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

**REPORT ON POLAND**

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**EVALUATION REPORT ON THE  
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**REPORT ON POLAND**

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**1. EXECUTIVE SUMMARY**

1. The evaluation team was very well received during a carefully planned and organised visit. The experts were able to meet high-level specialists in charge of international cooperation within the central authorities and some others working at regional level.
2. The overall conclusion of the evaluation visit is that Poland has successfully carried out formal implementation of the Eurojust Decisions, but that at the time of the on-site visit this implementation still had to produce practical effects . It is fair to say that, while Poland still does not make full use of Eurojust' s potential, the most recent figures provided by Polish authorities in September 2013 show that some concrete results have now been achieved.
3. The strict division of responsibilities and tasks between the Ministry of Justice, the courts, the Prosecution Service and the Police Services, as well as between their hierarchical levels, did not appear to the experts to be conducive to efficiency and good coordination of EU judicial cooperation.
4. It seems that only a restricted number of practitioners - mainly in central positions - are actually involved with Eurojust activities. Direct contacts between the local judicial authorities and their foreign colleagues, as well the Polish desk at Eurojust, still need to be enhanced.
5. In Poland Eurojust is used more for facilitation of mutual legal assistance and execution of European arrest warrants than for coordination of activities.
6. The ENCS was set up in December 2012 within the Prosecutor General's Office. At the time of the visit its operational activities were at a preliminary stage.
7. The mechanism for transferring information to Eurojust within the framework of Article 13 does not seem to be working well.

8. The national member at Eurojust has only been granted with the minimum set of powers set out by the Eurojust Decision and has no direct access to any of the databases available to national prosecutors.
9. The Polish desk still has a limited experience with Joint Investigative Teams. Further efforts could be made to increase the use of JITs, having regard to Poland's geographical situation, extensive borders, cross-border criminality and considerable dimensions.
10. The same can be said in relation to coordination meetings.
11. EJM contact points are located in the Ministry of Justice and within the Prosecution Service. Although all contact points may be indifferently requested by prosecutors and by courts, judges preferably will contact the Ministry.
12. The Prosecution Service is not involved in the setting up and supervision of controlled deliveries according to Polish law. Eurojust is not usually informed of such operations and therefore its facilities in this area, for example coordination meetings and setting up urgent contacts with other Member States, cannot be used.
13. In Poland the training for judges and prosecutors on international cooperation is organised by the National School for Judges and Prosecutors not only during preparatory studies, but also for practicing judges and prosecutors during their professional career. Exchange visits with other Member States are organised. The Ministry of Justice offers language skills training, e.g. legal English, international seminars and conferences.

## 2. INTRODUCTION

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

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

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust and the European Judicial Network (EJN) only but rather on operational aspects in the Member States. In addition to cooperation with prosecution services, it therefore encompasses, 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.

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

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

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

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

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

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



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The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJM. 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 also provide useful input to Member States that may not have implemented all aspects of the new Decision.

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

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

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

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

The experts charged with undertaking the evaluation of Poland were Mr Roelof Jan Manschot (Netherlands), Mr Juan Carlos da Silva Ochoa (Spain) and Mr Ola Löfgren (Sweden). Two observers were also present, Mr Laszlo Venczl and Ms Stephanie Bovensiepen (Eurojust), together with Mr Hans G. Nilsson and Ms Claire Rocheteau from the General Secretariat of the Council. There were no observers either from the European Commission or from Europol during this visit.

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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 to Poland between 8 and 12 April 2013, and on Poland's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

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### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. General information

##### 1. General structure of the Polish system

Since the reform addressing the independence of the prosecution (which entered into force on 31 March 2010), as a rule the Prosecutor General has been independent from the Government and other bodies. He is appointed by the President of the Republic of Poland for a term of six years and is subject to an annual overview by the Prime Minister and ultimately the Parliament concerning the functioning of the prosecution office, issues relating to fighting crime and safeguarding the rule of law.

The Polish Prosecution Service is organised in a hierarchical structure. It mainly consists of the following.

- The Prosecutor General's Office notably carries out “higher-instance supervision tasks” in the preliminary proceedings led by the divisions for serious and organised crime and corruption, located within the structure of the appellate prosecution offices. It is at this level that visits, checks, and co-ordination of the supervision over preliminary proceedings in lower-level prosecution offices take place. Numerous activities relating to international legal assistance in criminal matters are also performed.

- 11 appellate prosecution offices, headed by a Chief Appellate Prosecutor, represent the Prosecution Service in trials in the appellate courts. They exercise powers of higher-instance supervision over proceedings led by the regional prosecution offices as well as carrying out inspection visits there. Specialised units of appellate prosecution offices supervise cases of serious organised crime and corruption. These are the only units of the appellate prosecution level that require and often use Eurojust assistance. Due to the seriousness of the criminality involved they rather do not seek the EJM support. The most important investigations conducted at this level are directly supervised or monitored by the Department for Organised Crime and Corruption of the Prosecutor General's Office.

- 45 regional prosecution offices, headed by a Chief Regional Prosecutor, take part in the proceedings before regional courts. They are tasked with proceedings in relation to the most aggravated cases. They also exercise direct official supervision over the proceedings pending in the lowest level of the service, i.e. the district prosecution offices, and carry out periodic inspection visits.

- 357 district prosecution offices led by a Chief District Prosecutor. They usually encompass the territory of a county or a larger city. As a first instance, district prosecutors directly handle inquiries and investigations, and supervise the preliminary proceedings of the police. They bring charges against suspects, bring cases to trial and handle cases at the district courts.

Poland has 242 district courts competent for cases concerning minor offences, 45 regional courts competent for cases concerning serious criminal offences and 11 courts of appeal, as well as the Supreme Court and the Constitutional Court.

The fact that the mandate of Eurojust is related to serious and organised crime means that regional courts are usually, but not always, competent for cases where Eurojust could be involved. In regional courts one or more judges deal with international/MLA matters. They are assisted by civil servants in charge of filling the forms and preparing the court's decisions ("MLA Inspectors").

The Polish system does not include investigative judges. Prosecutors, acting under the principle of legality, are competent to decide on most investigative measures, e.g. seizure, house searches and arrests, which are then carried out by the police. The decisions of a prosecutor are subject to review by the competent court upon complaint. An exception exists for surveillance and recording of communications: such measures can only be authorised by a court (an authorisation that may be given afterwards in urgent cases), normally the regional court as the competent court for serious criminal offences.

The regional courts also decide on the issuing and execution of European arrest warrants. Since the principle of proportionality is not incorporated into Polish law, European arrest warrants are generally issued for all kinds of crimes provided that a national arrest warrant exists. A legislative change is currently under way in order to recognise the principle of proportionality as legally binding.

Controlled deliveries fall under the competence of the police as part of operational work. When the operation is started, a prosecutor has to be informed and has the authority to stop the controlled delivery if there is an imminent threat to life or public health. When the police services consider the material gathered during such an operation to be sufficient to start a criminal investigation, all documentation is passed to the prosecutor who can formally initiate a criminal investigation. During a criminal investigation, the prosecutor supervises the work of the police services.

## **2. Implementation of the Eurojust and EJM decisions into Polish law**

For the evaluation, the Member States were requested to indicate all relevant legal or statutory provisions, if any, that they had to introduce or amend in order to bring national law in line with Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and its amendments according to Decision 2009/426/JHA on the strengthening of Eurojust, or to indicate intentions in this respect, and to indicate 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, and Council Decision 2008/976/JHA adopted on 16 December 2008 and repealing the Joint Action.

Article 18 section 6 of the Law of 20 June 1985 on prosecution, amended in 2011, states that the Minister of Justice, after obtaining an opinion of the Prosecutor General, shall specify cooperation with international organisations by means of regulations.

Regulations are a source of binding law under Article 92 of the Constitution of Poland. In order to implement the Council Decisions on Eurojust and the EJM, on the basis of the above mentioned provision, the Minister of Justice has adopted 2 regulations:

- Regulation of 30 April 2012 *on the manner in which general organisational units of the prosecutor's office are to carry out their duties in relation to cooperation with international or supranational organisations acting on the basis of international agreements,*
- Regulation of 14 December 2012 *amending the Regulation of 23 February 2007 relating to the rules of procedure in general courts .*

Articles 8 to 13 of the Regulation of 30 April 2012 regulate the role and tasks of the national member, the deputy national member and the assistant, while Articles 14 to 17 implement Article 13 of the 2009 Eurojust Decision. The Regulation of 30 April 2012 also designates the deputy national member at Eurojust as the national correspondent for Eurojust.

The Regulation of 23 February 2007 as amended in December 2012 regulates courts' contact with EJM on the one hand and with Eurojust on the other, including the obligation to forward relevant information that has not already been forwarded during the preparatory proceedings.

Further details on the transmission of data from the Prosecution Service under Article 13 of the 2009 Eurojust Decision are laid out in instructions and orders from the Prosecutor General.

- Order No. 51/12 of 27 January 2012 and Order No. 61/12 of 4 October 2012 amended by Order No. 11/13 of March 2013 define the tasks of the EJM and ENCS contact points.
- The Instruction of 11 January 2013 sent to all prosecutors sets out the procedure for forwarding information under Article 13 of the 2009 Eurojust Decision within the hierarchy of the Prosecution Service.

It remains unclear whether Poland considers Council Decisions to have direct applicability when they have not been transposed into Polish law. The Ministry of Justice stated that it has repeatedly relied directly on articles of the Eurojust Decision when asked by practitioners for advice on how to cooperate with Eurojust.

## Implementation of the Eurojust National Coordination System

### 3.1.1. Eurojust National Coordination System (ENCS)

Under Article 12 of the revised Eurojust decision the ENCS shall:

- ensure coordination of the work carried out by the various correspondents/contact points/experts listed under Article 12(2); and
- facilitate the carrying out of Eurojust tasks within the Member State concerned.

The Polish ENCS was formally established by the Regulation of 30 April 2012 but has been operational since 1 December 2012. It is established within the Prosecutor General's Office, and the Prosecutor General appoints its members.

