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THE EUROPEAN UNION**

Brussels, 26 September 2013

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GENVAL 41

Evaluation report on the sixth round of mutual evaluations:

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

Report on Austria

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1. EXECUTIVE SUMMARY

Although Austria has implemented Council Decision 2002/187/JHA by the Federal Law on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union - EU-JZG*) in May 2004, the legislative process to implement Council Decision 2009/426/JHA was still not finalised at the time of the on-site visit¹.

The Joint Action 98/428/JHA on the creation of a European Judicial Network was also implemented by the Federal Law on Judicial Cooperation in Criminal Matters with Member States of the European Union (*EU-JZG*) (Sections 69, 79 *EU-JZG*) the provisions of which have remained unchanged since their entry into force in May 2004.

Eurojust and in particular the Austrian desk at Eurojust seem to be generally very well appreciated by the Austrian judicial authorities. Those judicial authorities that are heavily involved in international cooperation are well acquainted with Eurojust. The EJM and its services seem to be less generally known; its use diverges from one authority to another.

Eurojust is in particular generally appreciated for its role in solving cases and speeding-up cooperation with other Member States. Moreover the use of coordination meetings at Eurojust is highly appreciated by the authorities that have made use of it, such as the special prosecution office for economic and corruption offences.

Whereas the awareness-raising efforts by Eurojust seem to be sufficient, there appears to be a lack of knowledge of the role of the European Judicial Network (EJM).

¹ The amendments of the federal law cited above will enter into force on 1 August 2013.

2. INTRODUCTION

Following the adoption of the Joint Action 97/827/JHA of 5 December 1997², a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime has been established.

In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to the practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime³, as amended by Decisions 2003/659/JHA⁴ and 2009/426/JHA⁵ and of the Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁶ repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters⁷.

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust and European Judicial Network (EJN) only but rather on the operational aspects in the Member States. This is taken into account to encompass, apart from cooperation with prosecution services, also, for instance, how police authorities cooperate with Eurojust National members, how the national Units of Europol will cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities.

² Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime, OJ L 344, 15.12.1997, pp. 7 - 9.

³ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63, 2.3.2002, pp. 1-13.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130-134.

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 provide useful input also to Member States that may not have implemented all aspects of the new Decision.

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

The order of visits to the Member States was adopted by GENVAL on 31 October 2011. Austria was the ninth 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 on 15 July 2011 to delegations made by the Chairman of GENVAL.

The evaluation teams will consist of three national experts, supported by two staff from the General Secretariat 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 this evaluation were Ms Ieva Trunciené (Lithuania - Prosecutor at the Prosecutor General's Office, Department of Criminal Prosecution), Mr Joachim Ettenhofer (Germany - Senior Prosecutor, Office of the Prosecutor General, Munich) and Ms Beata Hlawacz (Poland - Deputy Director, Office of the Prosecutor General, Department of International Cooperation). Four observers were also present: Ms Alexandra Jour-Schroeder, (EU Commission, DG Justice), Mr Dimitar Hadzhiyski (Eurojust, seconded national expert and assistant to the Bulgarian national member at Eurojust), Ms Stephanie Bovensiepen (Eurojust, seconded national expert) and Mr Bart de Buck (Europol, Legal Service), together with Mr Guy Stessens and Mr Peter Nath from the General Secretariat of the Council.

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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 that took place in Austria between 9 and 13 December 2012, and on Austria'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

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

In Austria, Council Decision 2002/187/JHA of 28 February 2002 was implemented by the Federal Law on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union - EU-JZG*), which entered into force on 1 May 2004. This law will be amended to implement Council Decision 2009/426/JHA of 16 December 2008 (from now on referred to as the “new” Eurojust Decision).

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

The Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network was also implemented by the Federal Law on Judicial Cooperation in Criminal Matters with Member States of the European Union (*EU-JZG*) (Sections 69, 79 *EU-JZG*). The provisions have remained unchanged since their entry into force on 1 May 2004.

3.2. Implementation of the Eurojust National Coordination System

The bill presently under preparation envisages implementing Article 12 of the new Eurojust Decision in the manner provided for therein. At this stage of discussion there is no intention to designate other authorities than those referred to in Article 12 within the Eurojust National Coordination System (ENCS).

