her functions.

It establishes that he/she has the power to access information on criminal records, registers of arrested persons, investigation registers, DNA registers and other registers deemed necessary for the performance of his/her tasks, under the same conditions as an acting national public prosecutor.

This provision fully transposes Article 9(3) of Decision 2009/426/JHA.

As already mentioned, the setting up of a Criminal Information Integrated Platform (PIIC) has been planned since Laws 73/2009 and 74/2009, both of 12 August, entered into force; as implementation is now at the final stage, the transposition and application of Council Framework Decision 2006/960/JHA of 18 December 2006 will be complete. PIIC will allow access, by the relevant authorities, to several police databases, on a "need to know" basis.

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

The competent authorities' obligation to exchange information with the national member, in the cases provided for in Article 13(5) to (7) EJD in relation to the setting up of joint investigation teams, procedures that directly involve at least three Member States and in relation to which requests for judicial cooperation have been sent to at least two Member States and decisions on this subject-matter, as well as on conflicts of jurisdiction, controlled deliveries and difficulties or refusals to execute the requests), is set forth in Law 20/2014.

The legislation previously in force already stated that "*The Public Prosecution Service competent to conduct the investigation shall inform the national member of cases relating to crimes falling within Eurojust's competence when the investigations involve two or more European Union Member States.*"

Based on this provision and on Article 8 (4)(b) of the same law, which states that the national member may "*ask the Public Prosecution Service, the competent criminal investigation bodies and administrative authorities for the information necessary for it to exercise the duties*", it was already possible to exchange with Eurojust all the information needed to fulfil the objectives of Article 13 EJD.

The exception provided for under Article 13(8) is equally provided for in national law, national authorities not being obliged to supply the information referred to in paragraphs 5 to 7 in a particular case if this would mean harming essential national security interests or jeopardizing the safety of individuals.

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

The exchange of information and cooperation on terrorism occurs as follows:

- At national level, through the Counter-Terrorism Coordination Unit (UCAT), set up on 25 February 2003, which, within the scope of the fight against terrorism, is entrusted with coordination and the exchange of information between the services involved. UCAT is composed of police and security bodies (FPSS) and *intelligence* services, such as the Polícia Judiciária (PJ - UNCT), the Intelligence Security Service (SIS), the Defense Strategy Intelligence Service (SIED), the Aliens and Borders Service (SEF), the Public Order Police (PSP), the National Republican Guard (GNR), the Directorate General for Maritime Authority (DGAM) and of a representative from the Homeland Security System (SSI);
- UCAT meetings are held in PJ premises every week (or whenever necessary, as exemplified below) and are informally chaired by the head of the PJ Counter-Terrorism National Unit. These meetings are designed to respond to the need to exchange relevant operational information related to the threat of terrorism in terms of prevention and adequate reaction. In addition to these meetings, information is exchanged on a 24/7 availability regime, through an encrypted communication channel (Via VPN – Virtual Private Network), available to all FPSS with a seat at UCAT. These meetings, for example, may take place daily and, upon the initiative of any of the FPSS represented, extraordinary meetings can be held; for instance, between 15 March and 15 July 2004, after the attacks on 11 March, in Madrid, and throughout EURO 2004, in Portugal, UCAT met on a daily basis, having set up a "Situation Room" between 15 March and 15 December 2004. The same happened during the week that preceded the NATO Summit held in Lisbon in November 2010;
- In accordance with the Internal Security Law (LSI - Law 53/2008, of 29 August), a new

institutional structure – SG-SSI - was set up. This structure is designed to guarantee effective cooperation between the police and the security bodies (FPSS) and *intelligence* services that come under different Ministries. The LSI also included the Defense Strategy Intelligence Service (SIED) in the Coordination Security Office and in the High Council of Internal Security, thus bringing the external and internal features of the fight against terrorism closer together;

- At international level, through INTERPOL and EUROPOL, the PJ Counter Terrorism National Unit (UNCT) not only receives *intelligence* and criminal data requests from other European Union Member States but also requests data to be transmitted for criminal investigation purposes. In fact, under Article 5(2) of the Law 37/2008, of 10 August, "PJ has to ensure the functioning of the Interpol and Europol offices in the pursuit of its mission and in order to exchange information in the framework defined by law";
- The UNCT has, for many years now, privileged international cooperation channels, either multi-bilateral or bilateral, where information is exchanged in a quick and effective way, in particular whenever offences directly or indirectly linked to organized crime and to terrorism are committed, as these are matters that fall under its jurisdiction;
- In terms of international cooperation, the cooperation with Spain should be highlighted, due obviously to geographic closeness, and in particular with the Spanish police authorities in counter-terrorism matters (CT);
- The bilateral cooperation with Spain has been substantially enhanced throughout the last ten years and has always been guided by close proximity and mutual collaboration. This close bilateral cooperation with either the Cuerpo Nacional de Policía – Comisaría General de Información (CNP-CGI) or with the Guardia Civil dates far back, to the direct collaboration of PJ-UNCT with CNP-CGI, especially since April 2005, and in particular with the Unidad Central de Información Interior (UCII), first in the field of Galician separatist terrorism and, immediately after, in the fight against ETA;



- Soon after the attacks in Madrid on 11 March 2004, PJ UNCT was part of a joint delegation with SIS which was sent to the Spanish capital to collaborate with CNP-CGI, the entity in charge of the whole investigation. As a result of their close proximity and of the fact that specialized training in the CT area could be provided to Portuguese officers, Spanish counterparts organized three training courses on the globalization of terrorism that took place in Canillas-Madrid in November 2005 and June 2007 and in Lisboa in May 2008. Around two dozen of investigators from the UNCT attended these courses;
- The Guardia Civil, even though a military body, is responsible for investigation, information and prevention matters, as well as matters related to the fight against violent political extremism in Spain; it has, throughout the years, shown interest and availability to collaborate with PJ-UNCT. In all these areas, without exception, such cooperation has occurred under the best auspices;
- More recently it should be highlighted that a meeting of the Police Cooperation Working Group was held in Lisboa on 23 October 2012 to deal, amongst other things, with the application of the Memorandum of Understanding between Portugal and Spain on themes such as "Anarchic or Extremist Groups" or "Islamic Terrorism", which were delivered by PJ-UNCT;
- In all cases, the communications channels set up between UNCT and its international partners are and have always been used within the parameters laid down in law, in order to allow a quick, fluid and effective exchange of information and intelligence;

