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Report on Hungary

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Evaluation report on the sixth round of mutual evaluations:

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Report on Hungary

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TABLE OF CONTENTS

1.	Executive summary	4
2.	Introduction	7
3.	General matters and Structures	9
	3.1. General information	9
	3.2. Implementation of the Eurojust national coordination system (ENCS)	14
	3.3. National desk at Eurojust	19
	3.4. EJN contact points	22
	3.5. Conclusions	23
4.	Exchange of information	29
	4.1. Exchange of information from judicial and law enforcement authorities to Eurojust	29
	4.2. Feedback by Eurojust	30
	4.2.1. E-POC project	31
	4.3. Conclusions	31
5.	Operational aspects	33
	5.1. Practical experience in relation to Eurojust	33
	5.2. Allocation of cases to Eurojust or the EJN or others	33
	5.3. Experience of cases in relation to the competences attributed to Eurojust	34
	5.3.1. Cases related to the tasks of Eurojust acting through its national members (Article 6)	35
	5.3.2. Cases related to the tasks of Eurojust acting as a college (Article 7)	36
	5.3.3. Cases related to the powers exercised by the national member	36
	5.4. Practical experience related to coordination meetings	37
	5.5. Use of the On-call coordination (OCC)	37
	5.6. Experience of cases relating to the cooperation between the ENCS and the Europol national unit	38
	5.7. Conclusions	38
6.	Cooperation	43
	6.1. Participation of national members in joint investigation teams (Article 9f)	43
	6.2. Cooperation with other EU agencies	44
	6.3. Cooperation with third states	45

6.4.	<u>Practical experience of the EJN</u>	46
	<u>6.4.1. The EJN Website</u>	47
6.5.	<u>Conclusions</u>	47
7.	<u>Special investigative techniques</u>	50
	<u>7.1. Controlled deliveries (Article 9d (a))</u>	50
	<u>7.2. Other special investigative techniques (SITs)</u>	50
	<u>7.3. Conclusions</u>	50
8.	<u>Training and awareness raising</u>	52
	<u>8.1. Promotion of the use of Eurojust and the EJN</u>	52
	<u>8.2. Specific training for national members and EJN contact points</u>	53
	<u>8.3. Conclusions</u>	53
9.	<u>General observations and final remarks</u>	55
	<u>9.1. Conclusions</u>	55
10.	<u>Recommendations</u>	56
	<u>10.1. Recommendations to Hungary</u>	56
	<u>10.2. Recommendations to the European Union, its institutions and agencies, and to other Member States</u>	60
	<u>10.3. Recommendations to Eurojust/the EJN</u>	61

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1. EXECUTIVE SUMMARY

1. In line with Article 2 of the Joint Action 97/827/JHA of 5 December 1997, the Working Party on General Matters including Evaluations (GENVAL) decided at the Meeting on 22 June 2011 that the sixth round of mutual evaluations will be devoted to the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters.
2. Hungary has implemented the Eurojust Decision and the EJM Decision partly through primary legislation and partly through an order by the Prosecutor General. On 19 November 2012, there was a final vote in parliament and the bill on the Criminal Cooperation with the Member States of the European Union was passed. The President had not signed the bill at the time of the evaluation mission to Hungary¹. The order of the Prosecutor General on "the prosecutorial activities in relation to Eurojust and the European Judicial Network" was signed on 20 November 2012. The order is quite wide-ranging. Hungary wanted a comprehensive, single framework for Eurojust and the EJM. It also provides a handbook for practitioners.
3. The Eurojust national coordination system (ENCS) was set up in 2011. It is currently in a transitional period. Not all persons are in place. However they have been appointed and are waiting for a final decision from the Prosecutor General (a few persons may change)². Some 80 per cent of the people who are involved in the ENCS are from the Prosecutor General's Office.
4. Five persons are currently appointed to the national desk at Eurojust; three of these persons (including a secretary) have their regular place of work in the Hague. All of them (apart from the secretary) are appointed by the Prosecutor General. The order of the Prosecutor General on the prosecutorial activities in relation to Eurojust and the European Judicial Network gives a real prospect of conferring prosecutorial powers on the national member.
5. The Hungarian judicial authorities have at this moment designated three EJM contact points, two for the Ministry of Public Administration and Justice and one for the Prosecution Service. There are discussions ongoing to increase the number of EJM contact points.

¹ The bill entered into force on 1st January 2013 (Act no CLXXX of 2012).

² See 18031/12 COPEN 287 EUROJUST 110 EJM 88 (notification of the appointments in Eurojust for Hungary, dated 21 December 2012).

6. The national member has received more than 20 Article 13-template replies, most of them during the second half of 2012 following a strong encouragement in July 2012 to the public prosecutors to ensure that in any suitable and worthwhile case to contact the Hungarian Eurojust desk and to request Eurojust's help. Eight of the template replies received became Eurojust cases. This is an impressive number of notifications, especially in view of the short time period.
7. The EJM plays an important role in Hungary and is used by practitioners on a daily basis.
8. Eurojust is also well-known, but used more for facilitation than coordination of activities, pointing at some hesitance to go towards a coordination approach. According to Hungary, as the country is so centralised, and since everyone is familiar with systems around them, persons involved often use their personal contacts and solve problems this way.
9. According to Hungary, national authorities choose Eurojust in cases where they think that the gravity of the case or the scope of the problem justifies the action at international level, while they seek the assistance of the EJM contact point where they lack the information on the international cooperation to proceed (probably since they perceive the EJM rather being more bilateral than international).
10. There have been very few coordination meetings requested by Hungary, and the Hungarian authorities doubt that Hungary would attend these without financial support from Eurojust.
11. In Hungary, as regards the On-call coordination (OCC), the national authorities are informed about the existence of the OCC through a letter sent to each Chief Prosecutor on the instruction of the Prosecutor General. It does not seem to be widely used.
12. According to Hungary, the cooperation between the Eurojust national member and the EJM contact point of the Prosecutor General's Office is excellent, and daily communication is common practice. Where the case falls within the competence of a court, the Eurojust national member contacts the EJM contact points in the Ministry of Public Administration and Justice. This relation also appears to work smoothly.

14. In a "normal" controlled delivery, judicial authorities are not involved, unless an undercover agent is used. This means that there is a risk that information as regards controlled deliveries is not forwarded to Eurojust, and that the possibilities provided by Eurojust, for instance coordination meetings, are not used to their fullest extent.

According to the Art. 67 of the Law CLXXX of 2012, the law-enforcement authority is obliged to inform the prosecutor on controlled deliveries affecting at least three States, at least two of which are MSs.

15. The national member has started a Eurojust promotion tour throughout Hungary. Three regions are addressed per meeting (30-40 prosecutors per meeting). In addition, a letter of 25 July 2012 from the Hungarian Eurojust member to the public prosecutors and prosecutors in charge of the departments, asking them to retrospectively examine cases from 1 December 2011 to 1 September 2012 with a view to verifying whether all cases had in fact been reported. This has had a drastic effect and provided for an increase in cases. Hungary expects that they will reach about 50 cases as requesting state in 2012. The publicity tour by the national member is a key to increase the understanding of the EU level of crimes.

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2. INTRODUCTION

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

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

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust and EJN only but rather on the operational aspects in the Member States. This is taken into account to encompass, apart from cooperation with prosecution services, also, for instance, how police authorities cooperate with Eurojust national members, how the National Units of Europol will cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities. The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJN. Thus, the evaluation will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experiences from all evaluations show that Member States will be in different positions regarding implementation of relevant legal instruments, and the current process of evaluation could provide useful input also to Member States that may not have implemented all aspects of the new Decision.

The questionnaire¹ 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 questionnaire². 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.

¹ Doc. 12384/3/11 GENVAL 76 COPEN 176 EUROJUST 106 EJN 87.

² Doc. 5241/2/12 GENVAL 3 COPEN 6 EUROJUST 3 EJN 2.

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The order of visits to the Member States was adopted by GENVAL on 31 October 2011¹. Hungary was the eighth 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. Experts with substantial practical knowledge in the field were nominated by Member States pursuant to a written request on 15 July 2011 to delegations made by the Chairman of GENVAL.

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

The experts charged with undertaking this evaluation were Branca de Almeida Lima (Portugal), Stanislava Juričková (Slovak Republic) and Angelika Möhlig (Germany). Two observers were also present: Vera Alexandrova (DG Justice, Commission) and Ingrid Maschl-Clausen (Eurojust), together with Anne Cecilie Adserballe and Peter Bröms 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 Hungary between 19 and 22 November 2012 and on Hungary's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

¹ Doc. 13040/2/11 GENVAL 82 COPEN 184 Eurojust 111 EJM 91.

3. GENERAL MATTERS AND STRUCTURES

3.1. General information

For the evaluation, the Member States were requested to indicate all relevant legal or statutory provisions, if any, they had to introduce or amend in order to bring national law into conformity with the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Decisions 2003/659/JHA and 2009/426/JHA ("the Eurojust Decision"), or indicating intentions in this respect, and all relevant legal or statutory provisions, if any, which they had to introduce or amend in order to implement 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 ("the EJM Decision").

As regards Hungary, on 15 October 2012 the Parliament adopted bill no. T/7984 on the Criminal Cooperation with the Member States of the European Union which at the time of responding to the questionnaire was still to be signed by the Chair of the Parliament¹. In the bill:

- Article 61, paragraph (1), transposes Article 9f of Council Decision 2002/187/JHA, amended by Article 1, paragraph 8, of Council Decision 2009/426/JHA.
- Article 67, transposes Article 13, paragraph 7(b), of Council Decision 2002/187/JHA, amended by Article 1, paragraph 11, of Council Decision 2009/426/JHA.
- Article 174 transposes paragraph Article 5, paragraph 1, of Council Decision 2002/187/JHA.
- Article 175, paragraph (1), transposes Article 7, paragraph 1(a)-(c), of Council Decision 2002/187/JHA, amended by Article 1, paragraph 6, of Council Decision 2009/426/JHA.
- Article 175, paragraph (2), transposes Article 6, paragraph 1(a)-(c), of Council Decision 2002/187/JHA, amended by Article 1, paragraph 5, of Council Decision 2009/426/JHA.

¹ The bill entered into force on 1st January 2013 (Act no. CLXXX of 2012)

- Article 176 transposes Article 8 of Council Decision 2002/187/JHA, amended by Article 1, paragraph 7, of Council Decision 2009/426/JHA.
- Article 177 transposes Article 9, paragraph 2, of Council Decision 2002/187/JHA, amended by Article 1, paragraph 7, of Council Decision 2009/426/JHA.

The text of the particularised provisions of the act reads as follows:

Article 61:

(1) This law shall apply to the joint investigation team initiated by Eurojust, its national representative or the European Police Office (Europol), as well as to the rights and obligations of its members. The official of Europol may participate in the joint investigation team pursuant to this law, but he/she is not allowed to apply during the execution of his/her tasks any coercive measures determined by the provisions of the Criminal Procedure Act, or coercive methods determined by the provisions of the Police Act.

Article 67:

The Hungarian law enforcement agency entitled to direct and supervise the controlled delivery applied in the territory of Hungary shall apprise the prosecutor of the following data to ensure that the Hungarian national member of Eurojust is informed on the controlled deliveries affecting at least three States, at least two of which are Member States:

- Member States and competent authorities concerned;
- data which identify the person, group or organisation that is the object of a criminal procedure;
- type of delivery;
- type of criminal offence in connection with which the controlled delivery is carried out.

Article 174:

Eurojust shall fulfil its tasks through its Hungarian national member or the national members representing the Member States as a College.