3.3. National desk at Eurojust

3.3.1. Organisation

Within the national desk at Eurojust the following persons are currently appointed for Austria:

- one national member,
- one deputy to the national member,
- one assistant to the national member (with 80% of the normal working hours),
- one secretary, and
- one public prosecutor (three-months European Judicial Training Network (EJTN) internship).

3.3.2. Selection and appointment

Regarding the appointment of the Austrian national member at Eurojust or his/her deputy, the entire selection and secondment procedure is under the responsibility of Department Pr1 (in cooperation with Department IV 4) of the Federal Ministry of Justice.

The selection of candidates by the Ministry of Justice is performed by way of an in-house search for interested persons, and according to the administrative practice of the Federal Ministry of Justice the factual selection decision is based on the following job profile:

Mandatory criteria:

- in line with Article 2(1) of the Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust the function of a public prosecutor or judge
- a successful professional career as court judge, public prosecutor in a public prosecution service or in the Federal Ministry of Justice (preferably at the Department for International Criminal Law)
- verbal and written command of at least one further common official language of the European Union on a negotiation level;
- excellent professional knowledge in the areas of formal and material criminal law (also on an international level)
- good knowledge of European and International Law

- ability to work in an efficient and target-oriented manner; ability to cope with heavy workload
- social skills above average; high capacity for teamwork; skilful, objective demeanour
- flexibility and readiness to be exceptionally mobile with respect to official trips often at short notice and at times in high frequency.

Optional criteria (not mandatory at the start of the secondment, yet desirable):

- Knowledge of divisional responsibilities and organisational structure of the Federal Ministry of Justice; ideally previous work practice there
- at least good command of a second or several foreign languages
- several years of successful work as judge or public prosecutor
- qualified previous experience (e.g. as national expert) or at least internships with institutions of the European Communities or another intergovernmental institution. Suitability of interested persons is being assessed on the basis of available records (personnel files, performance appraisals, if need be also reviews and inspection reports or comments by the head of department) and in personal interviews in an assessment centre.

Subsequently, the secondment to Eurojust is effected by the Federal Ministry of Justice. The representatives of the Ministry of Justice at Eurojust are professionally supervised by Department IV 4 of the Federal Ministry of Justice.

3.3.3. Powers granted to the national member

3.3.3.1. General powers

At the time of the on-site visit the new Eurojust Decision was in the process of being implemented. While it is intended to implement the Decision regarding the powers granted to the national member, there are no plans to necessarily go beyond it.

The national member should be granted powers corresponding to those of a public prosecutor. Powers exclusively granted to a judge according to the Austrian law cannot be conferred to the national member (Article 9e [1] b i)).

3.3.3.2. Access to national databases

The Austrian national desk has access to the following national databases:

- Automation of Court Procedures:
Case Management System designed to support criminal procedures (used by judges and prosecutors) [except cases being dealt with by the Central Prosecution Service for the fight against economic crimes and corruption]
- EKIS (personal data entered by the police for the purposes of tracing persons)
- Criminal records
- IVV (data concerning prisoners' administration)
- ZMR (the central register of residents)
- Land Register:
Automation supported Land Register (maintained by courts) and Cadastre (maintained by land surveying offices)
- Commercial Register:
Data of all companies in Austria that require registration
- Legal Databases:
All legal databases accessible via the Justice Intranet

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

The official at the Austrian desk responsible for a specific case (national member, deputy or assistant) shall decide which other national desks should be granted access. Access will be restricted to the national desks involved in the case on a Eurojust level (“need to know” principle).

There are no respective written guidelines.

At the time this report was drafted, only the national desk of Eurojust has access to the national part in the Case Management System (CMS). It is envisaged that the national correspondent for Eurojust and the national correspondent for the EJM will have a read only access to the CMS. Further the appropriate contact point (CP) of the EJM may get access to it if they are members of the ENCS and they wish to have access to it.

3.4. EJM contact points

3.4.1. Selection and appointment

Contact points are established at a public prosecutor's office based at the seat of a senior public prosecutor's office or at a court of first instance based at the seat of a Regional Court. In Austria there are four districts of Higher Regional Courts of Appeal: Vienna, Graz, Linz and Innsbruck. In addition two contact points are appointed at the Federal Ministry of Justice (within the Department of International Criminal Law) who have been assigned the role of national correspondent and national tool correspondent respectively.