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- As an example, PJ-UNCT maintains a communication mechanism able to respond to urgent requests for information and *intelligence*. It is an international cooperation channel, informal and independent from any institutional, political or community affiliation, whose existence dates from 1979. The network of the Police Working Group on Terrorism (PWGT) has an encrypted communication system that functions 24 hours a day, 7 days a week, 365 days a year and establishes connections between member countries. Connection between partners is further reinforced by two conferences or biannual meetings that take place in the spring (May) and autumn (November), organized by each country in turn (as within the European Union). Portugal is represented in this network by PJ-UNCT, which has already organized three presidencies (1988-Lisboa, 1994-Funchal and, more recently, in 2007-Óbidos). In addition to the "Elcrodat" system (encrypted e-mail), this network also has a data-transfer system that allows the encrypted transmission of data, images, fingerprints and other biometrical data comprising telephone, fax and electronic mail.

At the presentation made during the on-site visit the evaluation team was impressed by professionalism of the Polícia Judiciária Terrorism Unit (UNCT)

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

Information regarding Article 13 of the Eurojust Decision can be sent to Eurojust through the secure network of the Prosecution Services Information System (SIMP).

The Article 13 form provided by Eurojust is available on SIMP to enable every Public Prosecutor in Portugal to fill it in and send it to the Portuguese national desk through the system. The form is then uploaded by the Portuguese desk in Eurojust's information system, everything being done within a totally secure environment.

Pursuant to Circular of the Prosecutor-General 5/2004, of 18 of March 2004:

- All public prosecutors are required to submit to DCIAP the information referred to in Article 3 of the Council Decision of 19 December 2002, with a reference to the EU Council Common Position 2001/931/CFSP and to the respective attached list updated by Common Position 2003/906/CFSP;
- The information referred to is also sent to the Eurojust national member.

#### **4.2. Feedback by Eurojust**

Due to various specific circumstances and to technical constraints, the form designed to transmit to Eurojust, in a structured way, the information referred to in Article 13 of the Eurojust Decision only recently became available to all prosecutors via the Prosecution Services Information System (SIMP).

This, together with the fact that the Eurojust Decision was implemented recently, and the lack of internal administrative rules covering the obligation to communicate, as set forth in Article 13, in the rules governing magistrates' daily duties may certainly explain the absence of communications to Eurojust by the national authorities.

This does not mean, however, that the national Eurojust delegation does not systematically convey to the Portuguese law enforcement authorities all the information that it has access to and that it gathers in the course of its duties and which may be deemed useful to ongoing investigations in Portugal; in this regard, it always tries to play a proactive role, either by contacting its international counterparts or by maintaining close relations with Europol.

Likewise, Europol, besides the information that results from analysis carried out on communications made in accordance with current legislation and instructions, in particular letters of request - tries to gather, from the national law enforcement authorities, information that may be useful to ongoing investigations or that may lead to proceedings in other Member States.

The aim is to contribute to increasing the flow of criminal information between the European Union Member States, which is, after all, an objective of the rules contained in Article 13 of the Eurojust Decision.

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

The general feeling in Portugal is that the information exchanged with Eurojust is reliable and is obtained in a quick, informal and effective way.

The national authorities also respond with remarkable efficiency to information requests made by Eurojust.

Whenever it is necessary to interact with Eurojust at the trial stage of criminal proceedings, contact is made directly by the Public Prosecutors or judges.

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

In order to notify information to Eurojust, the national authorities should use the Article 13 template designed for this purpose. Filling in this form, which is rather large and detailed, requires substantial efforts on the part of the national authorities.

The Portuguese authorities replied as follows:

The immediate difficulties have now been overcome; they stemmed from the fact that the form was not in an electronic format, as referred to in the context of Article 13, allowing it to be filled in in a semi-automatic manner.

The issue that should, however, be discussed concerns the processing of the information and of documents obtained in the course of the coordination meetings (besides the preliminary issue on the nature of the meeting, an extra-procedural activity for intra-procedural effects). *May this information be used as evidence or is it just intelligence? Is this considered an acceptable way to spontaneously exchange information or does it have to conform to a legal form (Law 74/2009, of 12 August, Framework Decision 2006/960/JHA)? Which confidential rules should apply to the exchange of information so that the different procedural phases, with different rules as regards judicial confidentiality and access to the case, do not prejudice any of the parties concerned?*

The formal manner in which the communications and procedures are conducted delays responses, and practical results are frequently not available in good time; this obviously prejudices the management of cases, causing intolerable delays in the processing of criminal cases, especially those that are already at trial stage.

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

The Portuguese authorities suggested simplifying the "standard" contents of communications, reducing formalities, harmonizing proceedings and providing better training for the persons involved.

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

Portugal participated in the EPOC-IV project but only as an observer and in a late phase. The potentialities that were noted led Portugal to apply to join EPOC-V.

### **4.3. Conclusions**

- Relations between national authorities and the Portuguese desk benefit from smooth personal contacts and the pragmatic approach generally adopted by practitioners. In most cases, Public Prosecutors ask for the assistance of the Portuguese desk informally and receive quick and useful feedback from Eurojust.
- The information regarding Article 13 can be easily transmitted to Eurojust via the secure network of the Prosecution Services Information System (SIMP) to which every Public Prosecutor has access. The Eurojust "Article 13 form" is available in SIMP. However, up to now it has not been used and is regarded by practitioners as time-consuming; it needs to be further simplified and improved.
- The form used in Portugal by the DIAPs to inform the DCIAP of serious crime cases falling within its remit seems to be a good example of the systematic internal flow of information. DCIAP could therefore transfer this information received from the various DIAPs to Eurojust in order to comply with the obligation under Article 13 EJD faster and more easily.