Article 175:

(1) If Eurojust acts as a College, it

a) may request from the prosecutor, giving its reasons, in relation to organised crime, terrorism, crimes determined in Appendix 15 affecting several Member States and other types of crime committed with the aforementioned crimes to:

aa) ordain an investigation into a definite crime,

ab) accept that the prosecutor may be in a better position than the competent authorities of other Member States concerned to ordain an investigation into a definite crime,

ac) assure coordination with the competent authorities of other Member States concerned,

ad) set up a joint investigation team with the competent authorities of other Member States concerned in accordance with the relevant legal instruments on cooperation,

ae) provide any information that is necessary for Eurojust to carry out its tasks,

b) shall ensure that the prosecutor and the competent authorities of other Member States concerned inform each other on the investigation which has consequences on European level or which may concern other Member States beyond the directly concerned ones,

c) shall assist at the request of the prosecutor in ensuring the best possible coordination of the investigation.

(2) When Eurojust acts through its Hungarian national member, it

a) may in relation to any crime ask the prosecutor, giving his/her reasons to:

aa) accomplish the specific acts determined in paragraph (1) a), subsections aa)-ae),

ab) undertake an investigative act or measure justified by the criminal procedure,

b) shall ensure that the prosecutor and the competent authorities of other Member States concerned inform each other on the investigation of which it has knowledge,

c) shall perform the tasks defined in paragraph (1) c) at the request of the prosecutor.

Article 176:

If Eurojust through its Hungarian national member or as a College, giving its reasons, requests ordering an investigation, accepting that the prosecutor is in a better position in ordaining an investigation, assuring coordination, setting up a joint investigation team, providing the information which is necessary to perform its tasks, or asks through its Hungarian national member to take any measures in connection with the investigation or to take any measures justified by the criminal procedure, and the request is not complied with, the prosecutor shall inform Eurojust without delay on the decision and its reasons. If the reasons for refusing to comply with the request harmed essential national interests or jeopardized the safety of individuals the prosecutor might cite operational reasons.

Article 177:

All information exchanges between Eurojust and the Hungarian judicial authority shall be performed through the Hungarian national member.

Legal texts in force:

Act No. CLXIII of 2011 on the Prosecution Service, which provides in Section 2(1j), that it is the Prosecution Service that "shall perform the duties relating to Hungary's participation in Eurojust". Prior to the entry into force of this Act on 1 January 2012, exactly the same provision was incorporated into Act No. V of 1972 on the Prosecution Service in 2006;

Act No. CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career, which in Section 30 (2) provides that "a prosecutor on a long-term secondment abroad may exercise prosecution powers within the scope and in the manner determined by the Prosecutor General". Prior to the entry into force of this Act on 1 January 2012, exactly the same provisions were incorporated into Act No. LXXX of 1994 on the Status of Prosecutors as early as in 2004;

Other relevant provisions:

Order No. 2/2004 (ÜK.2.) of the Prosecutor General on the participation of Hungary in the work of Eurojust;

Order No. 17/2011 (VIII. 19.) of the Prosecutor General on setting up the Eurojust National Coordination System;

Circular no. 4/2011 (X. 31) of the national member (as Head of the Directorate for International Representation) on the implementation of Order No. 17/2011, namely on the use of the Eurojust template for Article 13 reports. Both annexes to the Circular (the template and the table of equivalence) were uploaded to the Intranet of the Prosecution Service, making them accessible for each prosecutor;

Letter no. NF. 5933/2011, of 27 October 2011, by the Head of the Directorate General for Supervision of Investigations and Preparation of Indictments to all Chief Prosecutors, instructing them to encourage prosecutors to send more appropriate (complex, multilateral) cases to Eurojust and benefit more often and more effectively from its assistance;

Letter no. Ig. 536/2012, of 25 July 2012, by the national member (Head of Directorate within the Directorate General for International and European Affairs) to all Chief Prosecutors, emphatically reminding them of their reporting obligation to Eurojust, including Article 13 information;

Order of the Prosecutor General on the prosecutorial activities in relation to Eurojust and the European Judicial Network.¹ This Order replaces Order No. 2/2004 (ÜK.2.) and Order No. 17/2011 (VIII. 19.). It is comprehensive, codifies the rules on the national member, the ENCS and the Art. 13 reports, but goes far beyond that. It contains rules on the deputy national member and assistant, the EJM Contact Points, the National Correspondent for Antiterrorism, defines the powers of the national member and formalises many procedures that have been mainly informal so far, for instance how to contact the EJM Contact Point, how to refer a case to Eurojust, what the national member should do and how he is expected to act and react in certain situations, introduces the secure network, and so on. The order is the result of the work of a drafting team. As part of the compulsory procedure, it was circulated for comments among the relevant Directorate Generals and Directorates of the Prosecutor General's Office.

¹ The order was signed on 20 November 2012.

3.2. Implementation of the Eurojust national coordination system (ENCS) – see HU comments to 1.3

Due to organisational and personal changes – which were beyond the powers of the Prosecution Service and the Prosecutor General – the ENCS and the functioning of the Eurojust Correspondent are now in a transitional period. The position of chief/principal Eurojust national correspondent is vacant at the moment, but all conditions are in place for starting his/her work. Currently the position of the deputy to the national member is also vacant.

The ENCS kick-off meeting was held in October 2011, on the basis of Order No. 17/2011 (VIII. 19.) of the Prosecutor General. No further meeting has taken place so far. Since then the operation of the ENCS was led as interim Eurojust national correspondent by the current national member until June 2012.

The Eurojust national member at the time also participated in the first meeting. Besides the "standard" participants of the ENCS, the head of the Europol National Unit was also invited. A list was established to be permanently updated on the contact details of the participants. Regular meetings (annual or semi-annual) were planned, permanent contacts were decided to be maintained through e-mails.

Most participants belong to the Office of the Prosecutor General, some of them having more than one EU judicial cooperation related functions. Consequently, the communication with them for ENCS purposes is quite easy and daily practice. From organisational point of view, the relationship among the participants is loose, characterised by partnership, considering that the ENCS is inter-institutional by nature. High ranking officials from the Ministry of Public Administration and Justice, police officers, and prosecutors from various units are assembled under the coordination function ensured by the Eurojust national correspondent belonging to the Office of the Prosecutor General. It should be pointed out that the coordination and working relations with the Ministry's officials (EJN contact point, EJN national correspondent) have always been excellent; so the ENCS only opened up a new aspect of the common daily practice.

The coordinating activity under article 12(2) of the Eurojust Decision can be summarised as a promising beginning and a basis on which can be further built: information on the activities of the various contact points was exchanged, conclusions of different meetings were mutually forwarded to the participants, exchange of views took place on issues of common interest.

As to the facilitation of Eurojust's work by the ENCS under article 12(5) and (6) of the Eurojust Decision in Hungary, the connection to the case management system (CMS) is not yet established. The main reasons for that consist in the organisational changes and the connected difficulties described above.

The Directorate of EU Judicial Cooperation established within the DGIEA (Directorate General for International and European Affairs) will be the basis for performing the ENCS tasks defined in article 12(5) and (6).

At present, the participants perform their ENCS related work as part of their normal working time. It would be very difficult to measure how much time is devoted to this particular work. It could be anticipated that the work of the Eurojust National correspondent responsible for the functioning of the ENCS will be full time.

At this moment, there are two Eurojust national correspondents in Hungary. Both were designated by the Prosecutor General. One of them is the Eurojust national correspondent for terrorism matters. His duties are clearly delineated in Council Decision 2005/671/JHA. The other is the Eurojust national correspondent who is responsible for the functioning of the ENCS. His main task is to be a strong link between Eurojust on the one hand, and the Member State and its authorities, on the other hand. Along this line, he organises the cooperation among the various Eurojust related networks' Hungarian contact points/experts that otherwise would carry out their relevant activities in isolation and without knowing about the activities of each other at domestic level. Mirroring the situation that the secretaries of several networks are located in The Hague under the umbrella of Eurojust, the ENCS – where he plays a leading part – can also be conceived as a hub for these networks' contact points at national level.

The national correspondent can also be regarded as an extended arm of Eurojust. In this respect, he should ex officio report any relevant domestic news or new developments that may be of interest for Eurojust. It may happen that the national member urgently needs background information about such national novelties; then this would be provided on request. In turn, Eurojust produces – as casework by-products – many useful studies, compilations, summaries and other materials within its horizontal work and team activity, which are worth distributing among national specialists and practitioners and also for training purposes. Therefore the dissemination of information on Eurojust and its "products" should also be one of the main tasks of the national correspondent.

The national correspondent is also expected to provide strong support to the national member and the national desk. The ENCS could be proved a very efficient back office at home for the national desk. As far as the casework and related tasks are concerned, the Order of the Prosecutor General contains very important provisions in this regards: assisting and orienting in determining which case should be dealt with by the EJM or Eurojust; ensuring that the national member has access to all registers the Prosecution Service has access to; access to the CMS to the extent defined by the Prosecutor General; using Secure Network, etc. In addition, two Eurojust national correspondents are foreseen for the purposes of the ENCS.

The first contact with the head of the Europol National Units was established in October 2011. He seemed enthusiastic over the new possibilities, but before the cooperation could have really evolved, he received a position in Brussels at the Permanent Representation.

There is currently no contact via the ENCS to the Sirene Bureau. The ways of cooperation could possibly be discussed under Article 16(3) of the Order, which foresees that the representative of the International Police Cooperation Centre (NEBEK) – of which the Sirene Bureau is part – could be invited to the regular meetings of the ENCS.

Article 4 of Order No. 17/2011 of the Prosecutor General separately mentions in paragraph (2) that – apart from the "standard" participants listed in paragraph (1) – *"the activity of the coordination system [...] also includes the necessary coordination with the prosecutor contact point for the European Anti-Fraud Office (OLAF)"*. The new order [...] states in its Article 16(3) that also the OLAF contact points and representatives of the ENU shall also be invited to the meetings of the ENCS. In the view of the evaluation team this is a good practice that even goes beyond the Eurojust Decision.

Although OLAF conducts only administrative investigations and does not deal with criminal cases as such, information exchange – especially as regards judicial follow up and matters related to the protection of the financial interests of the Union (PIF) – is of common interest. OLAF is mentioned in the Eurojust Decision among the most important partners of Eurojust at European level, so it seemed quite natural to the Hungarians to somehow connect the OLAF contact point to the activities of the ENCS at national level. All the more so since the OLAF contact point had been designated by the Prosecutor General from the Directorate General for Priority Cases, which deals with the most serious and complex economic and financial crime cases. His participation could definitely add value to the effectiveness of the functioning of the ENCS and vice versa.

Article 3(1)d) of Order No. 17/2011 states that the ENCS while performing its tasks, maintains close relations with the Europol National Unit. This practically implies that the Head of the Europol National Unit is invited to all significant meetings/activities of the ENCS.

The Head of the ENU is an important piece in the European networking chain. In the Hungarian system international police and law enforcement cooperation is centralised at the National Police Headquarters within the International Police Cooperation Centre (NEBEK), which the ENU also belongs to, together with the Interpol National Bureau, the Sirene Bureau, etc. All information exchange between the Hungarian police authorities and Europol has to be channelled via the ENU. Furthermore, it is only the ENU that is allowed to second National Liaison Officers to Europol (forming the National Liaison Bureaux there). They are the national members' close partners at work on a daily basis in The Hague. Police and judicial cooperation should go hand in hand, complement each other, by respecting the relevant law and producing timely and successful criminal proceedings and final judgements. The ENCS offers a platform to build up excellent high-level working relations with Europol through the Head of ENU at national level.

According to the Order on prosecutorial activities in relation to Eurojust and the European Judicial Network, a new participant emerges: the contact point of the SEEPAG (Southeast European Prosecutors Advisory Group). This loose regional mechanism for facilitating judicial cooperation between Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Greece, Hungary, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey operates through a network of "active intermediary" prosecutor contact points and also supports the work of the SECI (...) Centre in Bucharest. Food for thought might be whether Articles 26a-27 should also govern the external relations of the ENCS or these provisions relate only to Eurojust.