The Federal Ministry of Justice announces the national contact points to the EJM after the Office of Senior Public Prosecutors at the Higher Regional Court and the Presidents of the Higher Regional Courts of Appeal have identified qualified prosecutors or judges willing to serve as correspondents (§ 70 *EU-JZG*). Relevant criteria for choosing a person are expertise and practical experience especially in the field of judicial assistance, foreign language competence and possibly also participation in other international activities or networks.

3.4.2. Practical operation of the EJM contact points in Austria

3.4.2.1. Vienna Higher Regional Criminal Court District

The EJM contact point for the Vienna Higher Regional Criminal Court district has been established with the Public Prosecutor's Office Vienna. This office is contact point both for incoming requests from authorities abroad, as well as for enquiries and requests from judges and prosecutors within the district. Enquiries from EJM contact points abroad are mostly communicated by e-mail and are being responded to in the same manner as fast as possible, or forwarded to the competent official, who in turn responds to the national contact point, so that EJM cases are in principle directly handled and answered by the contact point. Telephone communication between EJM contact points are the exception. Outgoing cases, i.e. requests submitted to foreign countries, are submitted to the national contact point both by e-mail and by telephone, which in turn communicates directly with the respective contact points abroad.

Finally, there is also a close and excellent relationship between the EJM contact point and Eurojust, so that the necessary information is being exchanged in an expeditious and informal manner by e-mail or by telephone.

3.4.2.2. Graz Higher Regional Criminal Court District

The EJM contact point for the Graz Higher Regional Criminal Court district belongs to the Graz Public Prosecutor's Office. In the framework of its activity as EJM contact point, a reference point for members of authorities and other judicial bodies in the district is first established when legal or practical problems related to cross-border criminal cases have occurred. The major activity in this regard will be the handling of requests for legal assistance, determining the competent authority abroad, help with formulating letters rogatory and establishing and supervising joint investigation teams (at the time of the evaluation two "JITs" had been established with the Public Prosecutor's Office Graz). Additionally, a unified reference point for "incoming" requests from foreign authorities had been established, which is also related to the fact that there is responsibility for incoming letters rogatory.

The major activity is also the handling of requests for legal assistance or transmitting without delay particularly urgent requests, which fall into the scope of other authorities, to the competent bodies. In addition, assistance is provided to authorities abroad, ranging from executing European Arrest Warrants to information about national law (mainly issues of procedural law). Finally, the contact point maintains the relationship to Eurojust via the national desk.

3.4.2.3. Linz Higher Regional Court District

The EJM contact point in the Linz Higher Regional Court District is available to domestic and foreign authorities through telephone, e-mail, fax or personal contacts. The majority of enquiries relate to specific cases of legal assistance.

3.4.2.4. Innsbruck Higher Regional Court District

In practice, foreign authorities get in touch with the contact point at the Innsbruck Higher Regional Court mainly by e-mail. Enquiries from the district are mostly made in person or by telephone.

The CP is frequently used by public prosecutors, sometimes also by judges. Responses are delivered mostly in the same manner. As far as possible, the enquiry is answered immediately, or the contact with the desired counterpart is established directly. Sometimes research or further enquiries are necessary and the response is supplied subsequently. Contacts are very informal and straightforward.

3.4.3. *Updating of the EJM website*

The EJM website is being updated by the national correspondent and the tool correspondent of the EJM, both working at the Federal Ministry of Justice. The *Fiches belges* were said to require an update, which is envisaged in the near future as a joint project of all Austrian contact points (CP). The data in the Judicial Atlas is being updated regularly but the technical handling seems to be burdensome and characterised by frequent changes of the back office structure provided by the EJM Secretariat. Whenever a foreign contact point reports erroneous data concerning the Austrian part of the website, the national tool correspondent or the national correspondent are trying to correct it immediately.