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## 5. OPERATIONAL ASPECTS

### 5.1. Statistics

The National Desk at Eurojust registers all contacts with the Portuguese judicial and law enforcement authorities and has statistics on situations that have led to the opening of operational cases.

In 2013, Eurojust's intervention was requested from practitioners throughout the country; 91 cases were opened (89 registered at the College), of which 22 were from DCIAP, another 22 from the DIAP of Lisboa, seven from the criminal chambers of Lisboa, three from the Public Prosecution Services in Funchal, and four from Funchal and Coimbra Public Prosecution Services.

In 2012, requests to Eurojust were still concentrated in the DIAP of Lisboa (15 cases), in the Lisboa criminal chambers (six cases), in the Funchal Public Prosecution Services (five cases), in the Lisboa High Court and in Portimão court of first instance (three cases each). In 2011, the law enforcement authorities that requested Eurojust intervention were distributed throughout the country, with a marked concentration in the DIAP of Lisboa (19 cases), in the Lisboa criminal chambers (six cases), in the Funchal Public Prosecution Services (four cases), and in the DCIAP, the Public Prosecution Services of Portimão and the Tribunal da Relação de Lisboa (Lisboa Court of 2<sup>nd</sup> Instance) (three cases each).

### 5.2. Practical experience in relation to Eurojust

The need to improve cooperation or to obtain assistance, bearing in mind the need for effective investigation, forms the basis for a large part of the requests made to Eurojust by the Portuguese law enforcement authorities.

Portugal reported that whereas, in the past, most of the requests had to do with facilitating the execution of requests that had been pending for far too long, it was currently observing an increasing tendency to request Eurojust intervention earlier in order to follow the execution of cooperation requests from their beginning to their end (often right from the preparation phase); Eurojust thus plays a fundamental role as a privileged interlocutor of the executing authorities as far as legal doubts, compliance modalities or providing additional information are concerned.

Portugal's geographic position at the south-western end of Europe, bordering Spain, at some remove from most of the major international crime routes may explain, to some extent, the low number of multilateral cases (8 multilateral-bilateral cases in 2011, 4 in 2012, 9 in 2013).

During the visit DCIAP provided some examples of cooperation with EUROJUST in the following fields:

- Submarines;
- Purchase of military equipment – contacts for direct transmission of information (some of which is subject to State secrecy);
- Notification of a defendant in France requiring simultaneous intervention of EUROJUST and the central authority (PGR);
- Preparation of coordination meetings for transmission of criminal proceedings (Spain) or to share information in cases with connections to several countries (Portugal, Romania and Spain);
- Urgent communication of disembarkation from a flight from Stockholm to Lisboa (drug trafficking).



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

The Prosecutor-General's Office issued two Circulars (Circular 7/2006 *on the procedures to follow as regards cooperation with Eurojust* and Circular 15/2004 *on the intervention of Eurojust in the execution of a European Arrest Warrant*) urging Portuguese Public Prosecutors to call on Eurojust when deemed helpful or efficient, especially when serious forms of crime are under investigation. In addition, Circular 5/2004 expressly identified a national contact point for Eurojust to deal with terrorism-related issues and cases.

Circular 6/2000 provides information on the European Judicial Network, its powers and operation.

On the website of the Office for Documentation and Comparative Law of the Prosecutor-General's Office, extensive information is provided on the organization of both European bodies, their powers and fields of work, information that is provided in a Mutual Legal Assistance handbook, which has been drafted and disseminated to assist national authorities whenever they consider starting international cooperation.

Several regional workshops have been organized to provide information on the powers and operation of Eurojust and four similar seminars were also held on the activities of the European Judicial Network.

In practice, the local authorities may tend to request assistance indiscriminately from the contact point at the central authority or from Eurojust. As communication between CPs and the national desk runs very smoothly, a case can easily be directed to the entity best placed to assist in the specific case.

It was however pointed out that the Portuguese desk gives support to its national authorities in many cases that fall under the responsibility of Eurojust pursuant to Article 4(2) of the Eurojust Decision, *i.e.* types of offences other than those referred to in the list of forms of serious crime in which Eurojust may assist, in accordance with its objectives, at the request of a competent national authority. (This practice is also present in other countries). The evaluation team's opinion is that it is advisable that national desks, as far as they can, welcome any questions and requests for assistance from national practitioners. However this may increase the workload of the desks and subsequently divert Eurojust away from its core business.

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

The Portuguese national member has used the formal prerogative conferred on him under Article 6 of the Eurojust Decision, especially in the situations provided for in paragraph (a)(ii); this means that, whenever necessary, he/she advises the national authorities that one of them may be in a better position to undertake an investigation or to prosecute specific acts. These are cases that usually concern positive conflicts of jurisdiction and that have already been subject to discussion and to agreement between the law enforcement authorities involved in a Eurojust coordination meeting, to whom the advice of the national member certainly brings added value whenever, at domestic level, the delegation of jurisdiction to a foreign State or the acceptance of a case coming from another State occurs.

Recommendations have also been made pursuant to Article 6(a)(i), in order to open criminal proceedings for specific acts.

The most common practice as regards this matter is, however, a less formal procedure for the communication of information or of facts likely to give rise to an investigation, followed by monitoring of the decisions that the national authorities may take.

On the terms set forth in the Law 36/2006, communications related to Article 6(a) are forwarded to DCIAP; they can also be sent to the DIAPs and to the District Public Prosecution Service (*Procuradoria-Geral Distrital*) if they are matters that fall outside their jurisdiction.