The ENCS is composed of the national correspondent for Eurojust who is simultaneously deputy national member at Eurojust, the national correspondent for the European Judicial Network (EJN) who is also a contact point for the EJN, two other contact points for the EJN, the national correspondent for Eurojust for terrorism matters, a plenipotentiary of the Prosecutor General for co-operation with the National Asset Recovery Office, and one contact point each for joint investigation teams, for the European network of contact points concerning persons responsible for homicide, crimes against humanity and war crimes, and for the network of contact points combating corruption.

Prosecutors performing functions within the ENCS also have, as part of their responsibilities, other official duties specified by the Prosecutor General. With regard to the contact points of the European Judicial Network appointed within common organisational units of the prosecution, decisions regarding these duties are taken by their respective superior prosecutors, i.e. an appeal prosecutor or a regional prosecutor.

The Polish authorities emphasised that such duties are allocated to prosecutors according to the principle of equal distribution of official duties in order to ensure their proper and timely execution.



Members of the ENCS may ask common organisational units of the prosecution for the necessary means to perform their tasks, as defined in the Prosecutor General's Order 51/2012, in particular exchange of information and cooperation with the national member at Eurojust.

Since Polish common organisational units of the prosecution are organised in a strict hierarchical and centralised pattern, information gathered all over the national territory by contact points and national correspondents will transit through appellate prosecutors.

A list of the people working within Eurojust and as correspondents and contact points, including their telephone, mobile and fax numbers and addresses, has been transmitted to appeal prosecutors so that they can be forwarded to their subordinate prosecutors. The list was attached to the instruction issued by the Deputy Prosecutor General on 11 January 2013.

In Poland the ENCS was established in strict accordance with Article 12 of the Eurojust Decision, which means that no other contact points have been established in Poland in addition to those indicated in the Decision. However, two prosecutors within the Prosecutor General's Office (Department of Preliminary Proceedings and the Department for Organised Crime and Corruption) are appointed as contact points for OLAF.

### *3.1.2. National correspondents*

The above-mentioned regulations define the tasks of national correspondents.

The national correspondent for Eurojust is responsible for:

- ensuring timely transfer of information to Eurojust;
- performing activities whose purpose is to assess whether, in specific circumstances, assistance should be sought from Eurojust or the European Judicial Network;
- assisting the national member at Eurojust in specifying an authority competent to execute requests for international legal assistance, European arrest warrants and judgements which are subject to mutual recognition in another Member State of the European Union;



- co-ordinating activities undertaken by the Eurojust national correspondents for terrorism, the national correspondent and contact points of the European Judicial Network, contact points of the network of joint investigation teams, the European network of contact points concerning persons responsible for homicide, crimes against humanity and war crimes, the network of contact points for combating corruption, and the network of contact points concerning co-operation between asset recovery offices responsible for recovery of assets in Member States in the area of tracing and identification of proceeds from crimes or other assets connected with crimes;
- co-operating and collaborating with the national member at Eurojust;
- maintaining working contacts with Eurojust and the national unit of Europol;
- participating in organisational meetings organised by Eurojust with the participation of national correspondents for Eurojust.

The Eurojust national correspondent for terrorism matters is also Director of the Department for Organised Crime and Corruption. His tasks include:

- collection of information transferred by appeal prosecutors regarding the preliminary proceedings instituted by subordinate organisational units of the prosecution and concerning offences of a terrorist nature;
- transfer of information to Eurojust on criminal proceedings concerning offences of a terrorist nature, covering data specifying the identity of the suspect (the accused), the type of offence and its special circumstances, the text of the final and enforceable judgement, any relation to other matters, and information concerning requests for legal assistance submitted to or received from other Member States of the European Union;
- co-operation with the national correspondent for Eurojust within the national co-ordination system of Eurojust with regard to offences of a terrorist nature;
- maintenance of ongoing contacts with the national member at Eurojust for the purpose of ensuring information exchange concerning offences of a terrorist nature;
- co-operation with national and international institutions with regard to the exchange of information concerning effective measures for preventing and combating terrorism;
- participation in seminars and other meetings organised by Eurojust, with the participation of national correspondents for terrorism from other Member States of the European Union.

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

Because the ENCS was established very recently (1 December 2012), Poland does not have much practical experience to date. So far its activities have included publication of information about the ENCS on the Prosecution Service's website, presentation of the ENCS at the annual meeting of appellate prosecutors in March 2013, distribution of information about the OCC to appellate prosecutors and setting up initial priorities.

The Polish authorities nevertheless expressed the opinion that the ENCS and the tasks assigned to its members will facilitate information exchange, to the benefit of preliminary proceedings conducted in Poland.

So far the ENCS members do not have direct access to the CMS. It was stated that, in the fourth quarter of 2012, preparatory organisational steps were undertaken aimed at the conclusion of an agreement with Eurojust for the establishment of a secure network for transmitting data to the CMS; the technical conditions were settled, and the agreement is expected to be concluded in 2013.

It was also underlined that internal regulations anticipate the possibility of exchanging information with Eurojust using automatic data transfer devices.

*3.1.4. Cooperation of the ENCS with law enforcement authorities (Europol national unit and SIRENE Bureau)*

The regulations in force state that one of the tasks of the national co-ordination system is to maintain working contacts with the national unit of Europol. Responsibility for the proper execution of this task is devolved to the national correspondent for Eurojust/deputy national member. The establishment of these contacts and the basic rules of this cooperation is ongoing.

The Polish SIRENE Bureau is an organisational unit of the police. Appellate and regional prosecutors must ensure 24-hour contact with the SIRENE Bureau, for the purpose of making an entry in the SIS (Schengen Information System). They are responsible for ensuring that there are always prosecutors on duty for this. The Prosecutor General's Office also has access to the SIS.

Data is entered by authorised prosecutors as soon as a European arrest warrant is issued by regional court in the course of preliminary proceedings. The Law of 24 August 2007 on the Schengen Information System and the Visa Information System and Articles 322 and 323 of the Internal Rules and Regulations of Operation of Common Organisational Units of the Prosecution impose a duty to transfer, in the form of an electronic document, a certified copy of the European arrest warrant, the names of persons wanted for temporary detention for the purpose of their surrender by a third party, and the names of suspects or witnesses summoned to appear in connection with preliminary proceedings.

The internal rules of the prosecution also stipulate that prosecutors should have access to the SIS database concerning items and persons when such access is justified by the needs of criminal proceedings.

### **3.2. National desk at Eurojust**

#### *3.2.1. Organisation*

Three people work at the Polish desk in The Hague: the national member, an assistant and a secretary. The desk is supplemented by a deputy national member assigned to the Department for Organised Crime and Corruption at the Prosecutor General's Office in Warsaw.

The regular place of work of the national member and the assistant is at the seat of Eurojust. The current assistant, who was appointed at the beginning of 2013, has worked at the national desk before as a national member and subsequently as a seconded national expert. No seconded national expert is appointed at the moment. The national desk has a secretary, who is employed by Eurojust directly.

*3.2.2. Selection and appointment*

The national member and the assistant are appointed and seconded abroad by the Prosecutor General. Appointment of the national member is preceded by an opinion of the Minister for Justice. Any decision to dismiss the national member is also made by the Prosecutor General. If the national member is the President or Vice President of Eurojust, he may not be dismissed from his post before the term of office ends.

If the assistant is a prosecutor, which is currently the case, he or she may act on behalf of or as a substitute for the national member.

Secondment of a prosecutor to fulfil duties or serve certain functions outside the territory of the state is based on the Act of 20 June 1985 on Public Prosecution Service ; it must be in accordance with the prosecutor's qualifications, which are evaluated by the Prosecutor General. Such a secondment abroad is for a specified term of not longer than four years, with the possibility of extending the secondment for another period not exceeding four years. Decisions on terms of secondment are taken by the Prosecutor General.

The deputy national member is appointed by the Prosecutor General from among prosecutors of the common organisational units of the prosecution. The location of the appointment is also specified by the Prosecutor General. The Prosecutor General has stipulated that the deputy of the national member at Eurojust shall carry out official duties in Poland and shall be a prosecutor from the Department for Organised Crime and Corruption at the Prosecutor General's Office.

The deputy may act on behalf of or as a substitute for the national member. As already mentioned, the deputy of the national member is also the national correspondent for Eurojust, who is responsible for the operation of the Eurojust national co-ordination system and currently on behalf of the Department for Organised Crime and Corruption is also responsible for contacts with OLAF.

Supervision of the national member, deputy and assistant is exercised by the Prosecutor General. Since both the current national member and his deputy are prosecutors from the Department for Organised Crime and Corruption at the Prosecutor General's Office, their direct official superior is the director of that department.

### 3.2.3. Powers granted to the national member

#### 3.2.3.1. General powers

The competences of the national member are specified in the Regulation of 30 April 2012.

As a general principle the national member undertakes activities in matters falling within the competence of Eurojust, where Poland has jurisdiction or is directly involved. In particular the national member:

- 1) at the initiative of the relevant national authority, assists in the determination of a competent authority in another state for execution of requests for legal assistance, European arrest warrants and other judgements which are subject to mutual recognition, and also co-ordinates, monitors and facilitates the execution thereof, including acting as an intermediary in contacts between the relevant authorities of the Member States of the European Union;
- 2) co-ordinates the execution of other actions conducted or supervised by competent national authorities with the activities of the authorities of other Member States of the European Union;
- 3) transmits to competent national authorities any information, requests, opinions and other communication from Eurojust;
- 4) transfers to Eurojust any requests for information from national authorities conducting or supervising criminal proceedings;
- 5) co-operates with the European Judicial Network;
- 6) may participate in the development and common work of the joint investigation teams, as a representative of Eurojust;
- 7) acts as a representative of an on-duty co-ordination unit of Eurojust;
- 8) exchanges the information necessary to perform Eurojust tasks with other national members.

The Polish national member has the powers listed in Article 9b and 9f of the Eurojust Decision but is not vested with those listed in Article 9c and 9d.

As regards the powers indicated in Article 9c(d) and Article 9d(a), the Polish authorities stated that giving the national member further powers would be contrary to fundamental aspects of their legal system regarding the division of powers between the police, prosecutors and judges, in particular regarding controlled deliveries.

According to Polish law controlled deliveries fall within the competence of the law enforcement authorities, i.e. the police, the Internal Security Agency and the Border Guards.