Article 16(3) of the Order states that "the leading Eurojust National Correspondent shall convene the meetings of the persons involved in the ENCS at least twice a year, to which he shall also invite the prosecutor contact point for OLAF; the prosecutor contact point of the SEEPAG and the representatives of the International Police Cooperation Centre (NEBEK) of the General Directorate of Criminal Investigation at the National Police Headquarters, and the Europol National Unit" (which is, anyway, part of NEBEK).¹

The chief /principal Eurojust national correspondent and the deputy to the national member have also been designated. In fact, the same person will perform these 2 duties.

In Hungary, one of the aims of the ENCS is to provide support to prosecutors working on the field of criminal cooperation. A prosecutorial SEEPAG contact point may add value to the functioning of the ENCS, since he/she may provide information on different possibilities how to cooperate in the most effective way with SEEPAG members outside of the EU.

Terrorism contact point is a female prosecutor (see ENCS list attached)

OLAF contact point is one of the most experienced senior ranking prosecutor, presently serving at the Cabinet (PG's Office Department), also see ENSC list attached).

¹ All relevant contact points have been designated.

3.3. National desk at Eurojust

Five persons are currently appointed to the national desk at Eurojust:

- The national member;
- 1 deputy national member (place of work in Budapest, but currently this position is vacant, since the former interim deputy became national member);
- 1 assistant to the national member (place of work in Budapest);
- 1 seconded national expert (currently the former national member);
- 1 secretary.

All of them (except the secretary) are appointed by the Prosecutor General. In case of the national member a vacancy notice is publicised. The deputy and the assistant are designated without prior vacancy notice publicised.

The former national member was directly supervised by the Prosecutor General. The current one – due to the organisational changes – is supervised by the head of the Directorate General for International and European Affairs.

If the deputy or assistant in Budapest belong to the unit headed by the national member, the latter supervises them. If not, the national member could only indirectly supervise them, i.e. through the head of unit organisationally they belong to. If their place of work is in The Hague, they are supervised only by the national member.

The selection criteria are publicised in the vacancy notice. In 2012, they were as follows: being a prosecutor appointed for an indefinite period; having at least five years practice as prosecutor in the field of criminal law; having a good knowledge of EU law; having good proficiency in English or French; agreeing to be screened by the National Security.

As to the selection, the opinion of the Council of Prosecutors and those of the deputy Prosecutors General were requested on the candidacies prior to the decision of the Prosecutor General.

As regards the nature and extent of the powers granted to the national member, deputy or assistant, in Hungary, under the regime of 1 May 2004 – 30 June 2012 the national member had no procedural powers provided for other prosecutor at home by the Code of Criminal Procedure or by the judicial cooperation related national laws and international instruments. The basic concept is that prosecutorial powers cannot be exercised from abroad; exception can be made by the Prosecutor General, who then determines the extent and the manner how they are allowed to be exercised (see, Section 30 of Act No. CLXIV of 2011).

Her powers at Eurojust were derived from Order No. 2/2004 (ÜK.2.), from Act No. LXXX of 1994, and first and foremost from her position within the Prosecution Service (she was subordinated only to the Prosecutor General as head of an independent Directorate). The decades previously spent in the Prosecution Service mainly in executive positions, and also the associated networking and collegiality made it possible that the lack of powers was not discernible on the performance of the tasks. In fact, 99 per cent out of the Eurojust cases did not require exercising prosecutorial powers. In the remaining 1 per cent the national member was in a position to ask the prosecutors at home to exercise their powers. And they did, if the factual and legal requirements were met.

Basically, the situation has not changed since then, although the organisational position of the current national member is different.

The Order gives a real prospect of conferring prosecutorial powers on the national member. The collection of powers is as follows:

- He may contact the competent authorities directly and ask for information from them (already existing power);
- Ordinary powers defined in Article 9b of the Eurojust Decision (already existing power);
- Article 9c (1)a-b powers (new powers);
- Article 9d (b) powers (new powers);
- He has indirect access to all databases the Prosecution Service has access to (already existing power).

The national member, his deputy or assistant have indirect access to all national databases of the Prosecution Service in Hungary.

Nothing is said in the Order about the powers set out in Articles 9c(c), 9c(d) and 9d(a) of the Eurojust Decision. During the evaluation visit, the representatives of Hungary pointed out that there was no need for implementing this power into national law as the national member – remaining a prosecutor from Hungary – is entitled to order any kind of investigative measure. As to the powers provided in Articles 9c(d) and 9d(a), both related to controlled deliveries, Hungary pointed out that these powers had not been implemented, as controlled deliveries fall within the competence of the police, if no undercover agents are involved.

As regards the restricted part in the CMS, how it is allocated and managed, as far as the National Desk in The Hague is concerned, the decision is taken by the national member. Nobody has access yet in Hungary. Under §17 of the Order, the Prosecutor General may grant access to the Eurojust National Correspondent responsible for the ENCS, the National Correspondent for Antiterrorism, and the EJM contact point(s) of the Prosecution Service.

3.4. EJM contact points

The Hungarian judicial authorities at this moment designated three contact points, two for the Ministry (of Public Administration and Justice) and one for the Prosecution Service.

The contact points in the Ministry are experts in international cooperation in criminal matters. An important criteria was the knowledge of languages, they can communicate in English, French and German.

One contact point is the Head of Department of International Criminal Law (she is also National Correspondent of the EJM), the other is a senior legal counsel in the same Department.

The contact point at the Prosecutor General's Office is appointed by the Prosecutor General and the main criteria of appointment is experience in the field of international cooperation in criminal matters and good knowledge of (preferably more) foreign languages.

At this moment the contact point is a prosecutor at the Directorate General for Substantial and Military Cases (which basically deals with all the forms of serious crime), previously seconded to Eurojust as national expert (he is also tool correspondent).

The contact points at the Ministry receive incoming requests from foreign contact points or from foreign judicial authorities in cases where Hungarian courts are concerned. The contact points may contact judges directly and ask for the relevant information or measure.

As the Ministry is the central authority in several types of cases (for instance EAWs), some requests may be answered directly by the contact points.

The contact point of the Prosecution Service receives all the requests concerning ongoing investigations, pending MLA requests, inquiries about national law, etc.

If the request is about an ongoing procedure— since as a prosecutor has access to the case management system of the PPO – he identifies the case and the PPO directly involved. Then he normally forwards via phone or e-mail the request and in turn forwards the information to the requesting foreign authority.

As for outgoing requests (Questions from national judges or PPOs), judges may contact directly via phone or e-mail the contact points in the Ministry. Then the contact points help in finding the relevant information (for instance contact information on foreign EJM contact points, search in the ATLAS) or forward the request to the foreign EJM contact point/competent authority or to Eurojust.

As regards prosecutors, without any formal procedure, via phone or e-mail the contact point answers any questions related to international cooperation, making use of the EJM website, other related databases, previous experience and direct personal contacts.

Any judge or prosecutor may turn to the contact point directly.

3.5. Conclusions – HU comments:

- On 19 November, there was a final vote in parliament and the bill on "the Criminal Cooperation with the Member States of the European Union" was passed. The President had not signed the bill at the time of the evaluation mission to Hungary, however the new legislation implementing the Eurojust Decision should be in place on 1 January 2013.
- The bill does not cover all aspects of the Eurojust Decision. The provisions in the bill listed above are the only provisions in primary legislation. Otherwise the legally binding provisions can be found in orders from the Prosecutor General. If the Prosecutor General has competence to legislate (issue an order), there is in the Hungarian system no need for an Act. For instance, as for the national member, he must be a prosecutor, thus an order outlining his duties suffices and a law is not deemed as necessary. The same is true for the ENCS.

- The latest order by the Prosecutor General was signed on 20 November 2012. The order is quite wide-ranging. Hungary wanted a comprehensive, single framework for Eurojust and the EJM. It also provides a handbook for practitioners. The Prosecutor General's order is not binding to the police (not even indirectly). However, prosecutors can instruct the police, still leaving them tactical autonomy.
- The division between the bill and the order of the Prosecutor General on the prosecutorial activities in relation to Eurojust and the EJM was not always clear to the evaluation team. For instance, Art 9c is not in the bill, but setting up JTs is. In addition, according to Hungary, as regards Article 13, this is part of the order as it was not deemed necessary that it be part of the bill. However, since JTs relate to international cooperation, other aspects part of national competencies/prosecutors' competencies are at play, according to the criminal procedural code (which is the *lex generalis* according to Hungary; the bill is a *lex specialis*).
- The fact that the bill only covers certain aspects of the requirements in the Eurojust Decision, and that order of the Prosecutor General is binding only to prosecutors, could provide problems. If nothing else, it should be noted that the requirements in the Eurojust Decision are binding to Hungary, not only to the Prosecutor General's Office - including, for instance, the police.
- The ENCS was set up in 2011. It is currently in a transitional period. Not all persons are in place, however they have been appointed and wait for a final decision from the Prosecutor General (a few persons may change)¹. According to the Hungarian authorities, no major difficulties are expected in relation to the implementation. Some 80 per cent of the people who are involved in the ENCS are from the Prosecutor General's Office. It will serve as a back office to the national member; a platform for horizontal information flow between those involved in international (judicial) cooperation, and a knowledge centre or a think tank. This setup seems to be efficient.

¹ See 18031/12 COPEN 287 EUROJUST 110 EJM 88 (notification of the appointments in Eurojust for Hungary, dated 21 December 2012).

- The ENCS includes the national correspondents for Eurojust, the national correspondent for terrorism matters, the national correspondent for EJM and its contact points, the national expert for the Network of Joint Investigation Teams, the contact point for the network in matters of genocide, crimes against humanity and war crimes (Decision 2002/494/JHA), the contact person for the network against corruption (Decision 2008/852/JHA), and the contact person for the network of Asset Recovery Offices (Decision 2007/845/JHA).
- The ENCS will have at least two meetings per year, including the contact point for OLAF, a representative of the Europol National Unit, the contact point of the Southeast European Prosecutors Advisory Group (SEEPAG) and a representative from the International Police Cooperation Centre (NEBEK). The Ministry of Public Administration and Justice is part of the ENCS as EJM contact point and will thus participate in ENCS meetings. The inclusion of the SEEPAG representatives is an interesting addition beyond the "normal" setup of the ENCS. It is not clear whether it will present challenges in relation to Eurojust, for instance if sensitive matters need to be discussed.
- Hungary believes there is an added value from the ENCS, even in light of the established close cooperation between Hungarian authorities. The ENCS enables personal contacts (which were not there before), and now there is structured information sharing via a set platform, for instance providing immediate information about organisational changes, personnel changes, etc. As one respondent put it: *“The essence of the ENCS is that people sit down together; the information flow was (almost) already there.”* In the opinion of the evaluation team, such steps promoting personal contacts are valuable and should be extended as far as possible.

- Responding to the question whether it is sufficient with the national member together with a seconded national expert in The Hague, whilst others remain in Budapest, some of the respondents are convinced more people are needed in The Hague. The reason why no more staff has been appointed to Eurojust is budgetary constraints, it is not an ideological opposition. There is an increasing number of cases to handle, and the national member has to take part in the heavy workload of the College. It can be argued that personal presence is always better than what can be dealt with via the phone. Whilst the national member expects continued support from a strong back office in Budapest, he would like to have a second, two-year seconded national expert.
- There is a need to further clarify whether the national member of Eurojust is provided with the powers to order investigative measures in accordance with Article 9c(c) of the Eurojust Decision. During the evaluation visit the representatives of Hungary pointed out that there was no need for implementing this power into national law as the national member – remaining a prosecutor from Hungary – is entitled to order any kind of investigative measure. However, the answers from Hungary to the questionnaire, as well as the provided information in the record on the term of office, the judicial power and the prerogatives of the national member suggests that the national member is in fact not provided with this specific power. Following the answers provided in the questionnaire, "*under the regime of 01/05/2004 – 30/06/2012 the National Member had no procedural powers provided for other prosecutor at home by the Code of Criminal Procedure or by the judicial cooperation related national laws and international instruments*", and that "*the basic concept is that prosecutorial powers cannot be exercised from abroad*". Thus, the current situation related to the powers provided to the national member is not sufficiently clear. There is therefore a need to clarify, either by law or at least in the order of the Prosecutor General, with which powers the national member is endowed.
- The national member cannot really see that he would need to exercise the powers in Article 9c(c) of the Eurojust Decision, more than possibly in urgent cases. In general, the national member does not foresee that he will use the urgency powers (that he got through the new order), not as long as he has strong backup from Budapest. Soft power has proven to be enough.