The information referred to in Article 6(b) is provided to the magistrates responsible for the investigation.

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

Except for the situations specified under Articles 6 and 7 of the Eurojust Decision, Portuguese legislation does not lay down any formal requirements or specific procedures for contacts between national authorities and the national member or his/her deputy.

The contacts tend to be, in most cases, informal, it being up to the magistrate responsible for the case to define the manner and form to be adopted and to decide whether to include communications with the national desk in the case.

Different levels of formality may often be adopted within a case, according to the nature and the purpose of a given communication. For instance, an information request may be an e-mail message, wholly informal, if the investigation has an informal purpose, but may also be a formal letter if it is to be included in the proceedings and if the purpose is to obtain a formal reply.

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

A significant amount of the operational work carried out by any national member, if not most of it, still has its legal basis in Article 3(1)(b) and (c) EJD. Due to the late implementation of Decision 2009/426/JHA, in the particular case of Portugal powers granted by Article 9b(1) have been, up to now, at the core of the national member's activity, i.e. receiving, transmitting, facilitating, following up and providing supplementary information in relation to the execution of mutual legal assistance requests.

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

Portugal has no experience in this area.

**5.4. Practical experience related to coordination meetings**

There were 206 coordination meetings held at Eurojust during the year 2013 and Portugal participated in nine of them, in two as a requesting country and seven as a requested country. As a result of one coordination meeting a joint Portugal/United Kingdom investigation team was set up.

The outcome of this participation is clearly positive.

According to the Portuguese authorities the main advantage of these meetings is the opportunity to present and to discuss specific cases directly, taking into account the point of view of each of the different Member States' law enforcement authorities, whereupon an assessment may be made and subsequently a joint decision taken in a quick, efficient and effective manner.

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

The setting-up of the on-call coordination system has not led to any changes in the organization of the Portuguese delegation at Eurojust as its members may already be reached by e-mail, telephone and mobile phone on a permanent basis; their addresses and contact numbers are given on the webpage of the Prosecutor-General's Office<sup>8</sup> and their on-call use has been widely encouraged during training courses held by the national member and his deputy throughout the country as well as those organized by the Centre for Judicial Studies (CEJ).

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<sup>8</sup> [http://www.pgr.pt/Portugues/Instancias\\_Eu\\_Int/eurojust.html](http://www.pgr.pt/Portugues/Instancias_Eu_Int/eurojust.html)

The operation of on-call coordination was explained during Eurojust dissemination measures held in 2011 and 2012 in Portimão, Porto, Lisboa, Coimbra, Setúbal, Funchal, Ponta Delgada and Guimarães and at the CEJ, in 2013. In addition, the contact numbers and the instructions on their use were sent to the Prosecutor-General's Office that has disseminated them through the Information System of the Public Prosecution – SIMP, where they are currently available.<sup>9</sup>

#### **5.6. Experience of cases relating to the cooperation between the ENCS and the Europol National Unit**

Article 12(5)(d) of the Eurojust Decision entrusting the ENCS with maintaining close relations with the Europol National Unit is reflected in Article 12(2)(d) of Law 20/2014.

When visiting the PJ headquarters in Lisboa, the evaluation team received confirmation that relations between the Europol National Unit (ENU) and the members of the newly set-up ENCS are close and efficient.

#### **5.7. Conclusions**

- Statistics show that Portugal registers a rather high number of cases as a requesting country (89 in 2013), the majority of which, however, are bilateral (80 in 2013). These figures were explained by the fact that, due to its peripheral geographical position in Europe, Portugal is not very often involved in multilateral cross-border cases.

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<sup>9</sup> [https://simp.pgr.pt/destaques/des\\_ficha.php?nid\\_destaque=1344](https://simp.pgr.pt/destaques/des_ficha.php?nid_destaque=1344)

- The Portuguese authorities explained that, for the afore-mentioned reason, the national desk does not need to organise many coordination meetings at Eurojust (two in 2013). The statistics also show, however, that Portugal participated in a fair number of coordination meetings as a requested country (nine in 2013).
- Moreover, Portugal has so far been involved in three coordination centres.
- Concerns related to the confidentiality of the information exchanged with and via Eurojust were underlined by Portuguese practitioners. Such concerns may undermine the effectiveness of Eurojust's work and need to be addressed. It was suggested that "handling codes" be introduced at Eurojust, similar to those in use at Europol.

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## 6. COOPERATION

### 6.1. Cooperation with EU agencies and others

Relations between the national desk at Eurojust and the Europol National Unit, through the Liaison Bureau at Europol, are excellent, given that information is shared and, if necessary, means are provided to support the national delegations whenever they have to travel in order to participate in coordination meetings in The Hague.

The representatives of the Liaison Bureau at Europol are, as a rule, invited to the coordination meetings organized by the Portuguese delegation at Eurojust.

By contrast, the cooperation between OLAF and the Eurojust national desk seems unsatisfactory. The Portuguese authorities regretted that, despite the fact that the national member is considered the competent national authority for the purposes set out in Council Regulations (EC) 1073/1999 and (Euratom) 1074/1999 concerning investigations conducted by OLAF, the latter does not pass on any information to the national desk on the administrative investigations that it carries out in Portugal which could yield evidence of criminal offences. Likewise, when it provides assistance to ongoing investigations where cooperation is needed, the support of the Eurojust national desk has never been requested.

- Relations with Frontex are at an early stage and may be further enhanced in the future.

### 6.2. Cooperation with third states

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

Portugal provided no specific answer in this regard.

6.2.2. *Added value of Eurojust involvement*

Eurojust has a large contact point network in third countries, which is used with reasonable success by Portuguese Public Prosecutors and law enforcement authorities. The presence at the Eurojust headquarters of liaison magistrates from Norway, the United States of America and Croatia before its accession to the European Union has streamlined cooperation with these countries on several occasions.