For this reason the Polish authorities consider that, in the event of a controlled delivery, the proper channel for exchanging information and undertaking appropriate action would be Europol rather than Eurojust.

With regard to other powers indicated in Article 9c and 9d, pursuant to § 11 section 2 of the Regulation of 30 April 2012, the national member is obliged to co-ordinate the actions (other than those listed in § 11 point 1, see below) conducted or supervised by relevant prosecutors' offices with the actions of competent authorities of other Member States of the European Union.

According to § 11 point 1 of the same regulation, acting at the initiative of a competent court or prosecutor's office, the national member monitors and facilitates the execution of requests for legal assistance, European arrest warrants and other judgements which are subject to mutual recognition, and also co-ordinates, monitors and facilitates the execution thereof, including acting in as an intermediary in contacts between the relevant authorities of the Member States of the European Union.

When the competent authorities in Poland consider it expedient to submit a request to the national member at Eurojust for monitoring or co-ordination of certain activities, the aforementioned provisions constitute sufficient basis for the actions of the national member.

On the other hand, when a request for involvement of the national member is submitted by another desk, the latter acting on the same provisions is obliged to implement appropriate actions.

As regards the prerogatives specified in Article 9c(1)(c) of the Decision on Eurojust, in order to undertake certain actions according to the procedure specified in the Law on Prosecution the national member may apply to the Prosecutor General's Office or a competent unit of the prosecution and may, while submitting certain information, also submit proposals based on the co-ordination meetings. The national member cannot take decisions independently.

As regards the powers specified in points (a) and (b) of Article 9c(1) and point (b) of Article 9d of the Decision on Eurojust, relevant requests may be submitted by the national member to competent national authorities, and a decision regarding the introduction of a request for legal assistance is taken by the competent prosecutor's office or court.

Requests and decisions concerning judicial co-operation, when being transferred by the national member to competent judicial authorities, shall be used for information purposes only. The activities may be performed upon receipt of the request by the court or by the prosecutor's office, according to the procedure specified in the provisions governing issues of international legal assistance. During subsequent execution of the activities, the national member may undertake appropriate monitoring and co-ordinating actions, as referred to above.

#### 3.2.3.2. Access to national databases

The national member does not have any direct/autonomous access to relevant Polish databases. Pursuant to the Regulation of 30 April 2012 he does not have direct access to registers and databases that contain information vital for criminal proceedings, but he may obtain, *"in a specific case, through the Prosecutor General's Office and within the limits specified by the law"*, the data collected in the course of criminal proceedings and the data gathered in registers and databases containing information relevant for criminal proceedings.



This general remark is not restricted to criminal records. It is also applicable *inter alia* to the Schengen Information System, although, according to Article 42 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), a national member and his/her assistant should have the right to access and search data entered in SIS II.

In practice, the national member can contact his deputy in Warsaw to obtain information from these databases. The deputy, as the national correspondent for Eurojust, has access to or may apply for data necessary for the fulfilment of the duties of the national member at Eurojust.

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

Access to the restricted part of the CMS is given to the national member at Eurojust, who may decide to give access to the assistant if necessary.

**3.3. EJM contact points**

*3.3.1. Selection and appointment*

In Poland, the European Judicial Network is based on the structures of the Public Prosecution Service and the Ministry of Justice.

Currently, EJM is formed of three prosecutors from the Department of International Co-operation of the Prosecutor General's Office and 11 prosecutors appointed for respective districts of Appellate Prosecutors' offices.

Contact points in the districts of appellate prosecution offices are appointed by Appellate Prosecutors, whereas contact points at the Prosecutor General's Office are appointed by the Director of the Department of International Co-operation.



Two contact points of EJM are situated at the Department of International Co-operation and Human Rights at the Ministry of Justice, and are appointed by the Director of this Department according to the Organisational Regulation of the Ministry of Justice of 29 February 2012.

In addition, a Network Correspondent for IT Tools has been appointed at the Department of Labour Organisation, Visitation and IT Systems of the Prosecution Service.

The selection criteria for appointing contact points are experience in dealing with international co-operation issues and knowledge and practice in this regard. Currently all persons appointed as EJM contact points are involved with international judicial assistance in criminal matters. Other important criteria for appointment of contact points are a good knowledge of foreign languages and the ability to establish and maintain international contacts.

### *3.3.2. Practical operation of the EJM contact points in Poland*

As regards the prosecutors assigned as EJM contact points, their tasks and the tasks of the national correspondent for the EJM are specified in Order No. 51/12 of the Prosecutor General.

According to the aforementioned order, the tasks of contact points include:

1. facilitation of judicial co-operation in criminal matters between common units of the prosecution and the competent authorities of the Member States of the European Union, including, in particular:
  - a) information about the laws and practice of the states operating within the European Judicial Network, for the purpose of proper preparation of requests for legal assistance, European arrest warrants and other decisions which are subject to mutual recognition;
  - b) indication of authorities competent to accept the requests and decisions referred to in point (a);
  - c) acceleration of execution of the requests and decisions referred to in point (a) by competent authorities of the requested state;
2. participation in meetings with contact points of the network appointed in other Member States of the European Union;

3. promoting international co-operation training at the national level for common organisational units of the prosecution, including training organised in co-operation with the European Judicial Training Network.

The tasks of the national correspondent for the EJM situated within the structures of the Prosecutor General's Office at the Department of International Co-operation include:

1. ensuring proper operation of national contact points of the European Judicial Network, including co-ordination of activities concerning requests for information sent abroad and replies to requests addressed to Poland;
2. co-operation with the national correspondent for Eurojust within the Eurojust national co-ordination system;
3. transfer to the national member at Eurojust of information regarding matters falling within the competence of Eurojust, where Eurojust's assistance may prove to be more effective than other forms of co-operation;
4. maintenance of contacts with the Secretariat of the European Judicial Network, including participation in meetings of national correspondents to the European Judicial Network;
5. when necessary, issuing opinions regarding the appointment of new contact points of the European Judicial Network within common organisational units of the prosecution;
6. providing the national tools correspondent for the European Judicial Network with updated information concerning contact points appointed within common organisational units of the prosecution, as well as other updated information concerning co-operation with common organisational units of the prosecution which is placed on the website of the European Judicial Network.

The activities of the tools correspondent were previously executed by the Ministry of Justice. Changes introduced by Order of the Prosecutor General No. 51/2012 have meant that this role has been taken over by the Prosecutor General's Office. In October 2012, the administrator of the IT system at the Department of Labour Organization, Visitation and IT Systems of the Prosecution was appointed to fulfil the tasks of the tools correspondent for the EJN on behalf of the Prosecutor General's Office.

Generally, individual contact points fulfil their duties based on their territorial jurisdiction, but this is not a rigid criterion. Ultimately, the fulfilment of a given task may be determined by practical or system-related concerns (e.g. giving an answer requires interpretation of law within the jurisdiction of contact points at the central level).

Contact points within an appellate district deal with both incoming requests and requests addressed abroad, which are submitted by district courts and prosecutors. Contact between contact points of the network is mainly by e-mail, and more rarely by telephone.

Contact points appointed at the Department of International Co-operation at the Prosecutor General's Office fulfil tasks in the field of legal assistance, carried out by the Department in its capacity as a central authority, and provide interpretation of laws in complex cases referred to them by contact points located within appellate districts.

Contact points appointed at the Department of International Co-operation and Human Rights at the Ministry of Justice deal with legal assistance, particularly by providing the national and foreign authorities with information on foreign and Polish law. They also provide assistance during the preparation and execution of MLA requests, the enforcement of financial penalties and the execution of custodial sentences.

A flow of information between the national contact points of the EJN and foreign contact points of the network is carried out through direct contacts, mostly by e-mail, and more rarely by telephone.

Pursuant to the Regulation of 23 February 2007 courts may also apply, through the contact points situated in the districts of appellate prosecutors' offices, to foreign contact points of the EJM. In return, the regulation obliges courts to reply to inquiries addressed to them by national (Polish) contact points of the EJM.

On 19-21 November 2012, training was provided to Polish contact points of the EJM, including the tools correspondent for the EJM. During the training, the most important issues relating to the functioning of the EJM were discussed, including legislative changes affecting the functioning of the network. The meeting was also an opportunity for the Polish contact points to exchange experience and best practices.

On 13-14 December 2012, the tools administrator of the EJM website from the Hague made a visit to Poland, during which authorisation data was passed to the back office component of the EJM website for the purpose of managing of the Polish part of the site. The tools correspondent (in co-operation with the national correspondent for the EJM) adds, removes and updates data concerning individual contact points, and places content on the Polish part of the EJM website, where necessary and in compliance with the comments provided by contact points.

It appeared during the on-site visit that, although under the law all contact points may be indifferently requested by prosecutors and by courts, judges preferably will contact the Ministry. However Polish authorities stressed they have had signals that in the last months judges are increasingly open to use the opportunity given in the Regulation to address EJM contact points from the prosecution service in their region.

### 3.4. Conclusions

#### 3.4.1. *Formal (legislative) implementation process*

- Poland seems to have faithfully implemented the Eurojust and EJM Decisions in close adherence to the texts. It is commendable that both Eurojust and EJM are mentioned explicitly in the legal text.

- Poland should now ensure that faithful implementation at formal level also leads to concrete and effective action and full use of Eurojust' s potential. At the time of the on-site visit it was unclear to the experts whether the working principles of the system were functional; the increase in the dynamics of Polish activities within Eurojust as of mid-2013 appears to be a positive development in that respect. It remains to be seen on a longer term whether the various actors are able to play their roles fully and endorse their responsibilities.
- It should be noted that the legislation allows only a prosecutor to become a Polish national member, even though judges and police with equivalent competence can also become national members under the Eurojust Decision. This deprives Poland of an alternative that would otherwise exist under the legal framework.