- There are two contact points in the Ministry of Public Administration and Justice. The EJM contact point at the Ministry of Public Administration and Justice is appointed by the Deputy State Secretary. There are no guidelines concerning participation in the EJM. All requirements for the contact point, as well as their tasks, are based on Council Decision 2008/976/JHA. One of the contact points at the Ministry of Public Administration and Justice is also the national correspondent. Tasks linked to the role as national correspondent, apart from the role as contact point, include the coordination of national EJM meetings, and to provide Hungary's position in EJM meetings.
- Currently there is a discussion ongoing in Hungary concerning the involvement of judges in the EJM. According to the court, there is a very significant need to have a court EJM contact point, that is: a Hungarian judge. This would promote more direct contacts. According to the court, they would have to discuss with the Ministry of Public Administration and Justice what the relationship would look like, for instance when it comes to foreign contacts via the contact point or via the Central Authority (for some judges, it is easier to go to a fellow judge). This also seems to be a useful idea, and it should be combined with awareness-raising as regards the use and usefulness of the EJM without channelling the work via the Central Authority. The propensity to go via the Central Authority does not only present a restrained usage of the EJM, but it also puts a large strain on the contact points in the Ministry of Public Administration and Justice.
- Within the prosecutorial system, there will be a comprehensive revision of the tasks, number etc. of contact points within the prosecutorial system. At present, there is only one contact point within the Prosecutor General's Office. The contact point at the Prosecutor General's Office is also the tool correspondent. He takes care of maintaining and updating the information on Hungary on the EJM website. There should be more contact points within the Prosecutor General's Office as already noted in the order (which talks about contact points in plural). The Prosecutor General's Office is considering having contact points outside Budapest. The Prosecutor General's Office also wants to set up an informal network of prosecutors dealing with international issues, some 20-30 of them. This was an idea already in 2004-2005, but there is no formal system in place yet. The evaluation team sees a great advantage in such a system.

- The order of the Prosecutor General concerning prosecution activities in connection with Eurojust and the EJM includes articles about the EJM, however there are no provisions as regards requirements for contact points. It is up to the Prosecutor General to decide. However, it should be in line with the EJM Decision. For the Ministry of Public Administration and Justice you need experience in international cooperation plus good language skills. According to the evaluation team, written guidelines should be promoted, to support transparency and clarify explicitly what is needed to conduct the business as an EJM contact point .
- Since Hungary only has three contact points no national EJM meeting is deemed to be necessary. The EJM contact points have participated in regional meetings, but have not yet planned to arrange a meeting themselves. They plan to do so in 2014. It remains to be seen whether the revision of the number of EJM contact points will necessitate a national EJM meeting.
- The contact point at the Ministry of Public Administration and Justice collects the statistics for the Ministry whilst the contact point at the Prosecutor General's Office does it for the Prosecutor General's Office. The national correspondent then summarizes the statistics and sends them to the EJM Secretariat. Looking at the impressive number of cases the EJM contact points are dealing with, a certain amount of the daily working hours must exclusively be devoted to EJM matters. On the other hand, this means that the EJM contact points should be released from their normal work to a certain extent. It is necessary to guarantee that sufficient manpower is provided to fulfil the important and time consuming work as EJM contact point.
- An advantage in Hungary is that both the national correspondent and the tool correspondent have been correspondents for a longer period of time. This has ensured a high degree of continuity in their work as well as a high level of experience.

4. EXCHANGE OF INFORMATION

In June 2011, Eurojust developed an electronic form to assist the national authorities with the obligation to transmit information to Eurojust pursuant to Article 13(5) to (7) of the Eurojust Decision in a structured manner, and which has recently been released as version 2.0. In the period May 2011 to April 2012 inclusive, a total of 72 notifications under Article 13 have been registered in the CMS. A majority of notifications (25) are registered under "Article 13(6)(a) (serious crimes)", followed by "Article 13(5) (JIT)" and "Article 13(6)(b) (involvement of criminal organisation)".

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

As regards the obligation to exchange information under Article 13(5) to (7) of the new Eurojust Decision, on the basis of Section 5 of Order No. 17/2011 (VIII.19.) and Circular No. 4/2011. (X. 31.), the completed templates are sent by e-mail to the specific Eurojust e-mail address by the prosecutors in charge. The competent prosecution office (prosecutor in charge) is responsible for sending them.

Due to organisational and personal changes, the ENCS in this regard is momentarily in a transitional phase and the post of the Eurojust National Correspondent is vacant. For the background details see, 1.C.2.

As regards the obligation to exchange information under Article 2 of the Council Decision 2005/671/JHA on the implementation of specific measures for police and judicial cooperation to combat terrorism, the national correspondent for terrorism is a prosecutor appointed by the Prosecutor General, working at the Directorate General for International and European Affairs.

According to the Order of the Prosecutor General on the prosecutorial activities in relation to Eurojust and the European Judicial Network the national correspondent for terrorism has access to national databases in order to fulfil his obligations prescribed in the Council Decision 2005/671/JHA.

During the recent years no terrorism act falling under the scope of the Council Decision has been committed in Hungary.

Information is transferred by sending the completed template by e-mail to Eurojust. Although there are technical difficulties with the template, in particular in relation to certain Hungarian letters/accents, it is always used. There is not yet a secure line in place.

The reports contain the information requested while completing the template. Hungary has no knowledge about Article 13(8) exceptions.

In general, the flow of information is satisfactory. No problems that are worth mentioning have been experienced.

There is no outstanding difficulty in exchanging information between the national authorities and Eurojust.

Moreover, the planned internal order of the prosecutor general aims to streamline the procedure both in individual cases and cases falling into the category of Article 13.

4.2. Feedback by Eurojust

According to Eurojust's answers to the questionnaire submitted to them, Eurojust does not hold a statistical overview of the information sent to competent national authorities under Article 13a of the Eurojust Decision. Eurojust routinely provides operational and strategic information and feedback to these authorities. Information and feedback are provided mostly informally via direct contact between the national member, deputy national member and assistants, and the authorities of his/her Member State. Eurojust expects to expand the extent and nature of its feedback as a result of an increase in case-related information received from national authorities pursuant to Article 13, in particular paragraphs 1, and 5 to 7. The extent and nature of this feedback greatly depends upon the amount, timing and contents of the information sent to Eurojust. Additionally, new types of operational and strategic feedback can be provided in connection with the new powers granted to Eurojust and to its obligation under Article 13a.

Article 13a of the Eurojust Decision sets out an obligation for Eurojust to inform competent authorities on the results of the processing of information either on its own initiative, or on request. There has been no such request sent by Hungary and no ex officio information received so far.

4.2.1. *E-POC project*

Hungary does not participate in E-POC IV.

4.3. Conclusions

The national member has received more than 20 Article 13 template notifications, most of them during the second half of 2012 following a strong encouragement by letter of July 2012 to the public prosecutors. Eight of them became Eurojust cases. This is an impressive number of notifications, especially in view of the short time period.

- Hungary is active in encouraging its prosecutors to comply with the obligations under Article 13 of the Eurojust Decision. The activities undertaken have led to a large increase in the number of notifications reported to Eurojust. Given that the Hungarian national member opened eight Eurojust cases out of 20 reported ones, it is clear that the information provided to the Hungarian desk at Eurojust was of high importance for its work.
- According to the information provided by the Hungarian national member, no hit was found in the CMS in any of the reported notifications, including these which were reported due to a conflict of jurisdiction affecting other Member States. This suggests that other Member States did not comply with their reporting obligation or the data was not inserted in the CMS in a way that it could be found.
- Given that highly sensitive information are sent to Eurojust under Article 13 of the Eurojust Decision, it raises concerns that the templates containing the information under Article 13 of the Eurojust Decision are sent to Eurojust via normal e-mail given the fact that so far no secure line exists.
- As regards the Eurojust CMS, it only allows access within the Eurojust network. No national authorities have access to this system.

- The role of Ministry of Interior in international judicial cooperation is minimal. It has its one-stop unit as support for judicial cooperation within the National Police Headquarters in the International Police Cooperation Centre (NEBEK). The ENCS participant from the police would be nominated by the Head of the Police, the Ministry of Interior has no saying in this.
- The police channel all criminal information via Europol. The police have no knowledge of information which was forwarded directly to Eurojust, nor how information is handled between Eurojust and Europol. All relationships with the National Investigation Bureau (NBI) are indirect. International police cooperation in Hungary is centralised in the NEBEK. They have close cooperation with Europol, which the NBI does not. It appears to the evaluation team that the relationship between the police and prosecutors work well. However, awareness should be raised about the obligation of information exchange also within the police to ensure that the reporting obligations can be met, in particular with a view to the specific competences of the Hungarian police in the pre-investigation phase.

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5. OPERATIONAL ASPECTS

The main objectives of Eurojust under Article 3 of the Eurojust Decision are to stimulate and improve the coordination of investigations and prosecutions in the Member States, to improve cooperation between the competent authorities of the Member States as well as to otherwise support the competent authorities of the Member States in order to render investigations and prosecutions more effective.

5.1. Practical experience in relation to Eurojust

The competent Hungarian authorities do not keep statistics of their contacts with Eurojust. The national desk in Eurojust does not keep statistics of its contacts with national competent authorities. According to Hungary, the contacts are so frequent (e-mails, phone calls, etc.) that it would be very difficult, if not impossible, for them to count.

According to the Hungarian answer to the questionnaire, unfortunately, mostly bilateral, urgent MLA cases are referred to Eurojust; such cases that are deemed very important to solve for the individual prosecutors because of the deadlines, etc.

Still only a few prosecutors see their cases in European perspective. The really big, complex and multilateral cases were usually referred to Eurojust on the initiative or with the support of the Prosecutor General.

These quality cases require real coordination, including coordination meetings, and could lead to setting up JITs, etc. According to the Hungarian answer to the questionnaire, the bulk of cases are referred to Eurojust too late.

5.2. Allocation of cases to Eurojust or the EJM or others

According to Hungary, national authorities choose Eurojust in cases where they think that the seriousness of the case or the scope of the problem justifies the action at international level, while seeking the assistance of the EJM contact point where they lack information on international cooperation to proceed (probably since they perceive the EJM rather being more bilateral than international). See also comment to 1.9.

In the period of 2006-2011, the national member and the EJM contact point worked closely together within the same Directorate, so they systematically discussed which case should be solved by the EJM and which one should go to Eurojust.

The new internal order aims to remedy this and provide the national authorities a clear and streamlined way to choose between the channels of international cooperation.

Judges are more likely using EJM (website or contact points), but when the case is very complicated, involves more than two countries or concerns deadlines in EAW cases, the cases are referred to Eurojust.

5.3. Experience of cases in relation to the competences attributed to Eurojust

Any incoming request is examined from the point of view whether it could be dealt with by Eurojust or the EJM. This analysis is made on the basis of the provisions of the Eurojust Decision and the Hungarian laws.