**6.3. Practical experience of the EJN**

6.3.1. *Cooperation between the national member and the EJN*

Portugal stated that collaboration between the national desk at Eurojust and the EJN contact points, in particular the EJN national correspondent within the central authority, is frequent and of very good quality. This was also the impression of the team during the on-site visit.

6.3.2. *Resources allocated domestically to the EJN*

No specific or additional resources have been allocated since EJN activities were taken on in addition to the national functions of each contact point. However, they all have free Internet access as well as free access to international phone and faxes.



*6.3.3. Operational performance of EJN contact points*

According to EJN contact point at the central authority (Prosecutor-General's Office) 243 requests were handled in 2013, of which 88 were incoming and 155 outgoing. There seems to be a small decrease in comparison with previous years as shown by the statistics (2012 – 256, 2011-292).

The majority of EJN CPs' interventions are made in less than 48 hours.

An EJN contact point is mainly requested to intervene in order to obtain information on the execution of LoR speed up their execution, to organize video-conferences, to assist in the execution of EAWs, especially when temporary surrenders are to be considered or to obtain quick information (less than one hour) on comparative law.

According to the relevant practitioners contact points from other Member States usually do respond, in an adequate and quick way.

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

The European Judicial Atlas, as the tool allowing direct cooperation across the European Union, is regularly consulted by the Portuguese judicial authorities, either in the context of MLA or of EAWs. It is appreciated for allowing practitioners to identify, in a very easy and user-friendly way, their counterparts when it comes to starting an international cooperation procedure.

The library containing applicable instruments and information on the state of implementation of each European instrument is greatly appreciated.

Last but not the least, the list of contact points is considered as the most powerful tool when it comes to quickly identifying who, in another Member State, is able to assist in a specific case.

#### 6.4. Conclusions

- The overall assessment of the functioning of the EJM in Portugal is positive. The system proves to be well coordinated at national level by the EJM CP working centrally in the Prosecutor-General's Office.
- No legislation has been adopted in Portugal to comply with either the 1998 Joint Action or the 2008 EJM Decision; public prosecutors refer to a Circular of the Prosecutor-General's Office of June 2000, which is binding for Public Prosecutors but not for courts.
- In practice general awareness of, and/or compliance by practitioners regarding the respective role and tasks of Eurojust and the EJM could be further encouraged in order to limit redirections of requests and duplication of work.
- Cooperation between the Eurojust national desk and the Europol National Unit works very well. Contacts are frequent and include the exchange of information and mutual involvement in operational cases and coordination meetings.

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## 7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCE

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

The Portuguese authorities indicated that, in their experience, controlled deliveries constitute an effective instrument of international cooperation that has yielded useful results in criminal investigations; controlled deliveries require non-bureaucratic methods so as to achieve timely cooperation, giving priority to informal contacts initially and then subsequently submitting the documents to be added to the files as soon as possible.

According to Article 160–A (9) of Law 144/99, of 31 August, the Public Prosecutor of the district of Lisboa is the competent authority to decide upon a request for controlled deliveries.

In accordance with the statutory provisions and the regulations on the distribution of services in the DIAP of Lisboa, the competent authority to consider and decide upon requests for controlled delivery is the District Prosecutor in the 1<sup>st</sup> section for requests concerning drugs and the District Prosecutor in the 3<sup>rd</sup>/8<sup>th</sup> sections for requests concerning smuggled goods.

According to Law 20/2014 transposing the 2009 Eurojust Decision:

- The national member has the power to authorize and coordinate controlled deliveries in agreement with a competent national authority, or at its request and on a case-by-case basis (Article 8(3)(d)).
- In urgent cases, the agreement or the request by the competent authority may be dispensed with, insofar as it is not possible to identify or to contact the competent national authority in a timely manner (Article 8(4)(d)).

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

Among new aspects introduced by Law 2014, national members (or their deputies and assistants) must always be invited to participate in any joint investigation team in which Portugal is involved, if Community funding is provided under the applicable financial instruments. In any case the national member must be informed of any joint investigation teams that have been set up as well as of their results.

When national members, their deputies or assistants participate in a JIT, they do so in their capacity as national competent authorities.

### 7.2.1. Practical experience

In 2012 two JITs were established, both with the participation of prosecutors from the DIAP of Lisboa.

The creation of such JITs - the first with Portuguese participation -, was naturally due to the need to share information and to coordinate with a view to simultaneous procedures, in the course of proceedings pending in the countries involved in the JIT. The participation of the national member of Eurojust and of Europol experts contributed decisively to the establishment and operation of the above JITs, as well as to debate and analysis of the legal and operational difficulties encountered.

In practice, the setting up of the teams was preceded by coordination meetings at Eurojust. Each of the representatives of the countries involved presented the specific objective of the pending investigation and the aims envisaged.

The cost of travel, accommodation, translation and interpretation relating to the JITs' operational activities were borne by Eurojust under the EU Programme "Prevention of and fight against Crime" (OJ L 058, of 24 February 2007).

The Portuguese authorities stated that the overall evaluation of these JITs was very positive, confirming, once more, the relevance of judicial cooperation in criminal matters to the success of investigations; in their eyes a JIT is an instrument of cooperation particularly well-suited for investigations concerning criminal offences with an international dimension or concerning criminal organizations whose activity is spread over more than one country, thus involving authorities from different States and requiring direct contact and, in particular, coordination.

They consider that the participation of the national member of Eurojust allows the national authorities to, on one hand, call on technical/legal advice in the cooperation area on a permanent basis and, on the other hand, to have support in the preparation and negotiation of agreements, in the organization of preparatory and operational meetings, in the resolution of issues related to funding, etc.

### **7.3. Conclusions**

- The national member is able to authorise and coordinate controlled deliveries.
- Although Portugal's experience with JITs is rather limited (two JITs have been established so far, both in 2012), the outcome was successful and the feedback from the competent authorities involved was very positive.
- The importance of Eurojust's support in setting up JITs and the provision of funding via the JIT funding programme was highlighted.