3.5. **Conclusions**

3.5.1. *Legislation*

- The Council Decision 2002/187/JHA on Eurojust and the Joint Action 98/428/JHA on the EJM were implemented by Austria through the adoption of the Federal Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union (*EU-JZG*) which entered into force on 1 May 2004. At the time of the on-site visit Council Decisions 2008/976/JHA on the EJM and 2009/426/JHA on the strengthening of Eurojust had not yet been implemented by Austria, and the Ministry of Justice was in the process of working on a draft proposal to Parliament. It is planned to adopt a new law on Eurojust during the course of 2013. The draft was not available to the evaluation team at the time this report was prepared and as Council Decision 2009/426/JHA had not been implemented in the national legislation so far, its operational effectiveness could not be analysed at this stage.

- The Austrian authorities have announced that the implementing law would comprise a number of Framework Decisions that had not been referred to in the *EU-JZG*.
- Although it was maintained by the Austrian authorities that despite the national implementation lagging behind European legislation this was not necessarily hampering the actual application of the rules under the new Eurojust Decision; the experts nevertheless deemed it appropriate to recommend that the implementation process should be accelerated.
- In this regard the team also saw it fit to recommend reviewing whether all Articles of Council Decision 2002/187/JHA on Eurojust, including Article 19 on the right of access to personal data, and Council Decision 2008/976/JHA on the EJN, have been fully implemented.

3.5.2. *Implementation of the Eurojust National Coordination System*

- The Eurojust National Coordination System (ENCS) has not yet been established in Austria. The representatives of the Federal Ministry of Justice stated that, at this stage of the discussion, it was not intended to designate other authorities than those referred to in Article 12 within the ENCS. In view of the present state of affairs, the evaluation team deemed it appropriate to recommend that the necessary steps be taken to establish the ENCS in line with Article 12 and once this has been done, to organise meetings of the ENCS with a view to share information and exchange best practices.⁸

3.5.3. *The Austrian national desk*

- The regular place of work of the national member is at the seat of Eurojust in The Hague. The term of office of the national member is four years and can be renewed.
- One deputy with the regular place of work in The Hague is also appointed to the national desk.
- According to Section 64(1) of the *EU-JZG*, the national member and deputy shall be acting prosecutors or judges at the time of their delegation to Eurojust.

⁸ The amendments of the federal law will enter into force on 1 August 2013; Article 12 will be implemented by section 68a.

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- Furthermore, an assistant is employed at the national desk in The Hague under a part-time arrangement (80%). The assistant, a lawyer, is not an official of the Republic of Austria but works under a local contract concluded with the Austrian Ministry of Foreign Affairs. The duration of this contract is currently three years and can be renewed.
- The national desk also has a secretary, who is employed by Eurojust directly.
- Each year, a trainee from the EJTN is sent to the national desk to assist with the case work. However, there are no candidates for 2013 so far.
- All the interviews showed that there are good relations between the Austrian national desk and the colleagues working in Austria. Eurojust is well known and often used by prosecutors, judges and also police. And its work proved to be successful. The Austrian desk has always been able to meet domestic requests swiftly and lend their assistance to their colleagues in Austria in a very speedy manner. The help Eurojust is providing in organising coordination meetings and the setting up of joint investigation teams (JITs) has proven to be invaluable. Such appreciation however, has obviously resulted in a very high workload at the Austrian national desk.
- Although the national authorities have recognised that in view of the heavy caseload experienced by the Austrian desk, the secondment of a national expert (SNE) would be beneficial, none has currently been assigned to the desk. After the evaluation, the evaluation team was informed that notwithstanding a general shortage of personnel among public prosecutors in Austria in the wake of the 2008 judicial reform, there are plans to second a half-time national expert in the second half of 2013.
- Although the expert team understood that at present budgetary restraints existed with regard to employing staff at Eurojust, they were of the opinion that the high workload, generated by the number of cases and making the Austrian desk one of the busiest at Eurojust, would certainly merit a revision of the present staff complement.
- One possibility to alleviate such capacity bottlenecks could for instance be achieved by employing short-term SNEs who should also be perceived as an investment into the future and for multiplying the functioning of Eurojust and its added value in judicial co-operation among their colleagues in Austria after their return.