#### 3.4.2. *The national desk at Eurojust*

- Polish authorities have implemented the articles regarding the powers of the national member in a basic way, withholding effective autonomous powers. The evaluation team felt that the status given to the Polish national member is rather similar to a liaison magistrate with the task of facilitating mutual legal assistance and execution of European arrest warrants. In 2011 - 2012, Poland registered 162 cases and received 230 requests; it registered 72 EAW cases and received 53 requests. On the contrary, at the time of the on-site visit it only requested one coordination meeting (2 more as on the date of 12 September 2013) and received 19 requests (plus 6 as on 12 September 2013). It participated in one JIT (the involvement of Poland in another 3 JITs is currently being discussed).
- Regarding Articles 9c and 9d, no convincing reasons were provided as to why Poland did not confer those powers on the national member, with the possible exception of the fact that under the Polish system controlled deliveries are a task for the police.

- In the case of powers under Article 9c, the objection by Poland that these had to be vested by parliamentary legislation and not by an administrative regulation can only lead to the recommendation to proceed in that direction as soon as possible. If, as the evaluation team has also been informed, the problem lies with these powers being the jurisdiction of the courts, again a normative solution has to be found. After all, the national member is acting in these cases as the authority seconded by the Member State to support the competent national authority (the national member intervenes “in agreement with or at the request of” the national authority).
- The Regulation by the Minister of Justice does not provide the national member with powers that according to the law are vested in prosecutors when acting as such within the national framework. These rules not only leave the national member with no significant powers, but they also compromise his status as regards other members of the College and can thus become an impediment to effectiveness, which is the founding principle of Eurojust.
- The issue of the national member's lack of powers also raises the question of his status in general in relation to the Polish national authorities. There is a risk that the national member would only be able to achieve any results if he is in agreement with the Polish national authorities. The non-use of Article 6 indicates that this is actually the case.
- The national desk in The Hague has no direct access to the national criminal data systems or the Schengen Information System. This makes it even more difficult for the national member to fulfil his tasks.

#### 3.4.3. *Implementation of the ENCS*

- Poland has chosen to implement Article 12 partly by way of an order from the Prosecutor General rather than implementing it in full by Regulation of 30 April 2012, which would have had a larger scope because it would apply not only to prosecutors but also to courts and police services.

- Poland has also decided to organise its own internal ENCS in such a way that the National Correspondent for Eurojust is also the deputy national member at Eurojust. While some advantages are clear (two points of interaction centralised in one person, ENCS access to Eurojust databases, etc.) some disadvantages should also be taken into consideration (questionable integration of the deputy within the OCC toolkit, no direct daily face-to-face contact between the two which may lead to a lack of coordination, etc.). It can probably be acknowledged that the European lawmaker did not have this in mind when the rules were passed; nevertheless, it is arguably also true that it is not against those rules. Because of this, it would be advisable for Poland to monitor closely the daily practice of this arrangement, and to identify specific reasons for retaining or discarding it, coming to a conclusion in the next year or two.

#### 3.4.4. *Connection to the CMS*

- The Polish systems are not connected to the CMS at the moment.
- A connection is planned for the nearest future.
- The Polish authorities aim to conclude an agreement with Eurojust for the establishment of a secure network for transmission of data to the CMS during the course of 2013.
- Since a connection between the Polish systems and the CMS is indispensable, the process of concluding an agreement and establishing such a connection should be accelerated. The General Prosecutor's Office said it now have met all necessary technical requirements of the CMS connection at the end of the last year and that since that time both parties have negotiated the text of the agreement to be signed very shortly.



3.4.5. EJM

- 14 contact points are appointed within the prosecution service (3 at the Prosecutor General's Office and 11 at Appellate courts level) and 2 are located in the Ministry of Justice. No judges are appointed as contact points. Although, from a legal point of view, all contact points may be indifferently requested by prosecutors and by courts, judges preferably will contact the Ministry. Polish authorities stressed that it is noteworthy that the situation is changing. Experts would consider it a very positive signal that judges and prosecutors are open to cooperate within these newly established channels.
- The EJM National Correspondent is based in the Prosecutor General's Office. She is also part of the ENCS.

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#### 4. EXCHANGE OF INFORMATION

In June 2011, Eurojust developed an electronic form to assist the national authorities with the obligation to transmit structured information to Eurojust pursuant to Article 13(5) to (7) of the Eurojust Decision. The form has recently been released as version 2.0.

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

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

The Prosecutor General's Office has its own central IT system, the Central Database of the IT System of the Prosecution, which is composed of an internal SIP database (IT System of the Prosecution) and a module providing access to external databases.

The SIP database is a nationwide database which gathers data from databases kept by regional prosecution units. It contains information concerning registration, marking of matters and the data in these databases, e.g. the subject of the proceedings, possible charges brought against suspects, evidence, victims and suspects identified, preventive measures applied, the outcome of the proceedings and court settlements.

The Prosecution has remote access to the data gathered and processed by external databases, i.e. PESEL (*Powszechny Elektroniczny System Ewidencji Ludności* - Common Electronic System of Vital Records), KCIK (*Krajowe Centrum Informacji Kryminalnych* - National Centre of Criminal Information), CEP (*Centralna Ewidencja Pojazdów* - Central Vehicle Records), CEK (*Centralna Ewidencja Kierowców* - Central Driver Records), SIS (*System Informacyjny Schengen* - Schengen Information System), and KRK (*Krajowy Rejestr Danych* - National Register of Data). These databases are kept by the police or other state authorities, and the prosecution has access to them on the basis of a statutory authorisation.

Moreover, the prosecution has its own KCIK-*Prokuratura* system, which is designed to register only criminal information generated by the prosecution units.

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

Member States were asked to describe how the obligation to exchange information under Article 13 (5) to (7) of the new Eurojust Decision is applied in their country, and to provide information regarding the competent national authorities involved in this process, whether the information is sent in a centralised or decentralised manner and the role of the ENCS in this respect. MS were also invited to provide any relevant instructions given to competent authorities (guidelines, practical directives, etc.).

The Polish authorities answered as follows.

- As regards Article 13 (5):

The national correspondent for Eurojust co-ordinates the activities of all correspondents and contact points, including the contact point for the network of joint investigation teams. He also exchanges information with the national member. In view of the fact that the national member may participate in the establishment of a joint investigation team, information is provided to him when the appointment of a JIT is proposed.

On the other hand, a direct obligation was imposed upon each contact point and correspondent to co-operate with the national member at Eurojust within the national co-ordination system.

As laid down by the instruction of the Deputy Prosecutor General issued on 13 June 2011 and upheld by the instruction issued on 11 January 2013, appellate prosecutors are also directly required to immediately transfer reliable data to the Prosecutor General's Office (for the attention of the national correspondent for Eurojust) regarding, among other things, the establishment of a joint investigation.

- As regards Article 13(6)

A duty was imposed upon appellate prosecutors to immediately transfer to the Prosecutor General's Office, and update on a regular basis, any information concerning:

1) all preliminary proceedings instituted by subordinate organisational units regarding an offence involving at least three Member States of the European Union, where requests for international legal assistance or for execution of a decision which is mutually recognised are submitted to at least two Member States of the European Union, if:

a) the proceedings concern an act which carries a maximum penalty of at least five years and is included in the following list:

- counterfeiting and circulation of counterfeited money or other means of payment;
- trafficking in human beings;
- bribery and influence peddling;
- acts to the detriment of the financial interests of the European Union;
- illegal trade in firearms, ammunition or their parts or components;
- illegal manufacture, processing or smuggling of intoxicants, precursors, replacement agents or psychotropic substances, or trade therein;
- acts of a terrorist nature;
- acts against protection of data gathered, stored, processed or transmitted within an IT system;
- acts against sexual freedom or decency to the detriment of a minor;
- participation in an organised group or union whose purpose is to commit offences or fiscal offences;
- financial trade in property values originating from illegal or undisclosed sources;

b) according to the evidence, the offence may entail serious cross-border consequences, consequences for the European Union or may concern Member States of the European Union other than those which are directly involved.

Before the Regulation of 30 April 2012 came into force, i.e. before 1 June 2012, this data was transferred on the basis of the Instruction of the Deputy Prosecutor General of 13 June 2011 concerning the entry into force of Council Decision 2009/426/JHA as of 4 June 2011. That instruction is still in force.

The transfer of information to the national member is the responsibility of the Prosecutor General's Office, and more specifically of the national correspondent for Eurojust who, according to Order No. 51/2012, is "*obliged to provide timely transfer of the information concerned*".

On 11 January 2013 the Deputy Prosecutor General sent a new instruction to appellate prosecutors informing them of the establishment of an ENCS within the Prosecutor General's Office and of its tasks, staff composition and the scope of competence of individual members. In addition to the reminder of the duties imposed by the Instruction of 13 June 2011 and deriving from the Regulation of 30 April 2012 and Order No. 51/2012, the instruction encouraged prosecutors to take advantage of possibilities opened up both by Eurojust and by the national co-ordination system of Eurojust, as well as by the European Judicial Network.

The same duty to transmit information falling within the categories specified in Article 13(6) of the Eurojust Decision is also imposed upon common courts, if this information was not transferred during preliminary proceedings. Courts should transfer such information directly to the national member at Eurojust.

As regards Article 13(7)

The national member does not receive information from the Polish judicial authorities on controlled deliveries involving at least three Member States, because the performance and supervision of controlled deliveries does not fall within the competence of courts or prosecutor's offices. They are within the sole competence of the police authorities, the Internal Security Agency and the Border Guards.

The national co-ordination system and the national correspondent for Eurojust are responsible for notifying a national member of cases where a conflict of jurisdiction occurs or may occur and where there are repeated difficulties or refusals concerning the execution of requests and decisions regarding judicial co-operation. Each appellate prosecution office must transfer this type of information to the Prosecutor General's Office. The principles and procedure for transferring such data is identical to that described in the section on Article 13(6) above.

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

This obligation is fulfilled centrally, through the Department for Organised Crime and Corruption at the Prosecutor General's Office. It seems that no data has been transferred to Eurojust under the Decision.

The competence of this Department, where official duties are performed by the correspondent for Eurojust for terrorism matters (currently the Director of this Department), includes supervision of preliminary proceedings in matters of terrorist offences and monitoring cases of similar nature.

Each common organisational unit of the prosecution which performs activities in such matters or which institutes an investigation is obliged to immediately notify the Department for Organised Crime and Corruption at the Prosecutor General's Office.

The Polish authorities indicated that appellate prosecutors have been reminded on several occasions over the past few years of their duty to immediately transfer information when any terrorism-related proceedings are initiated.