After collecting all necessary annexes and information from the home authority, the assessment of the problems and the possible solutions follows by the national member, typically in close consultation with the prosecutor in charge. It is the national member who decides on whether opening the case at Eurojust, and if yes, what the objective is to achieve under the relevant law.

Once the case is registered with the College – or even earlier, when the case is inserted into the CMS – usually Level 2 meeting(s) are held with the national desks concerned about how to proceed and how to find the best solution. , and the outcome is communicated to the requesting domestic authority. Depending on the character of the case, various steps may be taken on merit of the case by the national members concerned: holding Level 2 meeting(s) to solve legal problems originated from the differences between the legal systems; exchanging information; taking all possible steps to achieve effective coordination; exercising "soft" powers granted by Article 6 of the Eurojust Decision towards their home authorities; convening a coordination meeting, if necessary; exercising national powers, if they have such and if it is necessary, etc. – until the case is solved and can be closed.

The whole process is characterised by the observance of all relevant national laws and international instruments – which is crucial for instance for the evidence to be accepted by the national courts – and the continuous cooperation with the respective home authorities. The result produced by Eurojust depends to a great extent on the readiness for cooperation of the national authorities the Eurojust national members rely on.

Basically there are no formal requirements. The cooperation mainly takes place in an informal way, which has many advantages: fast reactions are possible, no bureaucratic extra burdens, etc.

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

According to Eurojust's answers to the questionnaire submitted to them, informal requests are an essential part of the daily business conducted by the national desks at Eurojust. The vast majority of requests are made informally, for instance by phone or e-mail. In practice, informal operational guidance and recommendations are generally the result of early informal discussions between national members and their respective national authorities and they are favoured over the use of formal requests under Article 6 of the Eurojust Decision. These have nevertheless been used, for instance when specifically required by the national law of a Member State concerned that formal requests are used. Also, the formal recording of these requests tends to occur when audit trails of decisions are a requirement of procedural arrangements in particular Member States. (From Eurojust's casework, it appears that only a number of Member States, due to specific rules concerning the conduct of investigations, require formal written requests). In general, it is Eurojust's experience that the respective judicial authorities provide sufficient information.

As regards Hungary, the Hungarian authorities cooperate very well when Eurojust acts through the Hungarian national member. The requests by the latter are carefully considered and – if the factual and legal requirements are met – measures are taken. Reactions were quite quick to the requests. They always accepted the assistance offered by the national member on the basis of Article 6.

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

According to Eurojust's answers to the questionnaire issued to the agency, Eurojust's continuous dialogue with judicial authorities and law enforcement agencies on operational matters normally takes place through direct contact by way of both informal and formal exchanges with the national desks involved. As a result of this fruitful dialogue, formal requests under Article 7 of the Eurojust Decision have normally not been considered necessary. With respect to Article 7(2) and (3) of the Eurojust Decision, it should be noted that they only entered into force in June 2009 and that there has been no practical experience with these provisions. As a result of the absence thus far of deadlock situations where neither the national authorities nor the national members concerned have been unable to reach an agreement on how to resolve a case of conflict of jurisdiction, Eurojust acting as a College has not yet been asked to issue a written non-binding opinion on this matter according to Article 7(2) the Eurojust Decision.

As regards Hungary, there has been no such experience so far.

5.3.3. *Cases related to the powers exercised by the national member*

For the powers of the national member, see further above.

The powers mentioned in Article 9 (2)-(4) were already granted in 2004. The access to registers is indirect. No problems have been detected so far by the Hungarian authorities.

Ordinary powers defined in Article 9b of the Eurojust Decision are already existing powers, exercised since 2004. Without these elementary "powers" the national member simply would not have been capable to perform her/his tasks at Eurojust. In fact, everyone at the national desks needs the "basic powers" defined in 9b (1) to be able to operate, even the Secretary. No problems have been experienced so far.

The Order now provides for these powers in its §§ 6-7.

No experience regarding Article 9c. Article 9c (1)a-b powers (new powers) are foreseen to be granted by the Order in its § 8.

No experience regarding Article 9d(b). Article 9d (b) powers (new powers) are foreseen to be granted by the Order in its § 9.

As for derogatory arrangements, under Hungarian law controlled deliveries fall under police competence unless undercover agents are involved. According to Hungary, this solution works very well, and Hungary sees no reason to change it. The prosecutors are generally allowed to submit a request. No special mechanism seems to be necessary according to Hungary.

5.4. Practical experience related to coordination meetings

The number of coordination meetings involving Hungary under the auspices of Eurojust is rather low, therefore the Hungarian experience is limited. Still, the advantages of these meetings are in their view clear (direct and personal contact of the persons involved in connected cases etc.) and provide added value. Generally it can be stated that coordination meetings are very useful.

According to Hungary, unsuccessful coordination meetings are the ones where the preparation was not proper and beyond the recognition of cases connected it was not clear for the participants what to expect from the meeting.

Related to this, the national desks of Eurojust play a significant role in the outcome of the coordination meeting and the quality of the follow-up also mainly depends on them.

The new internal order also aims to make the public prosecutor's offices aware of this tool and ease their access to it.

The ENCS has no role in respect with these meetings.

5.5. Use of the On-call coordination (OCC)

According to Eurojust's answers to the questionnaire submitted to them, several requests have been processed through the on-call coordination (OCC). The OCC has proven to be useful because it gives Eurojust the opportunity to act immediately. Most national desks can also be contacted directly via their mobile phones outside of normal office hours, without the involvement of the technical infrastructure of the OCC System. This is a long-established practice, prior to the launch of the OCC.

The entry into force of the on-call coordination has not led to changes in the organisation of the national desk at Eurojust or of the national authorities with a view to complying with the mandatory 24/7 days availability as well as on any practical issue the OCC has eventually raised.

The Hungarian authorities were informed about the existence of the on-call coordination through a letter sent to each Chief Prosecutor on the instruction of the Prosecutor General.

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

Hungary does not have any experience of cooperation in a concrete case between the ENCS and the Europol national unit.

5.7. Conclusions

- Whilst prosecutors approach Eurojust directly when they consider that the issue should be dealt with by Eurojust, judges are still reluctant to contact Eurojust directly and tend to address the issue to the EJM contact point. It is then for the EJM contact point at the Ministry of Public Administration and Justice to decide whether the case can be handled via the EJM or whether it should be brought to Eurojust. There is a clear need to encourage also the judges to approach Eurojust directly in appropriate cases. In this respect, it seems to be necessary to make Eurojust and its competences better known to Hungarian judges.
- The Metropolitan Court has exclusive competence as regards extradition requests, receiving international arrest warrants, including EAWs, and mutual recognition of foreign decisions? It deals with both civil and criminal cases and holds some 740. Judges altogether with the 6 district courts which have their jurisdiction in Budapest. Most serious problems are about *in absentia* cases, where additional material needs to be requested. As the Metropolitan Court is sort of a regional court, in this case, this means that a regional court has exclusive competencies as regards international cooperation. This is a notable organisation setup.

- According to the Metropolitan Court, they always contact an issuing authority via the Central Authority, never directly, but know that the practice needs to be changed. Direct contacts in urgent cases are seen as good, but it is deemed safer and more effective to go via the Central Authority. In fact, there has only been one contact with Eurojust from the Metropolitan Court. However, there are close contacts with the Prosecutor General's Office and through this office with Eurojust. When information is needed, the judges routinely provide the required information if needed from abroad. When an urgent reply is needed, Interpol is contacted even when EAWs are concerned. During the trial phase, judges use established MLA channels. To the evaluation team, it is quite surprising to see that Interpol is a privileged party as far as EAWs are concerned, not least since the contacts seem to go via the Metropolitan Court rather than the police.
- Around 1 000 international cases are handled at the Metropolitan Court per year, plus another 100 or so from other courts. Three judges work with the execution of the 1 000 cases. The number of judges seems quite low to the evaluation team. This aside, it is unclear how many cases in Hungary have an international dimension. In some 10 per cent of the cases handled by prosecutors an MLA is used. However, this does not mean that the case is international.
- There are no direct contacts with EJM contact points in other countries from the regional/local levels. Contacts first go through relevant websites for applicable information (not persons). If this is not successful, then contacts are taken with the national contact point. If this is not successful, then Eurojust is approached. So, no direct contacts, but rather contacts via the contact point at the Prosecutor General's Office.
- In Hungary, Eurojust is used more for facilitation than coordination of activities, pointing at some hesitance to go towards a coordination approach. According to Hungary, as the country is very centralised (Budapest is in a very special geographical, economic and political position in Hungary, hosting 20 per cent of the population), and since everyone is familiar with systems around them, e.g. in neighbouring countries, they often use their personal contacts and solve problems this way. If they believe that a third country is involved, they could go to Eurojust, but then, according to the prosecutors at the regional and local levels, there is a risk that too many

people become involved. Based on this, it seems safe to draw the conclusion that Hungarian prosecutors - at the regional and local levels at least - prefer to keep contacts bilateral. It seems that prosecutors mostly see cases as lacking an international dimension, because international cases are viewed as complicated. Contrary to this, the experts are of the strong opinion that one should ensure that "big" cross-border cases are dealt with in an appropriate way and not limited by the fear that the case might "explode" through the involvement and coordination with other involved Member States.

- Although the number of cases the Hungarian desk of Eurojust is dealing with shows that Eurojust is well established in the judicial system of Hungary, and known by practitioners, most of the cases referred to Eurojust were bilateral cases brought to Eurojust because they were urgent or required an immediate action. The possibilities Eurojust can provide in the area of coordinating cross-border investigations in complex cases involving more than two Member States are still not sufficiently used by Hungarian prosecutors and judges. Again, one of the reasons for this seems to be the reluctance of the practitioners to follow up all international aspects and linkages of a case and to see their cases in a European perspective.
- Regional and local prosecutors contact the EJM and Eurojust informally by phone or email. Some send requests at the same time to both EJM and Eurojust. No statistics are available as regards number of contacts and their details. This is unfortunate, since statistics, beyond the numbers themselves, can provide interesting and useful insight into the information flows. Contacts with the EJM and Eurojust are quite informal. The EJM is chiefly understood as providing practical help, for instance to locate competent authorities abroad. Eurojust is viewed as slightly more effective for urging MLA requests.
- No explicit guidelines exist as regards which cases are to be dealt with by the EJM and in which cases Eurojust is better placed to deal with the issue. Although the new order of the Prosecutor General sets out which cases shall or may be referred to Eurojust (Articles 24 and 25 of the new order), nothing is said about the relationship between Eurojust and the EJM. It should be further clarified at national level, preferably in the order of the Prosecutor General, when to use the EJM and when to use Eurojust, while taking into account that bilateral cases which are not complex are normally to be dealt with by the EJM whilst normally Eurojust is better placed to deal with complex or multilateral cases.

- Only a few coordination meetings have been organised upon the Hungarian authorities' request. According to the evaluation team, in view of the usefulness of coordination meetings, Hungary should take further steps to increase awareness of this valuable tool, and thereby increase the number of coordination meetings in which Hungary participates. The Hungarian authorities however doubt that Hungary would attend coordination meetings without financial support from Eurojust.
- According to Hungary, there has been a few coordination meetings where only the police have been involved (this goes for the Hungarian side due to the specific competences of the police during the pre-investigation phase). In these cases the national member steps back and provides only logistical support. In view of the evaluation team this entails the risk of jeopardising the follow-up of the outcome of the coordination meeting.
- In Hungary, as regards the OCC, the national authorities are informed about the existence of the OCC through a letter sent to each Chief Prosecutor on the instruction of the Prosecutor General. It does not seem to be widely used.

Furthermore, according to the Hungarian authorities, the real added value of Eurojust resides with multilateral cases. 80 % of the EJ's cases (approx 1500/year) are – unfortunately – bilateral cases. Consequently, the proportion of multilateral cases should be increased.