- The national member and deputy are selected by way of an in-house search within the Austrian authorities. The Ministry of Justice selects the most suitable persons taking into account the personnel files and personal interviews of suitable candidates.
- The selection is based on a job profile deemed appropriate by the Ministry of Justice. Inter alia, the following criteria are taken into account: successful professional career within the Austrian authorities, language skills, social skills, possible previous experience abroad.
- The Ministry of Justice professionally supervises the national member and the deputy. According to Section 64(2) *EU-JZG*, the national member and deputy are subject to the orders of the Ministry of Justice and the Senior Public Prosecutor's Office. The assistant's obligations are laid down in the work contract.
- The national desk presents written reports on a regular basis (every 3 months) to the Ministry of Justice containing information on new developments at Eurojust, coordination meetings and statistics on case activities. In addition a newsletter is published by the national desk through which all Austrian prosecutors and judges are informed about recent events at Eurojust; furthermore the Austrian desk and its work are introduced. The newsletter is published in the intranet of the Austrian judicial authorities.
- At present, the national member has not been granted all powers possible under the 2009 Eurojust Decision. According to Section 64 of the *EU-JZG*, the national member has the right to obtain, by way of direct exchanges with Austrian authorities, the information that may contribute towards fulfilling the duties of Eurojust, as well as to exchange such information with institutions of the European Union, international organisations and authorities conducting criminal prosecutions in the Member States. According to the information received during the on-site visit, the law project for implementing the new Eurojust Decision presently only foresees granting the national member the ordinary powers pursuant to Article 9b of the new Eurojust Decision. In practice, the national member never issues formal requests under Article 6 or 7 of the Eurojust Decision, but works via an on-going dialogue with the national authorities. If a request from the national member to a national authority is not complied with, this has to be reported to the Ministry of Justice according to Section 68 of the *EU-JZG*. The reasons of the refusal shall be given to Eurojust. It has been maintained that no problems have been encountered in practice so far.²

⁹ The amendments of the federal law implementing Article 9a-e will enter into force on 1 August 2013 (section 64(4)-(6)).

- As regards the powers of the national member for Austria at Eurojust, they are not clearly enough defined in legal acts. In the opinion of the Federal Ministry of Justice, the national member should be granted powers corresponding to those of a public prosecutor. The Austrian side stated that based on previous experience, it was not considered necessary granting the Austrian national member the power to authorise controlled deliveries. It was explained that communication via police channels was preferred that did not necessitate an involvement of the national member, as in a few cases via the police channels different and more current information was transmitted than via Eurojust.
- Notwithstanding the information that has been received by the evaluation team on the powers of the national member and the reasoning behind it, they would nevertheless recommend that it should be considered to grant full powers to the national member as a competent authority in accordance with the Eurojust Decision.
- Austria should be commended for the IT development within its justice sector. Other Member States should be encouraged to consider setting up a judicial information system following the model of Austria and making use of the experience gained by this country.
- The national member has direct access to the national databases accessible to all Austrian prosecutors including the Automation of Court Procedures (the national case management system containing basic data on all cases), the land register, the commercial register and several legal databases. The Austrian authorities provide her with a secure connection to the Austrian prosecution intranet. Therefore the experts deemed it appropriate to recommend considering Austria as an example of “best practice”, granting the national member direct access to all the relevant national databases.
- There is no direct access from the national desk in The Hague to the data from the Central Prosecution Service on Economic Crime and Corruption as this is granted exclusively to the members of this office. Although the evaluation team understood the reasons for this particularly restricted access policy it would recommend re-assessing whether the cooperation between the specialised prosecution office and the Austrian national desk could benefit from granting the national member access to this database.

- The national member has no direct access to the police databases, but can ask for information contained therein according to Section 64(3) *EU-JZG*.
- The Austrian authorities can contact the national desk directly, via phone or e-mail. In practice prosecutors and judges regularly do this. Police officers normally address their requests to Europol.