Also, as stated above, the Eurojust national correspondent for terrorism matters, as a member of the national co-ordination system, co-operates with the Eurojust national correspondent on offences of a terrorist nature. The latter must ensure timely transfer to Eurojust of information meeting the criteria of Article 13(6).

*4.1.4. Channels for information transfer to Eurojust*

Following the Regulation of 30 April 2012, the structure of the information transferred looks as follows: the subject of the proceedings, the first name, surname, date of birth, occupation, place of residence and personal identification (PESEL) number, if any, of the suspect; the first name, surname, date of birth, occupation, place of residence and personal identification (PESEL) number, if any, of the victim; the Member States involved; a brief description of the offence and the legal qualification thereof; information about requests for international legal assistance submitted; the scope thereof and the progress of their execution; and, in the event of proceedings concerning offences of a terrorist nature, information about the text of the final and enforceable judgement ending criminal proceedings and possible links to other criminal proceedings, as well as Member States which may experience a conflict of jurisdiction.

Information may be entered into the Automated Case Management System in any way, including by e-mail. Currently, due to a lack of an appropriate connection to the CMS, electronic correspondence and fax must be used. Polish authorities have informed after the evaluation visit that notifications about 31 cases have been sent to Eurojust as on 12 September 2013 and further notifications are being prepared.

For the time being no data has been transferred using the Eurojust form. The Polish authorities stated that the possibility of using this template within Poland will occur when the Prosecutor's General Office and lower instances of the prosecutors' offices will be connected by a secure electronic system and that preparation for setting up of such a system is now underway. As a result it will not only allow to use the Eurojust template, but first of all will open a new operational possibilities for prosecutors in Poland. It is planned that the system will be operational next year.

## 4.2. Feedback from Eurojust

According to Eurojust's answers to the questionnaire submitted to them, Eurojust does not possess 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 their 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 paragraph 1 and paragraphs 5 to 7. The extent and nature of this feedback greatly depends upon the amount, timing and content 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 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 Poland and no own-initiative information has been received so far.

It is nevertheless worth underlining that the general assessment of the quality and efficiency of the support received from Eurojust by central authorities has been very positive. They see and describe the Polish desk at Eurojust as a partner with which they have fruitful contact.

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

Poland does not participate in E-POC IV.



#### 4.3. Conclusions

- The instructions sent by the Deputy Prosecutor General which are based on the obligations under Article 13 as stipulated in Regulations seem to be an efficient way of informing and instructing the Polish prosecutors. It is however doubtful whether these instructions are sufficient enough for the actual fulfilment of the obligations. On the contrary, the low number of notifications seems to indicate that Poland needs to do more to guarantee that Eurojust is notified of relevant cases. In addition, it would seem useful if Poland gave further guidance to prosecutors and judges on the interpretation of Article 13 in the light of Polish law.
- All information provided to Eurojust has to be transmitted through the hierarchy of the Prosecution Service. Therefore, all notifications sent from the district level go to the regional level, from there to the appellate level and from there to the Prosecutor General's Office. The national correspondent of the ENCS should then send the information to the national member.
- According to the Regulation of 23 February 2007 as amended in December 2012, courts are obliged to forward directly to Eurojust information which falls under Article 13 of the 2009 Eurojust Decision and which has not been provided during the pre-trial stage. So far the courts have not forwarded any information of this kind.
- The obligation to inform the national member about controlled deliveries pursuant to Article 13(7)(b) has not been transposed into national law. According to the Polish authorities, this issue has not been regulated by the Ministry of Justice as controlled deliveries fall under the sole competence of the police service, which is supervised by the Ministry of Interior.
- The obligation under Article 13(5) has not been transposed into national law but implemented by practical measures. The deputy Prosecutor General issued an instruction on 11 January 2013, which is binding on prosecutors.
- The Eurojust template is not used. Information is transmitted by fax. The national member will enter the relevant information into the CMS. The template is planned to be used in the future, depending on technical possibilities.



## 5. OPERATIONAL ASPECTS

### 5.1. Practical experience in relation to Eurojust

According to the registers of the Polish desk at Eurojust in 2011, 108 cases were registered from Poland and 113 cases were registered as cases addressed to Poland by other Member States of the European Union and Norway. In 2012, 143 cases from Poland and 124 cases addressed to Poland by other Member States of the European Union and Norway were registered.

The registered cases cover both the matters registered at Eurojust, as well as matters handled by the Polish desk by way of direct contacts with other representatives of EU Member States, without registration thereof in the CMS.

An analysis of the registered cases indicates that the majority of cases, including both cases submitted by Poland and cases addressed to Poland, are non-complex, bilateral and non-urgent. Most commonly, cases are introduced upon preparation and submission of a request for legal assistance and their purpose is to accelerate and facilitate the execution of these requests.

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

In their reply to the questionnaire Polish authorities stated as follows :

According to the evaluation of the Polish desk at Eurojust, the basic criterion for selecting Eurojust as an authority which may assist in obtaining materials or information required for criminal proceedings conducted in Poland is its established reputation as an organisation which is well institutionalised, and which has lengthy experience and extensive contacts with law enforcement and judicial authorities in Member States. The criterion for the selection is also indicated by the type of case. If the proceedings fall within the competence of Eurojust, prosecutors contact the national member. In other cases, contact points of the EJM are chosen. The most important prerequisite for their selection is whether or not a given contact point of the EJM is active and whether it replies to inquiries. Also, positive experience in earlier co-operation is of significant importance.

For the Prosecution Service, matters on which contact points of the European Judicial Network should be contacted for the purpose of obtaining assistance have been specified in § 3 of Order no. 51/2012. The matters in which one may refer to a national member at Eurojust result from § 11 of the Regulation of 30 April 2012 specifying the scope of the member's powers.

As regards common courts, the Regulation of 23 February 2007 (§ 329k and 329n) distinguishes which cases should be referred to Eurojust and which to the European Judicial Network.

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

Cases requiring intervention or involvement of the national member are to be sent to him/her directly by the prosecutor's offices and courts concerned. All means of communication are permitted. The matter is referred in the form of a copy of the documents generated and any correspondence conducted so far, and must include a written request specifying what assistance is expected from the national member by the given prosecutor's office or court. Matters submitted by representatives of EU Member States operating within Eurojust are also accepted in the same format.

At the Polish desk, cases are entered in one of two registers: matters referred by Poland and matters sent to Poland. A file is established for each case.

After registration at the desk, the content of the cases is evaluated by the national member or his/her assistant and a decision is issued on whether to:

1. register the matter at the CMS and handle it as a Eurojust case;
2. request assistance or information from another member at Eurojust, without registering the matter at the CMS;
3. apply to the contact point of the EJM of another state, through a member of that state at Eurojust or directly, i.e. without the national member of that state acting as intermediary.

The national authority which has requested assistance is notified that the case has been registered at the Polish desk. The requesting authority is notified on an ongoing basis, most commonly by e-mail, of any progress concerning the execution of its request and the final outcome of the request. After execution of the request, the case is removed from the Polish desk and from the CMS - if it was registered there - as completed.

Registration of cases is governed by § 22 of the Regulation of 30 April 2012, according to which the national member establishes and keeps temporary files for each case, either on paper or in electronic form. The national member marks the selected information in temporary files kept in electronic form or enters it in the system so that it can be searched for automatically in the future using an index.

Pursuant to § 26 of the same Regulation, unless the legal regulations provide otherwise, prosecutors communicate directly with the European Union's institutions, including, in particular, Eurojust, the European Judicial Network and OLAF, unless special regulations require a different form of contact. In complex matters, if so required by the circumstances of the case, prosecutors may communicate with the institutions of the European Union through the Prosecutor General's Office .

Direct communication between courts and the national member at Eurojust is also provided for in the Regulation of 23 February 2007, as subsequently amended.

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

So far, no such cases have been recorded.

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

So far, no such cases have been recorded.

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

Coordination meetings are considered by Polish authorities to be a very useful tool aimed at intensifying co-operation between the countries concerned, preparing co-ordinated joint procedural actions, and negotiating the conditions for establishing a joint investigation team. In the light of this, it is surprising that, at the time of the on-site visit, only one coordination meeting had been requested by Poland in the last two years.

The Polish authorities expressed the view that the added value of a coordination meeting, the purpose of which is to achieve the aforementioned objectives, is dependent on proper preparation. This concerns both the importance of the case, the stage of the criminal proceedings at which the suggested co-ordination meeting is to be held, as well as the objectives the requesting state wishes to achieve with such a meeting. If the idea of a co-ordination meeting is not based on a thorough analysis of the objectives to be achieved, then the meeting is usually the only instance of direct co-operation between the states and the added value for Eurojust and the parties is debatable.

Polish experience dictates that co-ordination meetings should be organised only for matters concerning offences covered by the Decision on Eurojust and when there is actual, serious justification for one.

Since the national coordination system provides for the analysis of information transferred by common organisational units of the prosecution with regard to matters of cross-border nature, it is possible to suggest that a competent prosecutor's office may propose a meeting be held. Explanation and information in this regard can be provided in reply to ongoing inquiries by the national correspondent for Eurojust/a deputy of the national member at Eurojust.

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

Information on the existence of the on-call coordination was submitted by the national member at Eurojust to the Department for Organised Crime and Corruption at the Prosecutor General's Office.

The national member also explained the operation of the OCC at certain meetings with prosecutors (seminars, debates). Information about OCC have been distributed by the Prosecutor General's Office, via hierarchical structure, to all prosecutor's offices in Poland, forwarded to the Ministry of Justice and Police Headquarters by the National Correspondent for Eurojust (by mean of a formal letter signed by the Director of the Department for Organised Crime and Corruption).

So far, no calls have been received through the OCC.

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

The Polish reply to the questionnaire stated that no such experience had been noted so far. Polish authorities said afterwards that the situation is changing and that contacts and informal exchange of information take place now on an *ad hoc* basis.