## 8. TRAINING AND AWARENESS RAISING

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

#### 8.1.1. Training

In Portugal training for magistrates (judges and public prosecutors) is provided by the Centre for Judicial Studies (CEJ).

Although the on-site visit did not include presentations or opportunities for interviews specifically dedicated to training, the evaluation team was informed that, within the scope of CEJ continuing training, special attention was given to the inquiry phase in criminal proceedings.

In particular, once or twice a year the contact point at the central authority and the national member are invited to a one-day lecture on international cooperation in criminal matters, aiming at familiarizing local authorities with the existing structures and tools, the respective responsibilities and added value of Eurojust and the EJM. The teaching session includes a demonstration of the EJM tools. The team was shown the programmes for all the sessions organized these last four years, which were of a high quality.

An EJM regional seminar on the enforcement of the most recent Framework Decisions based on mutual recognition and on the added value that the EJM contact points can provide, involving participants from Portugal, Spain, Germany and the Netherlands took place on 26 and 27 September 2013.

8.1.2. *Other measures*

- On the website of the Office for Documentation and Comparative Law of the Prosecutor-General's Office, national measures implementing EU law, as well as general information on the EJM and Eurojust is available to all (<http://www.gddc.pt/cooperacao/cooperacao.html>).

The Prosecutor-General's intranet, accessible to public prosecutors, provides detailed information on both bodies.

- Support by phone is provided on a daily basis by Portuguese contact points, in particular the CP working at the central authority. It is worth mentioning that, when answering any request related to starting a procedure for international cooperation, all the necessary basic information on existing bodies and tools is systematically provided, as the address of the European Judicial Atlas is expressly mentioned.

- Information is also accurately disseminated through the contact points, who will then address prosecutors working in the departments that they head. Also, information on general criteria designed by Eurojust is included in the intranet for prosecutors.

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

No specific training has been given to the national member or to the EJM contact points, who are among the most highly experienced national practitioners in the domain under evaluation.

### **8.3. Conclusions**

- Specific training is offered to practitioners once or twice a year; the content of the training sessions is of very good quality and their frequency could be developed further.
- Judges and courts are not sufficiently aware of new developments in European Union law. Information on developments should therefore be disseminated systematically, it being understood that the judicial independence of these authorities should not be jeopardised in any way whatsoever.

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## 9. GENERAL OBSERVATIONS

### 9.1. Overall assessment

In their reply to the GENVAL questionnaire the Portuguese authorities stated that the use of both EUROJUST and EJM assistance had proved to be of real added value for efficient international cooperation. Assistance during the preparation and execution of requests for international cooperation as well as the ability to obtain information on the progress of execution of requests made international cooperation in criminal matters quicker and more efficient. The identification of cases of concurrent jurisdiction, obtained either by information channeled through the EJM CPs or through the intervention of EUROJUST in the coordination of authorities across Europe had resulted in a significant shift towards international cooperation in the EU.

### 9.2. Further suggestions from Portugal

The only disadvantage identified was the duplication of effort due to the fact that several local authorities may request the assistance of both bodies for the same case/situation. The Portuguese authorities suggested that, in order to avoid duplication, local authorities should have some guidance on which entity to address in a specific case. "*What can we do for you*" - simple guidelines could be helpful.

During the on-site visit representatives of the Ministry of Justice claimed that, in addition to Eurojust and EJM, the European Union had created many networks, groups and bodies in the field of justice in which Portugal was required to be represented, and observed that this created a substantial workload. They wondered if these networks, groups and bodies could be merged and/or streamlined in order to reduce the workload.

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

No specific answer was made by the Portuguese authorities in this field.

## 10. RECOMMENDATIONS

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

The evaluation team thought it fit to make a number of suggestions for the attention of the Portuguese 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 Portugal

#### Portugal should:

1. Expedite the ongoing appointment procedure for the national member of Eurojust as a matter of priority and ensure that the person appointed actually takes office promptly ; consider appointing an assistant to the national member as well, based either at Eurojust headquarters or in Portugal, in order to comply with the requirements of the Eurojust Decision (cf. 3.4.1, 3.6.2);
2. Adopt and disseminate more precise criteria as to the requirements and skills needed for the appointment of the national and deputy members, which are lacking in Law 20/2014; in any case, ensure that in practice prosecutors with a sufficient level of seniority and recognised experience in judicial cooperation in criminal matters continue to be appointed as the Portuguese national and deputy members; (cf. 3.4.2, 3.6.2);

3. Ensure the effective practical implementation of the obligation to inform Eurojust in a structured way according to Article 13 of the Eurojust Decision, in parallel to relevant instructions and awareness raising for the practitioners responsible for sending the information (cf. 4.1.2, 4.2.2, 4.3);
4. Report back on the practical implementation and operation of the ENCS, in particular with regard to the role of the national member as responsible for the running of it, in the follow-up review of the Sixth Round general report, 18 months after its adoption in GENVAL (cf. 3.3.1, 3.6.3);
5. Appoint an EJM contact point for judges and develop associated actions and tools specifically addressing judges to raise their general awareness and enhance their direct involvement in the domain under evaluation (e.g. a specific website on international judicial cooperation and the possibilities offered by Eurojust and the EJM respectively, national and local seminars and meetings, fact-sheets etc.) (cf. 3.1, 3.5.1, 3.6.6, 6.4, 8.3);
6. More generally, further develop the excellent training sessions hosted by the Centre for Judicial Studies in order to spread as widely as possible all legal and practical information in relation to the role and tasks of EJM and Eurojust and, in particular, why, when and how to contact Eurojust for support in cross-border cases (cf. 5.3, 6.4, 8.1, 8.3);