In Hungary it is obligatory to initiate a procedure when there is a suspicious of crime (principle of legality and mandatory prosecution applies). It means that it may never happen that an MLA is not sent abroad (to a third or fourth country) just because the prosecution service does not want to “internationalize” the case.

The new Order of the Prosecutor General of Hungary gives clear indication on the different channels, when and how to use them

The use of the right channel is also treated by trainings and further trainings offered to prosecutors.

When there is an ongoing investigation in Hungary and related to this case a coordination meeting is held at Eurojust, Hungarian representative(s) of the law-enforcement authorities are always attending the meeting!

Furthermore, one of the tasks of the EJ correspondent is to inform the prosecutor acting in the case of the possibilities of cooperating with Eurojust, the European Judicial Network and third countries (Section 14 (d) of the Order of the Prosecutor General).

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6. COOPERATION

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

According to Eurojust's answers to the questionnaire submitted to them, Eurojust assists practitioners in the area of joint investigation teams (JITs) in the drafting, amending and extending JIT agreements. From its frequent dealings in JITs, Eurojust has also developed expertise that allows it to advise on potential legal obstacles and help prevent other difficulties. Eurojust national members, deputies and assistants have participated either as competent national authorities or on behalf of Eurojust in 29 JITs during 2011, 20 JITs during 2010, and 7 JITs during 2009.

The role of Eurojust in assisting Member States has also been recognised in Article 13(5) of the Eurojust Decision which provides that Member States have to inform Eurojust of the setting up of JITs, established either under the 2000 MLA Convention or the Framework Decision 2002/465/JHA, and of the results of the work of such teams. 8 notifications were received at Eurojust under this provision in 2011, 11 in 2010, and 10 in 2009.

In addition to its practitioner advice, Eurojust has financially and logistically supported JITs via its JIT Funding Project, so that financial limitations are not an obstacle to the use of JITs in fighting organised crime groups. Eurojust has been able to support 34 JITs in 2011, 22 in 2010, and 5 in 2009.

Hungary has two ongoing JITs at this moment.

In the first one the assistant to the national member had the task of coordinating and enhancing international cooperation. In this procedure EU funding was applied for and also granted at Eurojust.

In the second one the assistant to the national member is a member of the JIT while the national members of the involved countries are listed in a supporting role.

According to Hungary, the success of a JIT mainly depends on the case. Given the right choice of cases a JIT can bring substantial advantages over normal cooperation.

The involvement of Eurojust national members is useful and makes sense mainly in the preparation phase of the JIT (for instance organising coordination meetings, interpreting and comparing national legislation etc.), during its course only when any obstacle arises. If everything goes well, after the establishment of the JIT, national members do not need to be directly involved in the actual investigation.

Hungary has experienced such participation in a JIT carried out partly on its territory, and Hungary's participation definitely meets their expectations.

6.2. Cooperation with other EU agencies

According to Eurojust's answers to the questionnaire submitted to them, OLAF carries out administrative investigations of crimes affecting the financial interests of the EU and transmits relevant information to Eurojust when it appears that a case directly involves judicial cooperation between the competent national authorities of two or more Member States, or where the case concerns a Member State and the European Union. Close cooperation between Eurojust and OLAF is essential to help ensure that the taxpayers of the EU are protected from cross-border fraud. OLAF and Eurojust cooperate on an institutional and operational level.

Europol is an important partner in Eurojust's work. Alongside continuous strategic cooperation, Eurojust has also developed intensive operational cooperation with Europol. Casework cooperation with Europol is increasing steadily. In 2011, Europol was represented at 89 of Eurojust's coordination meetings (1/3 of the total number of Eurojust coordination meetings), compared with 41 in 2010. Moreover, the exchange of operational information between Europol and Eurojust has improved throughout the years. Messages sent through the secure communication link between Eurojust and Europol increased by 35 per cent in 2011.

In addition, Eurojust is associated with 17 out of 23 Analysis Work Files (AWFs)¹ at Europol. Eurojust representatives are appointed to each AWF and participate in the respective meetings and support the work of the AWF by contributing with feedback on cases or trends from a judicial viewpoint. However, some Member States are opposed to offering Eurojust associate status in certain important AWFs, such as Islamic terrorism and domestic extremism. The negotiations on this are still ongoing.

¹ The structure of the AWF-system has since changed.

Negotiations between Eurojust and Frontex with a view to concluding a Memorandum of Understanding in accordance with Article 26(1) of the Eurojust Decision are ongoing¹. In 2011, Eurojust participated in the Frontex project "Trafficking in Human Beings Training for Border Guards" to develop specialised training for border guards within the European Union and the Schengen Associated Countries. Prosecutorial and judicial aspects were taken into account with a view to the development of common curricula.

As regards cooperation with other EU agencies, the Member States were asked to describe their policy, if any, with respect to the involvement of Eurojust in cases involving OLAF or other EU agencies such as Europol and Frontex.

The Eurojust national desk would be normally informed about cases involving OLAF if there is an international aspect of the case. Hungary has a low number of such cases and most of them do not have any international links.

The involvement of Europol mainly depends on the decision of the national investigating authorities which have their liaison officers at Europol. Public prosecution offices as judicial authorities do not seek the aid of Europol as an organ of law enforcement cooperation, although they can instruct the investigating authority concerned to do so. So far, prosecutors and judges have not had any direct cooperation with neither Europol nor Frontex.

6.3. Cooperation with third states

In cases falling within the competence of Eurojust, the advantages that Eurojust's involvement can add are taken into account. In cases where expedient execution of a MLA request is essential, Hungary automatically seeks the assistance of Eurojust.

The involvement of Eurojust related to third states was not significant in Hungary's cases so far. However, Hungary perceives that this is mainly due to the nature of cooperation with third states (that is, lacking legal background, traditional and more inflexible approach to international cooperation).

¹ Concluded on ...

6.4. Practical experience of the EJM

The cooperation between the Eurojust national member and the EJM contact point of the Prosecutor General's Office is excellent, since previously they were working in close cooperation at the same unit, and the EJM contact point was seconded to Eurojust for a 6-months' period as a SNE, and at this moment the acting EJM contact point is also the appointed assistant to the national member. Daily communication is everyday practice.

Where the case falls within the competence of a court, the Eurojust national member contacts the EJM contact points in the Ministry. This relation also works smoothly.

There are no special resources allocated to the contact point of the Prosecutor General's Office at this moment. He fulfils his tasks besides his other responsibilities as a prosecutor.

The same is true for the contact points in the Ministry.

The number of cases/requests handled by the contact point of the Prosecutor General's Office per year is about 300-350, three quarter of them from the national authorities, a quarter of them from abroad.

The contact points in the Ministry receive about 200 requests/questions per year.

The nature of the requests varies, from simple information (for instance the postal address of a foreign authority, obtaining criminal records from abroad, checking dual criminality, etc.) to complex ones (for instance the possibilities of and requirements for using a covert operative measure abroad). The outcome of the requests is 99 per cent successful.

The contact points in other member states respond in a timely and professional manner; with neighbouring countries the connection and cooperation is especially good.

There is no obstacle to contact any relevant national authority to perform the tasks of the EJM contact point.

6.4.1. *The EJN Website*

The contact point of the Prosecutor General's Office also acts as the tool correspondent of Hungary. Maintaining information on the website is done based on need.

There will be steps taken to restructure and refresh information concerning national law and authorities after on the one hand the new national legislation on the cooperation in criminal matters between the member states of the EU comes into force and, on the other hand, the new version of the Atlas will be implemented.

If the contact point of the Ministry of Public Administration and Justice requests any change in the data present on the website, without any formal procedure requests the tools correspondent to apply them.

According to Hungary, the EJN website is a great tool of the judicial cooperation in criminal matters. The single most important part is the Atlas, which, regrettably, according to the Hungarian authorities, is not regularly updated by all countries.

This tool is widely used by professionals across the country. After the upcoming technical overhaul it would need to be verified and refreshed. According to Hungary's experience, other tools are not much used, they would need some "promotion" to get into common knowledge.

The EJN website is promoted through training courses on international judicial cooperation.

6.5. Conclusions

- As regards cooperation, the excellent level of English proficiency in Hungary considerably facilitates contact and cooperation. This is partly due to systematic training and emphasis on mastering languages, and such a best practice is certainly worth highlighting.

- According to the Prosecutor General's Office, there are only some cases per year which merit a JIT, so to run some two or three simultaneously is to them a reasonable ambition. As said by the Prosecutor General's Office, the most difficult thing is to set up the first JIT. Hungary has done it, so now they have overcome initial hesitance and the number of JITs is expected to grow in the future. The evaluation team welcomes the fact that the use of JITS has been initiated and encourages Hungary to continue using this important tool.
- As regards the question why there are not more JITs, the prosecutors at the regional/local level answer that the decision is within the competence of the Prosecutor General, who has not requested the setting up of JITs. They further note that it is a large responsibility and costly, and sometimes they only need information. This can be obtained through an MLA instead of having to set up a JIT. Leaving the matter of competencies aside, as discussed above, it appears that the regional/local level prefers to deal with their cases on a bilateral basis. Again, contrary to this, the experts are of the strong opinion that one should ensure that "big" cross-border cases are dealt with in an appropriate way, for instance by taking the responsibility to set up and run a JIT.
- Although the Eurojust national desk has few direct contacts with the Europol national desk, it receives substantial support regarding JITs. This is deemed as very positive by the evaluation team.
- Hungary has a low number of cases involving OLAF and most of them do not have any international links. The involvement of Europol mainly depends on the decision of the national investigating authorities which have their liaison officers at Europol. Public prosecution offices as judicial authorities do not seek the aid of Europol as an organ of law enforcement cooperation, although they can instruct the investigating authority concerned to do so. Hungary is not aware of any case where Frontex was involved. As regards the involvement of other EU agencies, and Europol in particular, Hungary is advised to engage this organisation as far as possible whenever a crime falls under its competencies in view of the added value this engagement could bring. The same is obviously true for OLAF and Frontex as well.

- According to Hungary, the cooperation between the Eurojust national member and the EJM contact point of the Prosecutor General's Office is excellent, and at this moment the acting EJM contact point is also the appointed assistant to the national member. Daily communication is everyday practice. Where the case falls within the competence of a court, the Eurojust national member contacts the EJM contact points in the Ministry of Public Administration and Justice. This relation also appears to work smoothly.
- As witnessed by the number of cases the Hungarian EJM contact points were dealing with in the last few years, the EJM has a strong role in Hungary. It is shown in the provided statistics of 2009 - 2012 that the EJM is widely used by the practitioners and has become an important, well known and well functioning contact point for upcoming questions in cases with a cross-border dimension, or in which MLA requests or requests for mutual recognition are issued.
- There is good and close cooperation between Eurojust and the EJM. In this respect it proved to be favourable that two of the EJM contact points spent six month turns at the Hungarian desk of Eurojust working there as seconded national experts. This led to an important insight into the work and functioning of Eurojust and to a better mutual understanding of the respective roles and functions. This is viewed by the expert team as a good practice.
- As noted above, the contact point of the Prosecutor General's Office also acts as the tools correspondent of Hungary. According to Hungary, the EJM website is a great tool of the judicial cooperation in criminal matters. The single most important part is the Atlas, however they lament the fact that it seems that not all EJM tool correspondents in the different Member States update the necessary data regularly.

7. SPECIAL INVESTIGATIVE TECHNIQUES

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

The police are the competent authority to authorise or coordinate a controlled delivery in Hungary if no undercover agent is involved. If the presence of an undercover agent is needed during operation the police should turn to the competent prosecutor for authorization.

The national member has not authorised or coordinated controlled deliveries in Hungary.