#### **5.7. Conclusions**

- Basic criterion for allocation of cases either to Eurojust or to the EJM are stated in national legislation.
- It is clear from the statistics and from answers given by the Polish representatives during several of the visits that Poland is not making full use of Eurojust' s potential.
- The number of co-ordination meetings is low. In most cases Poland did not initiate the meetings.
- The number of JIJs in which the Polish desk has been involved so far is also very low.
- The majority of the cases handled by the Polish national member and the Polish desk at Eurojust concern facilitating MLA and EAWs, and are bilateral, non-complex and non-urgent.

## 6. COOPERATION

### 6.1. Cooperation with EU agencies and others

Poland has indicated that experience in this area has so far been limited to e-mail contacts with OLAF and persons responsible for contacts with OLAF submitting explanations to it regarding national law and information on criminal proceedings falling within its area of interest.

### 6.2. Cooperation with third states

The national member at Eurojust provides assistance to national authorities in cases involving third countries which have signed cooperation agreements with Eurojust and countries which have established contact points with Eurojust.

From the point of view of the Polish national member, the value added by the involvement of Eurojust in relations with third countries comes from facilitation of contacts and intervention in domestic cases and acceptance of intervention from third countries addressed to national authorities. This applies to states which have signed a cooperation agreement with Eurojust and have appointed Eurojust contact points in their internal structures. In practical terms, such relations have been established in specific cases with Ukraine, Switzerland, Brazil, Croatia, Bosnia and Herzegovina and the Dominican Republic (through the IberRed network, which has signed a cooperation agreement with Eurojust).

### 6.3. Practical experience of the EJM

#### 6.3.1. Cooperation between the Polish member and the EJM

The Polish national member at Eurojust actively participates in cooperation with prosecutors - the EJM contact points. In urgent matters concerning the execution of requests for international assistance within the shortest possible time, the assistance of Eurojust facilitates the execution of the request within a time limit indicated by the requesting state (often two to three weeks from the date of submission of the request).

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The EJM contact points also *inter alia* determine, during telephone consultations with Eurojust, the best channel through which requests for international legal assistance should be directed.

The EJM contact points appreciate the intermediary services of the assistant of the national member, both in transfer of requests from other contact points and e. g. in giving access to the guidance provided by the UK desk at Eurojust on requests for assistance submitted to that Member State.

The EJM contact points located at the Ministry of Justice have no practical experience as regards cooperation with the Polish national member at Eurojust, since the activities of the national member relate mainly to the pre-trial stage of criminal proceedings (and are governed by the prosecutor's service). Those contacts are held via EJM contact points located at the Prosecutor's General Office. Moreover, Polish courts are entitled to address the national member at Eurojust directly, under paragraph 329n of the Regulation of the Minister for Justice of 23 February 2007 (as amended).

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*6.3.2. Resources allocated domestically to the EJM*

The contact points, in execution of the tasks of the EJM, mainly use technical means (computer, fax, telephone, internet, electronic mail). They also use the information on the EJM website - the most commonly used information sources are: ATLAS, list of contact points and Fiches Belges.

*6.3.3. Operational performance of EJM contact points*

On average, the prosecutors (EJM contact points) handle 15 to 45 cases/requests each year. The contact points working at the Ministry of Justice handle from 50 to 70 cases/requests a year. Most often these are motions for acceleration of execution of a request (addressed both to the requesting state and to the requested state) and for information on the law (requests from foreign authorities). Cooperation with the contact points of certain EU Member States is very efficient (e.g. the Federal Republic of Germany, Austria, Nordic countries, Czech Republic). For example, replies to inquiries sent by the contact points to Germany arrive within two to three days, sometimes on the same day, e.g. information about the progress of execution of a request). In the cases of some other states, it is difficult to talk about any cooperation at all, because the contact points do not react to any inquiries (this was formerly the case with Ireland and France, and is true currently with Spain, where there is often no reaction to inquiries submitted); finally, it should be noted that there are also cases where contact is impossible due to lack of knowledge of the language, even if that knowledge has been declared (e.g. knowledge of English in Italy).

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

The website is considered very useful and clear. The most commonly used tools include ATLAS, the list of contact points, practical information on mutual legal assistance instruments and the EAW.

One shortcoming is that the European Judicial Network website is not systematically updated. ATLAS and practical information on newly introduced legal tools, e.g. execution of financial penalties or custodial sentences, would be very useful both to the EJM contact points and to the Polish courts.

#### 6.4. Conclusions

- The EJM is appreciated in Poland. It is considered useful. However, the Polish authorities noted great differences in efficiency between contact points in some other Member States.
- The EJM is used frequently in simple bilateral cases, e.g. reminders regarding the execution of MLA requests. Eurojust and the EJM alike are also used for simple matters, e.g. finding the right address for a foreign authority.
- There are no general rules or guidelines on the allocation of cases to Eurojust or the EJM. Decisions are taken on a case-by-case basis.
- ATLAS is the tool used most frequently. It is regarded as crucial that it is regularly updated. In the past, this has not always been the case. For some Member States, information on ATLAS is completely or partially missing.
- Other tools used frequently are the list of contact points and the Fiches Belges.

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## 7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

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

Due to the fact that controlled delivery is not a judicial measure in Poland, there is no experience of controlled deliveries at the Polish desk at Eurojust .

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

The Polish model of a joint investigation team involves the possibility of the national member co-participating in the team's work as a Eurojust representative.

From 2009 to 2012 a joint Polish-Swiss team was in operation, established in the course of proceedings of the Appeal Prosecutor's Office in Wroclaw, pursuant to Article 20 of the Second Additional Protocol of 8 November 2001 to the European Convention on Legal Assistance in Criminal Matters of 1959. Since it had achieved its objectives, it was decided not to extend its operation, and the team ceased to operate on 10 November 2012. The Appeal Prosecutor in Wroclaw evaluated the Polish-Swiss JIT's contribution very positively.

Thanks to the establishment of a joint team, the following tangible procedural benefits were achieved:

- 1) improvement of the ongoing coordination and joint planning of many procedural activities in the territory of Poland, Switzerland and other countries in both investigations, including in particular: cross-examination of witnesses, detention, submission of charges, cross-examination of suspects, search and seizure of items,
- 2) joint development of tactics for individual procedural activities and directions of both investigations, leading to
- 3) joint participation of representatives of the Polish and Swiss party in the above-mentioned procedures, upon prior preparation by the initiating party of a request for legal assistance for the conduct of such activities, thanks to which each party had control of the progress of the activities it was particularly interested in,

- 4) ongoing consultations regarding the contents of the aforementioned requests for legal assistance for the purpose of more efficient and faster execution thereof,
- 5) ongoing exchange of operational information,
- 6) ongoing exchange of procedural materials, such as minutes of cross-examinations, minutes on search and seizures of items, commercial and financial documentation concerning the incriminating events,
- 7) facilitation of exchange of information on the activities of third country authorities concerning the object of investigations addressed by the actions of the team. All these benefits contributed to significant acceleration of procedural activities, enhanced their substantive value and saved duplication of effort.

Cooperation within the team also prevented unnecessary disclosure to other participants in the proceedings of information held by the parties to the agreement, where such disclosure could have obstructed proceedings.

Currently, one JIT is operating with the participation of Poland. On 26 April 2012, in Stara Leśna, the Prosecutor General of the Republic of Poland and the Prosecutor General of the Czech Republic signed an agreement (pursuant to Article 13 of the Convention on Legal Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000) on the establishment of a Polish-Czech joint investigation team, with the participation of prosecutors from the Regional Prosecutor's Office in Rzeszów and the Prosecutor's Office in Ostrava.

The text of the agreement indicates that Eurojust participates in the work of the aforementioned JIT as an observer, through national members of the Czech Republic and of the Republic of Poland, or possibly their nominees, supporting international judicial cooperation in a given criminal matter.

In preparations relating to the establishment and operation of the Polish-Czech JIT, support was given at the initial stage of its establishment by national members at Eurojust. This was advisory and consultative support, regarding in particular the determination of the details of the agreement and the basis for applying for financial support for the team.

The Polish desk at Eurojust was also involved in the work on appointing the team. The representatives of Eurojust supported PL and CZ during the preliminary evaluation and in the negotiation phase, providing them with legal advice and professional knowledge concerning operations within JIT. Since the agreement on the appointment of the Polish-Czech JIT was signed, the representatives of Eurojust have also been monitoring the operations of the team on an ongoing basis. The participation of the representatives of Eurojust in the work of the team and their involvement as participants is evaluated very positively.

In the opinion of the Regional Prosecutor in Rzeszów, cooperation in this matter is ongoing and good. To date no problems have been noted in relation to mutual contacts, exchange of information or planning and execution of activities in the matter, and the appointing of the team has contributed to the gathering of significant evidence and to more effective conduct of preliminary proceedings in the matter.

Europol representatives have not, as yet, have taken part in the activities of the team, but, according to information obtained from the Circuit Prosecutor's Office in Rzeszów, it is planned to submit a request shortly to Europol for technical, logistic and analytical facilities for the Polish-Czech JIT. In November 2012, a request was submitted for financial aid from the European Union. To date, no information has been received on whether or not funds will be granted for the operation of the JIT.

### **7.3. Conclusions**

- Since controlled deliveries fall within the competence of the law enforcement authorities in Poland, the Polish Prosecution Service has only a limited role in this domain. Most of the time Eurojust is not informed about controlled deliveries and its facilities therefore cannot be used, for example for coordination meetings and setting up urgent judicial-level contacts with other Member States. The Polish authorities are rarely involved in joint investigation teams (2 JITs so far); negotiations are currently in progress on starting a JIT with Germany. Funding from the European Union for a JIT has only been applied for in one case so far.
- The experts consider that the JIT instrument is clearly underused by the Polish authorities.

## 8. TRAINING AND AWARENESS RAISING

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

#### 8.1.1. Training

General information about the European Judicial Network and Eurojust (competences, scope of operation, etc.) is provided on the publicly accessible website of the Prosecutor General's Office. This website also contains information concerning the appointment and tasks of the ENCS.