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

**Member States should:**

7. Appoint national members, deputies and assistants with adequate professional experience and seniority/authority in the field of judicial cooperation in criminal matters, as well as responsibility for the entire territory of their country (cf. 3.4.2, 3.6.2).
8. Consider the involvement of the national member in the selection procedure for his/her future deputies and assistants as an example of good practice (cf. 3.4.2, 3.6.2);
9. Take inspiration from the centralised national database with information on bank accounts accessible to the Portuguese national member, which is a very useful tool that can facilitate and speed up the execution of incoming requests (cf. 3.1);

**The European Union should:**

10. Take into consideration the concerns of practitioners related to the confidentiality issue, especially in the framework of the reform of Eurojust currently under discussion (cf. 4.2.1, 5.7);
11. Examine whether, and if so, how the flow of information from OLAF to Eurojust national desks should be further improved (cf. 6.1, 6.4);
12. Ensure that funding of JIT projects continues through the Eurojust budget, given the leading role of Eurojust in the field as well as its expertise and experience so far (cf. 7.2.1, 7.3);

### 10.3. Recommendations to Eurojust/the EJM

#### **Eurojust should:**

13. Simplify, shorten and make more user-friendly the Eurojust "Article 13 form" in order to make it easier to comply with the obligation to exchange information with Eurojust (cf. 4.2.2, 4.2.3, 4.3).
14. Develop further its capability to detect links with cases already stored in the Case Management System and give as much feedback as possible to the competent national authorities in charge (cf. 4.2);
15. Continue supporting the setting-up and the functioning of JIJs, including by providing funding (cf. 7.2, 7.3);
16. Promote further among practitioners the Guidelines on confidentiality and disclosure within the framework of Eurojust coordination meetings, adopted by the College of Eurojust, in order to minimise concerns related to the confidentiality issue (cf. 4.2.2, 5.7);

#### **Eurojust and the EJM together should:**

17. Give publicity to the recently adopted joint paper on the assistance in international cooperation in criminal matters for practitioners which explains the respective roles of Eurojust and the EJM (cf. 5.3, 6.4);

**RESTREINT UE/EU RESTRICTED****ANNEX A: PROGRAMME FOR THE ON-SITE VISIT***Programme 14 to 16 May 2014*

| <b>May 14</b> |   |   |
|---------------|---|---|
| <i>Time</i>   | <i>Meeting</i>  | <i>Place</i>  |
| 09H15         | Departure from the hotel  |   |
| 10H00 – 10H15 | Welcome meeting at the Directorate General for Justice Policy   | Av. D. João II, nº 1.08.01E, Torre H, Piso 2, Campus da Justiça, Lisboa |
| 10H15 – 11H00 | <p>Meeting with representatives of the Ministry of Justice, National Correspondent of EJM and Portuguese National Member of Eurojust:</p> <ul style="list-style-type: none"> <li>• Presentation of the legal implementation of the Eurojust Decisions and explanation of the legislative options (by the Ministry of Justice )<br/>Answers &amp; questions</li> </ul> <p>Coffee break</p> | Av. D. João II, nº 1.08.01E, Torre H, Piso 2, Campus da Justiça, Lisboa |
| 11H00 – 11H15 | <ul style="list-style-type: none"> <li>• Presentation on the practical implementation and operation of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters (by the Coordinator for international judicial cooperation of the General Prosecutor's Office and National Correspondent for EJM)</li> </ul>  |   |
| 11H15 – 11H45 | <p>Answers &amp; questions</p> <ul style="list-style-type: none"> <li>• Presentation 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 (by the Portuguese National Member of Eurojust)</li> </ul>  |   |

**RESTREINT UE/EU RESTRICTED**

| <b>May 14</b> |   |   |
|---------------|---|---|
| <i>Time</i>   | <i>Meeting</i>  | <i>Place</i>  |
| 11H45 – 12H30 | Answers & questions   |   |
| 12H30 – 14H15 | Lunch break   |   |
| 14H30 – 15H45 | <ul style="list-style-type: none"> <li>Meeting with the Director of the Department for Criminal Investigation and Prosecution of Lisboa (DIAP Lisboa) - Portuguese contact point to EJM</li> </ul> Answers & questions                              | Av. D. João II, n.º 1.8.01Bloco D Edifício H, Campus da Justiça, Lisboa |
| 16H15 – 17H30 | <ul style="list-style-type: none"> <li>Meeting with the Director of the Central Department for Criminal Investigation and Prosecution (DCIAP) – Portuguese contact point to Eurojust in matters related to terrorism</li> </ul> Answers & questions | Rua Alexandre Herculano, n.º 60, Lisboa                                 |

| <b>May 15</b> |  |   |
|---------------|--|---|
| <i>Time</i>   | <i>Meeting</i>   | <i>Place</i>                            |
| 09H00         | Departure from the hotel   |   |
| 09H30 – 11H00 | Meeting with representatives of the Polícia Judiciária (Criminal Police) <ul style="list-style-type: none"> <li>Europol National Unit</li> <li>National Counter-Terrorism Unit (UNCT)</li> </ul> | Rua Gomes Freire, n.º 174, Lisboa       |
| 11H30 – 12H30 | High Council of the Judiciary  | Rua Mouzinho da Silveira, n.º 10 Lisboa |
| 12H30         | Departure to Coimbra (lunch break on the way to Coimbra)   |   |

**RESTREINT UE/EU RESTRICTED**

| <b>May 15</b> |  |                                |
|---------------|--|--------------------------------|
| 15H00 - 17H00 | Meeting with the Director of the Department for Criminal Investigation and Prosecution of Coimbra (DIAP Coimbra) – Portuguese contact point to EJN | Rua da Sofia, n.º 175, Coimbra |
| 20H30         | Dinner organized by the Ministry of Justice  | Casino de Lisboa               |

| <b>May 16</b> |   |  |
|---------------|---|--|
| <i>Time</i>   | <i>Meeting</i>  | <i>Place</i>   |
| 09H30         | Departure from the hotel  |  |
| 10H00 – 12H00 | Final round for debriefing and pending questions with representatives of the Portuguese entities, as requested by the evaluation team | Av. D. João II, n.º 1.08.01E, Torre H, Piso 2, Campus da Justiça, Lisboa |
| 12H30         | End of meetings / Departure   |  |