3.5.4. Implementation of Article 13

- At the time of the on-site visit Article 13 of the Eurojust Decision had not been implemented. A complete implementation is foreseen by 1 August 2013 according to the draft law under preparation¹⁰.
- The Austrian authorities have informed the expert team that at the time of the on-site visit no information exchange according to Article 13 – except for one notification on the setting up of a JIT - had taken place and that it was not quite clear yet what organisational and procedural requirements the application would bring in practice. It was however, maintained that once the new legislation had been adopted and supplemented by decrees it would be duly applied.
- During the visit it became apparent that prosecutors are not aware that they might be obliged to proactively transmit information to Eurojust in the future.
- However, pursuant to Section 61(1) *EU-JZG*, prosecutors already have to inform their national member at Eurojust about any proposal from Austrian prosecutors to form a JIT.
- In this regard, the evaluation team saw benefits in recommending to raise the awareness among the prosecution offices and courts about the obligation under Article 13 of the new Eurojust Decision to send information to Eurojust and ensure its proper application, e.g. by issuing practical guidelines. After the evaluation, the evaluation team was informed that such an obligation would be laid down in law under section 67 of the draft bill implementing the new Eurojust decision and would extend not just to prosecution offices, but also to courts.

¹⁰ The amendments of the federal law will in fact enter into force on 1 August 2013 (section 67 implementing Article 13).

3.5.5. *Connection to the Case Management System*

- At the time of the on-site visit, there was no connection from the Austrian systems to the Case Management System (CMS). Furthermore, there were no plans to establish such a connection in the near future. The team was informed however, that in the event of a connection being established, it will only provide read access.

3.5.6. *Eurojust Liaison Magistrates*

- The Austrian authorities have welcomed the possibility of posting Eurojust Liaison Magistrates to third states and have expressed that liaison magistrates would be particularly appreciated in the Western Balkan countries (Serbia in particular), Turkey, Russian Federation, United States of America Western and the Netherlands Antilles.
- The experts would second this view and therefore recommend that Eurojust should consider posting Eurojust liaison magistrates to third countries according to the needs expressed by Member States.

3.5.7. *EJN contact points*

- The six contact points in Austria were selected from sectors with different roles in cooperation in criminal matters in order to ensure contact points at every stage of criminal proceedings.
- Contact points are located at three district public prosecution offices in Vienna, Graz and Innsbruck. The contact point in Linz is a judge. After a reform of the Austrian judicial system in 2008, when the role of the judges in the investigation phase was reduced from an active part in the investigation to a mere legal review of coercive measures, it was decided to preferably appoint prosecutors as contact points. Two contact points, acting as national correspondent and national tool correspondent are appointed at the Ministry of Justice.
- It is currently under consideration whether all EJN contact points should become members of the ENCS.
- The plenary meetings of the EJN are regarded as essential to establish personal contacts between the contact points from all Member States.

- Austrian EJM contact points also take part in regional or national meetings in other Member States in order to develop stronger personal contacts, and the evaluation team deemed the regular EJM regional meetings organised by the Austrian EJM contact points a good example how to foster good relationships with contact points of other countries.
- The Austrian authorities have suggested that it would be desirable to maintain a greater consistency regarding foreign EJM contact points as frequent changes have an adverse effect on establishing stable personal contacts difficult.
- The Austrian authorities stressed the importance of choosing the contact points according to their language skills (at least English or French) and availability.

3.5.8. *EJM tools*

- There was broad consensus among practitioners that the EJM's Judicial Atlas was the most frequently tool used by prosecutors.
- It was however, regarded as crucial that the EJM Atlas is kept up-to-date by Member States which did not always appear to be the case.
- Furthermore, the Austrian authorities criticised that the Atlas language setting, when set to "German", was sometimes switching back to English or was not available at all due to technical difficulties.

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4. EXCHANGE OF INFORMATION

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

4.1.1. Databases relevant for the information exchange with Eurojust

Relevant in practice seems above all access to the Automation of Court Procedures. This system is used by all courts and public prosecutors and contains, in addition to data on the persons involved, also police reports (unless the data volume is too big) and notes on investigative measures performed (house searches, opening of accounts, etc). The following databases are also relevant in this context are: EKIS (personal data entered by the police for the purposes of tracing persons), criminal records, IVV (data concerning prisoners' administration), ZMR (the central register of residents) and the (public) company register. The national desk currently has access to all the databases mentioned in point 3.3.3.2..

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

The new Eurojust Decision is currently being implemented. Presently it is intended to confer the obligation to exchange information pursuant to Art. 13 (in particular paragraphs 5 to 7) to the public prosecutor, who will provide the information (by using the "template" in German) directly to the national member; notification of the Federal Ministry of Justice as national correspondent for Eurojust shall also be ensured.