As to raising awareness of the scope of operation of Eurojust in previous years, the following activities have been undertaken by Polish authorities:

- In February 2010, with the participation of the national member, a one-day video conference was held at the Prosecutor General's Office, addressed to prosecutors from appeal and regional prosecutor's offices.
- During the Presidency of the Republic of Poland in the Council of the European Union, from 4 to 6 October 2011, a strategic Eurojust seminar was organized in Kraków dedicated to the problems of prosecuting crimes involving trafficking in drugs. Some representatives of the Polish prosecution service and the common courts attended this seminar.
- On 19 and 20 April 2012, in Warsaw, a Eurojust marketing seminar took place, dedicated to the role of Eurojust in developing and strengthening effective judicial cooperation in criminal matters between Member States. The President of Eurojust, the Prosecutor General and the Deputy Prosecutor General participated in the seminar, along with about 60 prosecutors from investigation departments of appeal and regional prosecutor's offices handling preparatory proceedings relating to most serious crimes.
- During the official meeting of the management of the Prosecutor General's Office with prosecutors working at Departments for Organised Crime and Corruption at appeal prosecutor's offices, held on 23 and 24 October 2012 in Jadwisin, the national member delivered a presentation on methods of cooperation with Eurojust. Nearly 70 prosecutors participated in the meeting.

- For the past decade, the national member has been invited to participate in annual official meetings of prosecutors, during which he has presented the role and tasks of Eurojust, as well as the benefits of legal cooperation in criminal matters through that body.

As regards the EJM, the contact points conduct trainings of prosecutors within the units they are employed by. The role and tasks of the EJM constitute one of the topics of such training courses, which are usually held once a year.

Prosecutors and judges handling requests for international legal assistance in criminal matters (i.e. also the contact points of the EJM) also participate in training organised by the National School for Judges and Prosecutors, as part of the training of prosecutors and judges responsible for international cooperation, one of the topics of which is the "Role and tasks of Eurojust and the EJM". The last such training for prosecutors (conducted in 2 groups) was held in May 2012 in Jastrzębia Góra and included theoretical and practical issues concerning cooperation within JITs.

A language training programme for prosecutors is organised by the Secretariat of the EJM. As regards judges, the Ministry of Justice has decided to promote the role of Eurojust and the EJM in facilitating cooperation in criminal matters by organising special seminars for judges in the districts of all courts of appeal in Poland. The seminars, titled "The role and practical activity of Eurojust and the EJM in judicial cooperation in criminal matters" are open to all judges interested in participating, not only for those who deal with international cases on a daily basis. The training focuses on presentation of practical tools to allow the judges to use the assistance offered by the EJM and Eurojust in real cases.

The lecturers are practitioners as well: the judge from the Ministry of Justice; the prosecutor / national correspondent for Eurojust and the EJM national contact points (both from the Ministry of Justice and from the Prosecutor's Service). The seminars are organised by the Ministry of Justice in cooperation with the Presidents of Regional Courts, e.g. in March seminars are scheduled to take place in the regional Courts in Warsaw and Warsaw-Praga, as well as the seminar in the regional Court in Cracow.



A similar initiative has been undertaken by the Prosecutor's General Office regarding prosecutors' offices at appellate, regional and – to certain extent – district levels. This training started last March and will continue throughout 2013. Training will be given by a representative of the Polish desk in Eurojust and EJM contact points. Its purpose is to raise practitioners' awareness of the competences of Eurojust, ENCS and the EJM and of the present current legal framework, and to present practical examples of good cooperation.

*8.1.2. Other measures*

In their reply to the questionnaire the Polish desk at Eurojust sends the Eurojust annual activity report to appeal and regional prosecutor's offices and courts. The national member also provides information to the Prosecutor General on the activities of the Polish desk for each past calendar year. He may also, depending on the contents of documents produced at Eurojust, present some other information to relevant authorities (Prosecutor General, Minister for Justice, Chief Commander of the Police, etc.), and to correspondents and contact points.

Information on projects Eurojust and the EJM are working on is usually sent directly to contact points by the EJM Secretariat or through the national correspondent for the EJM. Contact points are consulted regarding new EU projects when there is a need for a Polish expertise on a given subject.

District prosecutor's offices and Divisions V and VI of regional prosecutor's offices are informed, during consultations in the area of international legal assistance in criminal matters, about possibilities for using the assistance of the contact points of the EJM.

The EJM contact points operating in a prosecution service send information concerning the tasks and principles of operation of the EJM and provide materials concerning the network to regional prosecution units.

Similarly, the EJM contact points at the Ministry of Justice inform the Polish courts about the tasks and principles of operational powers of the EJM, the possibilities for using EJM assistance and about the EJM website, and they provide materials concerning the Network to the courts. This information is provided via e-mail, by telephone and during direct contacts with the Polish judges.

The website of the EJM is the most commonly used source of information. Information is also transmitted to contact points through the national correspondent to the EJM, and to Polish courts by the Ministry of Justice. Information is also sent directly by the Secretariat of the EJM.

Polish authorities indicated, in September 2013, that 2 comprehensive handbooks on "*handling criminal matters on international relations*" have been drafted to the attention of prosecutors in 2009 and 2013. They've been made available (in Polish language) on the website of the National School for Judges and Prosecutors. The expert team had no opportunity to read their content.

## 8.2. Conclusions

- The National School for Judges and Prosecutors runs regular trainings on MLA (also currently provided to the so-called "MLA inspectors"), as well as general trainings on the application of EU law in domestic systems are also run by the School. Moreover specific (targeted) trainings on legal framework concerning Eurojust and EJM have been initiated at the beginning of 2013.
- The level of knowledge of practitioners on the mission and operation of both Eurojust and the EJM leaves room for improvement. Planned, scheduled and benchmark-measurable training seems to be needed. A dedicated intranet site offering information on legal provisions, instructions and guidelines would be helpful here.
- It might appear that the situation is not completely different in the courts, but the evaluation team have not had enough information on them. However, the evaluators have found that in general there is there seems to be at least one judge specialised in international cooperation matters in each regional court.

## 9. GENERAL OBSERVATIONS AND FINAL REMARKS

Due to the prosecutorial reform of 2009 which entered into force in 2010, the Minister for Justice no longer has authority over the activities of the Prosecution Service, which has a broad autonomy and independence from political influence. At the same time, the Minister for Justice remains competent to issue regulations. Regulations can be issued only if the statute provides a legal base. The Prosecutor General does not have the formal power to propose legislative initiatives or to issue regulations. He only can issue instructions for prosecutors.

Positive as this situation may be for the independence of the prosecutor, it risks creating a split between formal and practical implementation in the domain under evaluation : although the Minister for Justice sets the legislative framework of cooperation, the power to manage and supervise the prosecutorial work lies entirely with the Prosecutor General.

The evaluation team underlines that the internal organisation of the justice system should be left completely to the Member States. However, the team considers it important that the potential of the existing structures, regardless of their framework, should be used in the interest of combating transnational crime via Eurojust and the EJN. Therefore, while fully respecting the separation of the Ministry of Justice and the Prosecution Service in Poland, the evaluation team believes that efforts should be made to ensure more effective synergy between legislative and practical dimensions.

## 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 Poland has been able to review the Polish system.

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

The evaluation team would like to summarise their suggestions for the attention of the Polish authorities in the form of the following recommendations. Furthermore, based on the various good practices, related recommendations are also made to the EU and its institutions and agencies - and to other Member States.

### 10.1. Recommendations to Poland

Poland should:

1. Ensure effective implementation of Article 13 of the Eurojust Decision including the planned introduction in Poland and use of the Eurojust template for the direct transmission of information under Article 13, in order to facilitate the process; consider whether the fact that information related to Article 13 has to be transmitted through every level of the hierarchy of the Prosecution Service prevents timely transmission and whether measures could be taken towards a faster procedure (cf. 3.5.4, 4.3 and 8.2);
2. Accelerate the setting up of a safe connection to the CMS in order to improve the exchange of information between Eurojust and Poland both ways (cf. 3.5.4);

3. Examine how the existing rather strict division of competences could move towards a more effective and cooperative structure in order to achieve better results in combating organised and cross-border crime through EJM and Eurojust. Consideration could be given to how better to combine the expertise of central authorities, judges, prosecutors and police services. The Ministry of Justice could play a significant role here by issuing guidelines/recommendations for practitioners concerning a framework of action, without interfering in individual proceedings (cf. 4.3, 5.7 and 8.2);
4. Consider setting up intranet solutions for the dissemination of information on Eurojust and the EJM to practitioners. The advantages of intranet over individual letters and emails are that the information is permanently accessible in one place and that it is quick and efficient; a dedicated site containing all applicable instruments, acts, instructions and guidelines notably describing the functions of Eurojust and EJM and situations where contact could be made with either Eurojust or EJM revised in 2013, would be very useful. (cf. 6.4 and 8.2);
5. Reconsider the current legislation concerning controlled delivery, whereby the police are at present the competent body; bear in mind that in many Member States controlled delivery is a judicial instrument; controlled delivery is in many cases a cross-border situation; this means that coordination between national authorities of two or more countries is indispensable, and the role of Eurojust is therefore also very important because quite often the situation is very urgent; practice shows that judicial authorities in one country are quite often not prepared to cooperate with police authorities (cf. 3.5.2, 4.3 and 7.3);
6. Consider giving a Polish national member, to the largest possible extent, additional powers provided for by the consolidated Eurojust Decision so as to enable Eurojust to fulfill its tasks and use its full potential in the fight against cross border crime, as well as direct access to all the Polish criminal record systems including SIS, to enable him/her to fulfil his tasks in the most efficient way (cf. 3.5.2);

7. Make more frequent use of the instrument of coordination meetings facilitated by Eurojust; at the moment the level of initiation of such meetings by Poland is low (cf. 3.5.2, 5.7);
8. Evaluate the practical functionality of the ENCS as it was established, notably the role of the deputy national member/national correspondent for Eurojust (3.5.3);
9. Further promote contacts of both prosecutors and judges with Eurojust in order to strengthen the relationship between the relevant national actors and the Eurojust national desk; notably, the recent incorporation of an assistant to the national member would be a suitable moment to market the OCC tool to prosecutors and judges (cf. 4.3 and 8.2);
10. Raise awareness among police officers about the possibilities of assistance offered by Eurojust in their field of competence (cf. 3.5, 4.3 and 5.7);
11. Raise awareness of the JIT instrument among practitioners with a view to making more use of JITs whenever appropriate in a case and explore the possibilities for JIT funding (cf. 5.7, 7.3, and 8.2);
12. Continue and enhance the supply of regular training on international cooperation in general and on Eurojust and the EJM in particular, for prosecutors, judges, police officers and personnel from the Ministry of Justice throughout their career (cf. 6.4 and 8.2);
13. Consider the possibility of formalising and enhancing the role of judges in charge of mutual legal assistance at regional court level in disseminating the relevant information in this field and making support available at local level (cf. 3.5.5, 8.2);