7.2. Other special investigative techniques (SITs)

According to the Hungarian replies to the questionnaire, there has been no cooperation between Hungary's national authorities and Eurojust (acting through the national member or as a college) relating to other special investigative technique (SITs).

7.3. Conclusions

- The Hungarian law provides for an important pre-investigation intelligence phase which lies exclusively in the hands of the police and in which neither the prosecution offices nor the national member of Eurojust have competence. This might lead to difficulties in the event that investigations are carried out in different Member States which need coordination with the activities taken in Hungary in the pre-investigation phase. Although the Hungarian national member pointed out that in cases which are still in the intelligence phase, the police usually takes part in coordination meetings of Eurojust, the national member of Eurojust is not able to exercise the powers provided for in Articles 6 and 9ff. of the Eurojust Decision.
- Moreover, given that, according to the information provided, controlled deliveries are carried out by the police during the intelligence phase (without any involvement of the prosecution office), there is a risk that the obligation to provide Eurojust with information on controlled deliveries in accordance with Article 13(7b) of the Eurojust Decision is not fulfilled, or at least not fulfilled on time. Although Article 67 of the Hungarian law provides that the competent law enforcement agency has to inform the prosecutor of controlled deliveries meeting the requirements of Article 13(7b) of the Eurojust Decision, and that the prosecutor forwards the

information to Eurojust, none of the police officers taking part in the evaluation visit were aware of this obligation. Awareness should be raised about this obligation also within the police. Furthermore, since nothing is provided for in the Hungarian law which states that the information must be sent to Eurojust, there is a risk that the information is only provided when the intelligence phase is terminated, and that in worst case this could take years.

- According to the Prosecutor General's Office, controlled deliveries will (have to) be reported by the police. Controlled deliveries will be reported, even if they are guided by police law, and that is an exception in Hungary law, established to be in line with the Eurojust Decision. In practical terms, often this means that if a Hungarian prosecutor is made aware of a controlled delivery by another country, he will start a criminal case. However, as the police do not have to report on a controlled delivery during the intelligence phase, it might create problems in terms of reporting to Eurojust.

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8. TRAINING AND AWARENESS RAISING

8.1. Promotion of the use of Eurojust and the EJN

The existence and the role of Eurojust and EJM is promoted and disseminated by the communications implemented by the National Office for the Judiciary targeting both the judges and the general public. Information and links to EJM can be found on the central website of the courts.

The documents disseminated by Eurojust and EJM are handled in the document management system of the Hungarian Judicial Academy and they are available to all interested judges, researchers etc. at the Information and Documentation Centre of the Hungarian Judicial Academy.

Lectures on the value, operation and website of the Eurojust and the EJM are regularly contained in the syllabi of the courses that form part of the training programs organized by the prosecution service. The objective of such training is to provide a full training for prosecutors about how to contact and keep contacts with judicial authorities.

Information related to the value, operation and website of Eurojust and EJM are incorporated into all trainings touching upon international cooperation on criminal matters. The objective of such training provisions is to provide information for judges on the methods of contacting and cooperation between judicial authorities.

The Hungarian Judicial Academy also actively participated in organising and hosting international training seminars dealing with the questions related to international cooperation in criminal matters where the role of Eurojust and EJM were included in the curricula.

The current national member continues this hard work with great devotion. Apart from being one of the speakers of the recent high level training/consultation sessions, by the end of this year he will be holding a series of regional meetings with Chief Prosecutors and their staff covering the whole territory of Hungary.

As regards judges, the EJM contact points (or other experts from the Ministry) are regularly invited to training sessions for judges when the subject matter concerns international cooperation in criminal matters.

As for prosecutors, in the past, the national member (often accompanied by the EJM contact point for the Prosecution Service) was extensively involved in the training / consultation programs organised by the competent criminal law Directorates General (Supervision of Investigations & Priority Cases) for Chief Prosecutors or deputy Chief Prosecutors and others.

Apart from training, during the Hungarian Presidency judges and prosecutors participated in a great number at the EJM Plenary meeting in Budapest. That was a great occasion to promote EJM among practitioners.

The Eurojust national member is part of the prosecution service. Information about the service can be obtained in internal orders, communications, on the Intranet, on the webpage of the Prosecutor General's Office, etc. Until recently, hundreds of hard copy Annual Reports were sent out to prosecutors every year. Leaflets were also disseminated among the public prosecutors' offices.

By now, it is estimated that almost every prosecutor knows about Eurojust.

8.2. Specific training for national members and EJM contact points

No specific training is provided for the national member, deputy or assistant and EJM contact points with respect to their tasks. However one of the contact points from the Ministry participated at the language training organised by EJM Secretariat and ERA in The Hague in November 2012.

8.3. Conclusions

- Training for all judges is mandatory. There is a newly reformed system for training of judges. All must do one year as court secretaries including four weeks of training. After appointment, when assigned to the civil or criminal side, further training takes place. After a judge has achieved life-time tenure, more training options are provided in line with their specific interests, for instance international judicial cooperation.
- Judges can go as EJM trainees to Eurojust, arranged through the Hungarian Academy of Justice as they have joined the EJM system. They are now part of the short term programme, and will expand it to the long term possibilities including Eurojust. The evaluation team believes this is a very good move.

- Representatives from the Department of International Criminal Law at the Ministry of Public Administration and Justice participate in seminars on international judicial cooperation organised by judges and prosecutors, and give lectures on, for instance, good practice, recent developments in relevant legislation, the proper application of conventions and relevant EU legislation. During these seminars, they also promote the existence and the role of EJM. This is identified by the evaluation team as a best practice.
- The national member has started a Eurojust publicity tour throughout Hungary. Three regions are addressed per meeting. This has had a drastic effect and provided for an increase in cases. In fact, it has tripled the caseload. Hungary expects that they will reach more than 50 cases as requesting state this year. The publicity tour by the national member is a key to increase the understanding of the EU. In addition, the new order will further increase awareness. The idea is to let the national member be accompanied by the EJM contact point and the head of ENCS, which hopefully will happen next year. However, it is very time consuming. According to the evaluation team, while acknowledging the additional burden and in view of the limited number of EJM contact points, the evaluation team can only applaud the publicity tour, not least judging from its positive effects.
- The Ministry of Public Administration and Justice has prepared a handbook for the Hungarian judicial authorities on handling cases which concerns international judicial cooperation. It contains, *inter alia*, information about cooperation in general, declarations and reservations made by Hungary, and model requests as regards cooperation with common law countries. There are also other different internal guidelines on how to handle international cases, for instance which countries can be addressed directly with an MLA, which ones have to be addressed through the Prosecutor General's Office, which information is needed, etc. For normal MLA requests, there are practical guidelines available. The guidelines are not collated in one big book but appear in several different documents. Sometimes guidelines are disseminated in papers, circular mails, or on the Internet and the Intranet. The availability of easily accessible guidelines is a good practice, but possibly such guidelines should be edited through a central authority to ensure a harmonised approach.
- In addition, there are contact persons with expertise in international cooperation at both the regional and the local levels. The presence of such prosecutors or supervisors of international cases at the regional level has increased the number of MLAs. This is identified by the evaluation team as a best practice.

9. GENERAL OBSERVATIONS AND FINAL REMARKS

The creation of Eurojust and the EJM answers the need to address fundamental challenges in the fight against serious crime and terrorism across the European Union, as well as to build on the judicial dimension of the European area for freedom, security and justice after the creation of Europol.

According to Hungary, both Eurojust and EJM play a significant role in improving international cooperation in criminal matters.

In addition to the legal background of the EU they are the main tools which add both a qualitative and a quantitative lift to these relations, especially in comparison to cooperation with countries outside of the EU.

The remaining difficulties could be overcome mostly with the enforcement of the principle of mutual recognition.

According to Hungary, both Eurojust and EJM ought to be or remain quick, flexible and non-bureaucratic.

9.1. Conclusions

- The general assessment by Hungary of the activities of Eurojust and of the EJM is positive. They believe that both have a definite added value in view of facilitation of and support to international cooperation in criminal matters. The evaluation team takes note of this positive appraisal, and urges Hungary to continue its work to further promote the important work of both Eurojust and the EJM.

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 Hungary has been able to satisfactorily review the system in Hungary, expertly supported by the helpfulness of their national hosts. Overall, the working principles and legal framework of the system are robust and functional and the various actors know their roles and responsibilities.

Nevertheless, certain recommendations can still be made, to contribute to the further development of the system in Hungary. Furthermore, based on the various good and, without doubt, even best practices of Hungary, related recommendations to the EU, its institutions and agencies are also put forward.

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

10.1. Recommendations to Hungary

1. The fact that the Eurojust Decision is implemented partly by legislation and partly by internal orders from the Prosecutor General makes it more complicated to verify compliance. Hungary is therefore recommended to unambiguously delineate which provisions are covered through which legal instrument and why this is so.
2. The powers that the national member is provided with have to be further clarified, in particular the power whether the national member is entitled to order investigative measures in accordance with Article 9c(c) of the Eurojust Decision. This should be done either in the law or at least in the order of the Prosecutor General.
3. Hungary is recommended to close the transitional period of the ENCS, primarily by agreeing on the appointment of its participants and speedily fill the still vacant posts in the ENCS, most importantly the post as Chief/principal Correspondent. Also, the position of the deputy national member is currently vacant. Hungary is recommended to appoint the deputy national member without delay.

4. Hungary should reconsider the number of staff at the national desk at Eurojust, in view of the large and increasing workload in The Hague. Hungary should ensure that the desk is properly staffed, for instance by appointing a deputy to the national member who should have his regular place of work at Eurojust in the Hague and considering posting the deputy at Eurojust.
5. Hungary is recommended to appoint more contact points and be in line with Article 2(2) of Council Decision 2008/976/JHA. Thus, Hungary is recommended to conclude the ongoing discussion about the number of EJM contact points within the auspices of the Ministry of Public Administration and Justice by appointing one or more judge(s) as EJM contact point(s) with competence to deal with incoming or outgoing requests from/to courts at the Metropolitan Court or elsewhere within the court system.
6. Hungary is recommended to speedily conclude the planned comprehensive revision of tasks, number etc. of contact points within the prosecutorial system and appoint one or more prosecutors as additional EJM contact point(s) to deal with incoming or outgoing requests from/to the Prosecutor General's Office. In addition, Hungary is recommended to formally set up its planned informal network of prosecutors dealing with international issues - HU:
additional explanation.
7. Hungary is recommended to establish written guidelines for the nomination and functioning of EJM contact points, especially as more contact points are foreseen to be appointed. When choosing contact points, language skills and readiness to cooperate internationally should be in focus, in line with the requirements suggested in the non-binding Guidelines for the Selection of contact points of the European Judicial Network (PLEN2 2007/2). Furthermore, Hungary should ensure the proper financial and human resources to the EJM contact points so that they can fulfil the extra work resulting from the engaging in the EJM, including a possible reduction of the "regular work" of the EJM contact points.
8. Hungary should reconsider the need of arranging national meetings between EJM contact points, in light of the expected increase in the number of EJM contact points in the country. In general, steps should be taken to safeguard and possibly increase the frequency of face-to-face meetings with a view to increasing the overall efficiency of the system.