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**RESTREINT UE/EU RESTRICTED****ANNEX B: PERSONS INTERVIEWED/MET**

|                                    |  |  |
|------------------------------------|--|--|
| Procuradoria-Geral da República    |  |  |
| Dra. Joana Ferreira                | Procuradora da República<br>Diretora do GDDC   |  |
| Membro Nacional Eurojust           |  |  |
| Dr. José Guerra                    | Adjunto do Membro Nacional<br>Eurojust   |  |
| DCIAP                              |  |  |
| Dr. Amadeu Guerra                  | Procurador-Geral Adjunto<br>Diretor  |  |
| Dra. Rita Simões                   | Procuradora-adjunta<br>Substituta do Ponto de contacto da<br>RJE no DCIAP  |  |
| Dr. João Melo                      | Procurador da República<br>Substituto do Correspondente<br>nacional da EUROJUST para o<br>Terrorismo   |  |
| Dr. Manuel Soares                  | Procurador da República  |  |
| Dra. Isabel Nascimento             | Procuradora da República<br>Coordenadora DCIAP   |  |
| Dr. <sup>a</sup> Ana Carla Almeida | Procuradora da República   |  |
| DIAP de Lisboa                     |  |  |
| Dra. Maria José<br>Morgado         | Procuradora-Geral Adjunta<br>Diretora  |  |
| Dra. Anabela Montez                | Procuradora da República<br>Coordenadora da Unidade de<br>Cooperação Judiciária  |  |
| Dra. Teresa Almeida                | Procuradora da República<br>Coordenadora da 9. <sup>a</sup> secção –<br>criminalidade económica e<br>financeira – corrupção, peculato  |  |
| Dra. Fernanda Pego                 | Procuradora da República<br>Coordenadora das 3. <sup>a</sup> e 8. <sup>a</sup> secções<br>– burlas e fraudes fiscais   |  |
| Dr. Manuel Gonçalves               | Procurador da República<br>Coordenador das 1. <sup>a</sup> e 11. <sup>a</sup> secções<br>– tráfico de estupefacientes,<br>branqueamento de capitais e<br>criminalidade especialmente<br>violenta |  |
| Dra. Sofia Rocha                   | Procuradora Adjunta<br>11. <sup>a</sup> Secção - criminalidade<br>especialmente violenta   |  |
|                                    |  |  |

**RESTREINT UE/EU RESTRICTED**

|                                      |  |  |
|--------------------------------------|--|--|
| DIAP de Coimbra                      |  |  |
| Dr. José Luis F. Trindade            | Procurador da República<br>Diretor em exercício  |  |
| Dr. Filipe M. Costa                  | Procurador-Adjunto   |  |
|                                      |  |  |
| Conselho Superior da Magistratura    |  |  |
| Dra. Cecília Agante                  | Juíza Desembargadora<br>Membro do Conselho Superior da Magistratura  |  |
| Dr. Nelson Nunes Fernandes           | Juiz de Direito<br>Membro do Conselho Superior da Magistratura   |  |
| Dr. Gonçalo Magalhães                | Juiz de Direito<br>Membro do Conselho Superior da Magistratura   |  |
| Dr. Artur Cordeiro                   | Juiz de Direito<br>Membro do Conselho Superior da Magistratura   |  |
| Dr. César de Melo                    | Assessor jurídico do Ponto de contacto da RJE em matéria civil e comercial                                 |  |
| Polícia Judiciária                   |  |  |
| Dr. Luis Neves                       | Unidade Nacional contra Terrorismo<br>Diretor  |  |
| Dr. João Paulo Ventura               | Unidade Nacional contra Terrorismo<br>Inspetor-Chefe   |  |
| Dra. Ana Moniz                       | Unidade de Cooperação Internacional<br>Coordenadora Superior de Investigação Criminal, na UNE/PJ (EUROPOL) |  |
| Direção-Geral da Política de Justiça |  |  |
| Patrícia Ferreira                    | Subdiretora-Geral  |  |
| João Arsénio Oliveira                | Diretor de Serviços  |  |
| António Folgado                      | Chefe de Divisão<br>Unidade para a Justiça Penal   |  |
| Fátima Russo                         | Jurista<br>Unidade para a Justiça Penal  |  |
| Mónica Gomes                         | Jurista<br>Setor de Política Legislativa   |  |

## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

| LIST OF ACRONYMS, ABBREVIATIONS AND TERMS | ENGLISH OR ACRONYM IN ORIGINAL LANGUAGE           | ENGLISH   |
|---|---|---|
| CMS                                       | -   | Case Management System (Eurojust)                             |
| DCIAP                                     | Departamento Central de Investigação e Ação Penal | Central Department for Criminal Investigation and Prosecution |
| DIAP                                      | Departamento de Investigação e Ação Penal         | Department for Criminal Investigation and Prosecution         |
| EAW                                       | -   | European Arrest Warrant                                       |
| EJD                                       |   | Eurojust Decision   |
| EJN                                       | -   | European Judicial Network                                     |
| ENCS                                      | -   | Eurojust National Coordination System                         |
| GENVAL                                    | -   | Working Party on General Matters including Evaluations        |
| JIT                                       | -   | Joint Investigation Team                                      |
| LoR                                       | -   | Letter of Request   |
| MLA                                       | -   | Mutual Legal Assistance                                       |
| MoJ                                       |   | Ministry of Justice   |
| OCC                                       | -   | On Call Coordination system                                   |
| OLAF                                      | <i>Office européen de Lutte Anti-Fraude</i>       | European Anti-Fraud Office                                    |
| PIIC                                      |   | Criminal Information Integrated Platform                      |