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

14. The EJM contact points should be carefully selected; Member States should ensure that the designated contact points have the necessary qualifications and have enough time to carry out their tasks as efficiently as possible (cf.3.5.5);
15. The Member States should ensure that the Atlases on the EJM website always contain updated information and that regular updates are closely monitored (cf. 6.4).
16. The European Union should ensure that funding of JIT projects continues through Eurojust budget, given the leading role of Eurojust in the field as well as its expertise and experience built so far (cf. 7.3);

**10.3. Recommendations to Eurojust/the EJM**

17. Eurojust via the EJM secretariat should closely monitor regular updates of the Atlases on the EJM website (cf. 6.4).

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

**6<sup>th</sup> Round of Mutual Evaluations - 8-12 April 2013, Poland**

**Monday 8th April 2013**

15.00 – 17.00 Meeting at the Ministry of Justice

**Tuesday 9th April 2013**

9.00 - 12.30 Meeting at the Prosecutor General's Office

14.30 - 15.30 Meeting at the Regional Prosecutor's Office

**Wednesday 10th April 2013**

12.00 – 13.00 Meeting at the Regional Prosecutor's Office in Cracow

14.30 - 15.30 Meeting at the Regional Court in Cracow

**Thursday 11th April 2013**

10.00 - 11.00 Meeting at the Regional Court in Warsaw

12.00 - 13.30 Meeting at the National Police HQ

15.15 - 16.30 Meeting at the National Police HQ

19.00 - 21.00 Official dinner

**Friday 12th April 2013**

10.00 - 11.30 Concluding meeting at the Ministry of Justice

## ANNEX B: PERSONS INTERVIEWED/MET

## Meetings 8 April 2013

*Venue:* Ministry of Justice - Warsaw

Person interviewed/met	Organisation represented
Tomasz Darkowski	Ministry of Justice, Department for Criminal Law
dr Tomasz Ostropolski,	Ministry of Justice, Department for Criminal Law
judge Katarzyna Naszczyńska,	Ministry of Justice, Department for Criminal Law
prosecutor Tomasz Chalański,	Ministry of Justice, Department for International Cooperation, the EJN contact point.
Miłosz Augustyniak	Ministry of Justice, Department for International Cooperation, the EJN contact point.
prosecutor dr Beata Ziorkiewicz	Department for International Cooperation, Prosecutor General's Office
counsellor Ilona Kieres-Salamoński	CBI , National Police HQ

## Meetings 9 April 2013

*Venue:* Prosecutor General's Office - Warsaw

<b>Person interviewed/met</b>	<b>Organisation represented</b>
prosecutor Zbigniew GÓRSZCZYK	Director of the Department for Organized Crime and Corruption Prosecutor General's Office
prosecutor Jacek BILEWICZ	national correspondent for the European Judicial Network and contact point for EJM, Prosecutor General's Office
prosecutor Mariusz SKOWROŃSKI	Eurojust national member for Poland
prosecutor Monika KOŁODZIEJ	contact point of the EJM, Regional Prosecutor's Office, Warsaw
prosecutor Małgorzata KOZŁOWSKA	national contact point of the European network of contact points concerning persons responsible for homicide, crimes against humanity and war crimes, THB expert, Prosecutor General's Office
prosecutor Piotr RADOMSKI	national contact point of joint investigation teams, Prosecutor General's Office
prosecutor Tomasz LEJMAN	Plenipotentiary of the Prosecutor General for co-operation with the National Asset Recovery Office, Prosecutor General's Office
prosecutor Grażyna STRONIKOWSKA	Deputy of the national member in Eurojust, national correspondent for Eurojust, contact point for OLAF, Prosecutor General's Office
Prosecutor dr Beata Ziorkiewicz	Department for International Cooperation, Prosecutor General's Office

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Venue: Regional Prosecutor's Office - Warsaw

<b>Person interviewed/met</b>	<b>Organisation represented</b>
prosecutor Ryszard Rogatko	Chief of the Regional Prosecutor's Office - Warsaw
prosecutor Małgorzata Adamajtys	Deputy Chief of the Regional Prosecutor's Office - Warsaw
prosecutor Radosław Wasilewski	Regional Prosecutor's Office - Warsaw
prosecutor Monika Lewandowska	Regional Prosecutor's Office - Warsaw
prosecutor Katarzyna Jakacka	Regional Prosecutor's Office - Warsaw
prosecutor Dawid Hieropolitański	Regional Prosecutor's Office - Warsaw
prosecutor Anna Zalewska	Regional Prosecutor's Office – Warsaw, Head of International Cooperation Unit
prosecutor Agnieszka Romańczuk	Regional Prosecutor's Office – Warsaw – Praga, the EJM contact point

**Meetings 10 April 2013**

*Venue:* Regional Prosecutor's Office - Cracow

<b>Person interviewed/met</b>	<b>Organisation represented</b>
prosecutor Wiesław Wolnik	The Deputy Chief of the Regional Prosecutor's Office - Cracow
prosecutor Dorota Chechelska	The Regional Prosecutor's Office - Cracow
prosecutor Danuta Bieniasz	The Regional Prosecutor's Office - Cracow
prosecutor Grażyna Mirek	The Regional Prosecutor's Office - Nowy Sącz; the EJN contact point
prosecutor Dorota Tuchowska	The Regional Prosecutor's Office - Cracow
prosecutor Piotr Kosmaty	The Appellate Prosecutor's Office - Cracow
prosecutor Tomasz Dudek	The Regional Prosecutor's Office - Cracow
prosecutor Paweł Iciek,	The Regional Prosecutor's Office - Cracow

*Venue:* Regional Court - Cracow

<b>Person interviewed/met</b>	<b>Organisation represented</b>
judge Dariusz Mazur	The Regional Court – Cracow, Head of the Criminal Law Division
judge dr Aleksandra Sołtysińska – Łaszczycza	The Regional Court - Cracow

Meetings 11 April 2013

Venue: Regional Court - Warsaw

Person interviewed/met	Organisation represented
judge Beata Najjar	The Vice President of the Regional Court - Warsaw
judge Katarzyna Capałowska	Head of the International Cooperation Unit, The Regional Court - Warsaw
judge Anna Szymacha-Zwolińska	The Regional Court - Warsaw
judge Joanna Hut	The Regional Court - Warsaw
judge Anna Bator-Ciesielska	The Regional Court - Warsaw
judge Piotr Bojarczuk	The Regional Court - Warsaw

Venue: National Police Headquarters – Warsaw

Person interviewed / met	Organisation represented
judge Katarzyna Naszczyńska	Ministry of Justice, Department for Criminal Law
prosecutor Grażyna Stronikowska	Deputy of the national member in Eurojust, national correspondent for Eurojust, contact point for OLAF, Prosecutor General's Office
prosecutor Radomski Piotr	National contact point of joint investigation teams, Prosecutor General's Office
police officer Artur Klejn	Drug Division, Central Bureau of Investigation, National Police Headquarters – Warsaw

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<b>Person interviewed / met</b>	<b>Organisation represented</b>
police officer Marcin Karnaś	International Operations Division, Central Bureau of Investigation, National Police Headquarters – Warsaw
police officer Ewa Michalska	Criminal Division, Central Bureau of Investigation, National Police Headquarters – Warsaw
police officer Jacek Tomaszewski	Central Bureau of Investigation, National Police Headquarters – Warsaw
forensic officer Jakub Mondzelewski	Central Forensic Laboratory, Police HQ
police officer Joanna Mierzwińska	National Police Headquarters – Warsaw SIRENE
police officer Igor Parfieniuk	Director of the Central Bureau of Investigation, National Police Headquarters – Warsaw
police officer Marta Łukasiewicz	Europol Focal Point , International Cooperation Bureau, National Police Headquarters – Warsaw
police officer Joanna Pławecka	Anti- Corruption Division , Criminal Bureau , National Police Headquarters – Warsaw
police officer Rafał Łysakowski	Director of the International Cooperation Bureau , National Police Headquarters – Warsaw
police officer Rafał Wojtowicz	Central Bureau of Investigation , CBI Regional Division, Łódź
police officer Tomasz Orzechowski	Central Bureau of Investigation , CBI Regional Division, Łódź
Piotr Podsiadło	Ministry of Interior
police officer Ilona Kieres-Salamoński	Counsellor of the Central Bureau of Investigation, National Police Headquarters – Warsaw



## Meetings 12 April 2013

*Venue:* Ministry of Justice – Warsaw

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Tomasz Darkowski	Ministry of Justice, Department for Criminal Law
dr Tomasz Ostropolski,	Ministry of Justice, Department for Criminal Law
judge Katarzyna Naszczyńska,	Ministry of Justice, Department for Criminal Law
prosecutor Tomasz Chałański,	Ministry of Justice, Department for International Cooperation, the EJM contact point.
prosecutor Zbigniew GÓRSZCZYK	Director of the Department for Organized Crime and Corruption Prosecutor General's Office
prosecutor Grażyna STRONIKOWSKA	Deputy of the national member in Eurojust, national correspondent for Eurojust, contact point for OLAF, Prosecutor General's Office
prosecutor dr Beata Ziorkiewicz	Department for International Cooperation, Prosecutor General's Office
counsellor Ilona Kieres-Salamoński	Central Bureau of Investigation , National Police HQ

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

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	POLISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
EAW	-/-	European Arrest Warrant
EJN	-/-	European Judicial Network
CMS	-/-	Case Management System (Eurojust)
ENCS	-/-	Eurojust National Coordination System
COPEN	-/-	Working Party on Cooperation in Criminal Matters
GENVAL	-/-	Working Party on General Affairs, including Evaluations
OCC	-/-	On Call Coordination system
SIRENE	-/-	Supplementary Information Request at the National Entry
SIS	-/-	Schengen Information System
JITs	-/-	Joint Investigation Teams