9. Direct contacts should be promoted within the whole judicial system. Judges should be stimulated to change their practice and establish direct contacts also with Eurojust without the involvement of the Central Authority. Prosecutors should also increase their direct contacts, beyond the reach of familiar and long-established contacts, with a view to increase awareness of and efficiency in prosecuting and bringing to trial complex, cross-border organised crime cases. More direct contacts towards Eurojust should be encouraged in order to make Eurojust's work more efficient and easier to reach for the practitioners.
10. Hungary should consider increasing the number of JITs and its participation in coordination meetings. In view of this, Hungary is recommended to consider using Eurojust and Europol more efficiently when setting up and running a JIT, and invite Eurojust and Europol to take part whenever a crime falling under the competencies of Eurojust and Europol is being investigated by a JIT. Partly, the low number of JITs and coordination meetings seems to be the result of limited knowledge of these tools. Hungary is therefore recommended to increase efforts to raise awareness in relation to coordination meetings and JITs.
11. Hungary is recommended to clarify unambiguously (in a bill or an order of the Prosecutor General) whether the national member participates in JITs on behalf of Eurojust or in his capacity as a competent national authority.
12. In light of the large number of international cases handled at the Metropolitan Court (more than 1 000), and the small number of judges appointed to the task of dealing with them (three), Hungary is recommended to increase the number of judges working with the execution of international cases.
13. As regards the quality of cases referred to Eurojust, Hungary is recommended to consider introducing or strengthening incentives to prosecutors who strive to tackle criminal organisations in their entirety and initiate and coordinate proceedings in other states, instead of dealing with cross-border issues on a purely bilateral level by means of MLA.

14. Hungary should continue to send prosecutors or judges as seconded national experts or trainees via the EJTN to Eurojust. This is viewed as a very good practice and has led to a better understanding of how to deal with cross-border cases and of the possibilities Eurojust can provide to facilitate and improve cross-border investigations.
15. Today, it seems that prosecutors mostly see cases as lacking an international dimension, because international cases are viewed as complicated. This stance presents a real risk that complex cases will be addressed in a piecemeal fashion, focusing on lower levels of a criminal organisation and letting key players go unnoticed. Hungary is recommended to continue encouraging practitioners to see their cases not only in a national perspective but to focus the investigations also on the cross-border aspects of the case. In addition, Hungary is recommended to ensure that common EU priorities as well as efficiency measurement mechanisms are implemented and applied in practice, including the use of Eurojust.
16. Hungary is recommended to review the relationship between controlled deliveries (police-driven) and reporting obligations towards Eurojust, to ensure that their reporting obligations are upheld. In general terms, Hungary is recommended to raise awareness that there is an obligation on Hungary (not only the Prosecutor General's Office) to send in information to Eurojust, thereby increasing the involvement and sense of responsibility by all relevant parties. More specifically, Hungary is recommended to ensure that the police is aware of the obligation to provide information on controlled deliveries in accordance with Article 13(7b) of the Eurojust Decision, and that the information is provided not only when the intelligence phase is terminated.
17. Furthermore, Hungary should ensure that, as far as possible, Eurojust is informed of a (possible) conflict of jurisdiction already at the "intelligence phase" of criminal investigations (during which substantial measures such as wire-taps or controlled deliveries can be carried out according to Hungarian legislation). Hungary is also recommended to take steps to ensure that coordination can be carried out by Eurojust, and that Article 6 and 7 measures can be complied with by Hungary, already at the "intelligence phase" of investigations.
18. Hungary should continue to send prosecutors or judges as seconded national experts or trainees via the EJTN to Eurojust. This is viewed as a very good practice and has led to a better understanding of how to deal with cross-border cases and of the possibilities Eurojust can provide to facilitate and improve cross-border investigations.

19. In relation to communication, all necessary steps should be taken to set up a secure line between Eurojust and the Hungarian prosecution offices as soon as possible. In the meantime, the use of the crypto fax should be considered. As regards CMS access, Hungary is recommended to define the modalities of the CMS access of the ENCS members.

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

1. Similar to Hungary, Member States are recommended to appoint EJM contact points for a longer period of time. Longer serving contact points would guarantee more experience and usually more readiness to cooperate. Accordingly, the Member States should avoid too many changes in the list of EJM contact points.
2. In Hungary, prosecutors can contact Eurojust directly. They do not need to contact the Prosecutor General's Office or the contact point at the Prosecutor General's Office first. This model is very transparent and practical, and it is recommended to all Member States that do not have a similar system to study and duplicate Hungary's example.
3. In Hungary, there is a contact point at each regional and local prosecution office constituting an informal network who helps other prosecutors in the region when they need advice or help in the cases concerning judicial cooperation in criminal matters. Such an informal network of contact points seems to be very helpful, and the Member States are recommended to study and duplicate Hungary's example.
4. Member States are recommended to study the Hungarian ENCS setup, especially its involving the police, as this can provide a valuable and expedient source and channel of information between the judiciary and law enforcement. It also fosters transparency, trust and efficient working relationships within the whole crime fighting system.
5. Member States are recommended to ensure that common EU priorities as well as efficiency measurement mechanisms are implemented and applied in practice, including the use of Eurojust.

6. The approach of Hungary to send prosecutors to Eurojust as seconded national experts or trainees via the EJTN for a six-month period of time is worthwhile to be considered also by other Member States. Such a stay at Eurojust improves knowledge about how to investigate and prosecute cross-border cases and will show what Eurojust can provide to improve the coordination and cooperation in cases involving other Member States.
7. Member States are recommended to ensure compliance with the reporting obligation under Article 13 of the Eurojust Decision, so that hits can be found in the CMS.
8. The Presidency (aided by the EJM Secretariat at Eurojust) should monitor the fulfilment of requirements by the Member States when designating contact points, and monitor the regular and proper update of the list of contact points.
9. The Presidency (aided by the EJM Secretariat at Eurojust) should clarify roles and responsibilities of the Member States in the updating of the data available through the EJM tools and closely monitor the update by Member States, in particular as regards the Atlas.

10.3. Recommendations to Eurojust/the EJM

1. Eurojust should provide clear information as to the range of products, services and feedback that can be expected from Eurojust on the basis of Article 13a, as a result of the exchange of information based on Article 13.
2. In line with this, Eurojust should ensure that all desks insert at least the names of the suspects in their cases in the CMS to make sure that the CMS can detect cross-links with incoming Article 13 information and so that Eurojust can provide respective feedback according to Article 13a.
3. Furthermore, Eurojust is recommended to insert all data provided by the Member States under Article 13 of the Eurojust Decision in a way that hits can be found and to create a common approach on how to insert data provided in the templates by the Member States.
4. Eurojust should adjust the Article 13 template to the specificities of the Hungarian language so as to ensure that it can be filled out in Hungarian.

5. As regards Article 13, Eurojust should consider as best practice the example of Hungary, where in cases where information form has been received, the competent authorities are offered assistance by the desk.
6. Eurojust and the EJM should collect and disseminate guidelines or other material issued at national level on the reference of cases to Eurojust or the EJM, and support and encourage the adoption and issuing of such guidelines and other material at national level.
7. The EJM tools, especially the webpage, need to be constantly updated and filled with new information. The EJM Secretariat should therefore complete the library with relevant information on the status of the EU instruments based on the principle of mutual recognition in the field of international cooperation in criminal matters.

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ANNEX A: PROGRAMME FOR VISIT

19th November 2012, Monday

Arrival at the Hotel
Briefing for the evaluation team (no Hungarian participants)

20th November, Tuesday

9.00 Meeting at the Hotel – walk to the Ministry of Public Administration and Justice
Address: 1055 Budapest, Kossuth tér 2-4

(a colleague from the Ministry will meet the delegation in the lobby)

9.30 Welcome of the delegation
9.45-11.00 General discussion on the questionnaire

11.00 Coffee break

11.15-12.45 General discussion

Hungarian participants:
EJN contact points
Eurojust national member
Eurojust seconded national expert
Colleagues of the Department of International Criminal Co-operation
Prosecutors of the Office of the Prosecutor General

12.45 – 14.00 Lunch *(in the same building)*

14.00- 15.00 The role of judges in the international criminal co-operation, training of judges

Hungarian participants:
Judges of the Metropolitan Court
Judge from the Hungarian Judicial Academy

15.00-15.15 Coffee break

15.15 – 16.30 The role of police in the international judicial co-operation

Hungarian participants:
Center of International Criminal Co-operation / SIRENE Bureau
National Bureau of Investigation

21th November, Wednesday

9.30 Meeting at the Hotel – walk to the Office of the Prosecutor General
address: 1055 Budapest, Markó utca 16

(a colleague from the OPG will meet the delegation in the lobby)

10.00 – 12.00 Meeting at the Office of the Prosecutor General

Welcome of the delegation by the Prosecutor General

Discussion with prosecutors
The role of the Office of the Prosecutor General in the international criminal co-operation
Practical experiences with Eurojust and EJN

(coffee break in between)

12.00-14.00 Lunch

Restaurant “Szabadság”
Address: 1054 Budapest Aulich utca 8

14.00-16.30 Meeting at the Office of the Metropolitan Chief Prosecutor

Welcome of the delegation by the Chief Prosecutor

Discussion with prosecutors

19.00 Dinner offered by the Deputy State Secretary

Restaurant “Haxen King”
<http://www.haxen.hu/eng.php>

22th November, Thursday

9.30 Meeting at the Hotel – walk to the Ministry of Public Administration and Justice
Address: 1055 Budapest, Kossuth tér 2-4

(a colleague from the Ministry will meet the delegation in the lobby)

10.00 – 11.30 Debriefing

ANNEX B: LIST OF PERSONS INTERVIEWED/MET

20th November, Tuesday

9:45 – 12:45

Ministry of Public Administration and Justice

Tünde Forman dr.

Henriett Nagy dr.

Ministry for Home Affairs

Adrienn Szabó dr.

Eurojust national member

László Venczl dr.

Eurojust national expert

Ilona Lévai dr.

Prosecutors of the Office of the Prosecutor General

Balázs Garamvölgyi dr.

Zoltán Péter dr.

Mária Rahói dr.

14.00 – 15.00

Metropolitan Court

Judit Csiszár dr.

Éva Várhegyi dr.

Zsolt Horváth dr.

National Office for the Judiciary (NOJ)

Erika Steigerwald dr.

György Benedek dr.

15.15 – 16.30

National Bureau of Investigation

International Affairs and Projects

Dr. Farkas Éva Dr.

Gábor Sztankovics
János Almádi

Center of International Criminal Co-operation / SIRENE Bureau
Csajági Nándor

Hajós Krisztina

21th November, Wednesday

In the morning – Office of the Prosecutor General

Péter Polt dr. (the Prosecutor General)

Balázs Garamvölgyi dr.

Zoltán Péter dr.

Mária Rahói dr.

János Homonnai dr.

Krisztián Eperjes dr.

Eurojust national member

László Venczl dr.

Eurojust national expert

Ilona Lévai dr.

Ministry of Public Administration and Justice

Tünde Forman dr.

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In the afternoon – Office of the Metropolitan Chief Prosecutor

Tibor Ibolya dr. (Chief Prosecutor)

Melinda Szabó dr.

Gábor Janesó dr.

Lajos Korona dr.

Viktor Zaránd dr.

László Füredi dr.

Gerda Vastagh dr.

22th November, Thursday

Ministry of Public Administration and Justice

Tünde Forman dr.

Henriett Nagy dr.

Eurojust national member

László Venczl dr.

Eurojust national expert

Ilona Lévai dr.

Prosecutors of the Office of the Prosecutor General

Balázs Garamvölgyi dr.

Zoltán Péter dr.

Mária Rahói dr.

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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
CMS	-/-	Eurojust Case Management System
COPEN	-/-	Working Party on Cooperation in Criminal Matters
EAW	-/-	European Arrest Warrant
EJN	-/-	European Judicial Network
ENCS	-/-	Eurojust National Coordination System
ENU		Europol National Units
EPOC	-/-	European Pool against Organised Crime
EU	-/-	European Union
GENVAL	-/-	Working Party on General Affairs, including Evaluations
JIT	-/-	Joint Investigation Teams
MLA	-/-	Mutual Legal Assistance
OCC	-/-	On call coordination system
NEBEK		International Police Cooperation Centre
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
PIF		Protection of the Financial interests of the Union
SEPAG		Southeast European Prosecutors Advisory Group
SECI		South-East European Cooperation Initiative
SITs	-/-	Special Investigative techniques