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

By decree dated 21 August 2006, the Federal Ministry of Justice, in implementation of the Council Decision on the exchange of information and cooperation concerning terrorist offences, has provided information to courts and public prosecutors on combating terrorism and on the changes incurred due to the Council Decision 2005/671/JHA of 20 September 2005. One prosecutor from the Public Prosecutor's Office Vienna and one prosecutor from the Higher Regional Public Prosecutor's Office Vienna have been nominated as contact points. Information from national authorities is being communicated to Eurojust via the contact points or via the Ministry of Justice.

4.2. Feedback by Eurojust

4.2.1. *The Austrian experience regarding the obligation to inform under Article 13a of the 2009 Eurojust Decision*

As Austria has not yet implemented Article 13, no information pursuant to paragraphs 6 and 7 has yet been communicated to the Austrian desk at Eurojust. Therefore no evaluation of such information has been made and no feedback pursuant to Article 13a could be provided. Inasmuch as an existence of links to other countries is found when operational cases are handled, the Austrian desk authorities will take the initiative to notify the domestic authorities. In the future, the Austrian desk intends to provide feedback on the results of evaluation of information pursuant to Article 13a to the relevant authorities on its own initiative.

4.2.2. *Qualitative perception of the information flows between Eurojust and Austria*

The information flows are considered satisfactory. The information provided to or from Eurojust is perceived as being generally useful.

The public prosecutors interviewed unanimously indicated that the information flows with the national member function without problems and telephone and e-mail contacts are mostly preferred. The practically permanent accessibility of the Austrian desk at Eurojust was emphasised by the public prosecutors in a particular positive manner.

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

The Austrian authorities have maintained that there are no practical or legal problems when exchanging information.

4.2.4. *Suggestions for the improvement of the information exchange between Austria and Eurojust*

One contact point of the EJM requested to be notified, as soon as Eurojust should become operational in its district, which currently does not yet happen.

4.2.5. *The E-POC IV project*

Austria does not participate in the E-POC¹¹ IV project.

4.3. Conclusions

- As Austria has not yet implemented the new Eurojust Decision, no information pursuant to Article 13, paragraphs 6 and 7 has yet been communicated to the Austrian desk at Eurojust. Presently it is intended to confer the obligation to exchange information pursuant to Article 13 (in particular paragraphs 5 to 7) to the public prosecutor, who will provide the information directly to the national member; notification of the Federal Ministry of Justice as national correspondent for Eurojust shall also be ensured. It should be stated that the Austrian practitioners have not heard about the existence of Article 13.

¹¹ European Pool against Organised Crime

5. OPERATIONAL ASPECTS

5.1. Statistics

The Austrian desk at Eurojust keeps detailed statistical data on contacts with the competent Austrian authorities.

In 2012 there have been 74 Eurojust cases where requests have been forwarded from the competent Austrian authorities to the national desk at Eurojust and 82 cases that have been sent to Austria via the national desk.

The Austrian desk at Eurojust keeps an internal register – in addition to statistical data on College cases. It includes support requests by Austrian authorities (so-called 1 N – cases) and by national desks of other Member States (2 N-cases), which have not been initiated as College cases, but nevertheless were handled by the Austrian desk.

For 2012, the national desk at Eurojust has recorded 74 such 1 N-cases and 57 2 N-cases.

Due to the direct contacts with Eurojust there are no central statistics with regard to the contacts of the national judicial authorities with Eurojust.

5.2. Practical experience in relation to Eurojust

The majority of support request to the Austrian desk of Eurojust relate to acceleration or facilitation of legal assistance requests. In most cases, assistance regarding one single State is being requested (i.e. the case is registered at Eurojust as bilateral case). It is not always evident for the Austrian desk, whether the domestic procedure constitutes a bilateral or a multilateral case. Inasmuch as the Austrian desk has gained knowledge on links to further States or in any individual case considers coordination useful, it will actively offer relevant assistance – in the case of coordination in the framework of a coordination meeting, if need be. Only a very small part of the requests is originally directed towards assistance with coordination.

Eurojust is mostly employed if legal assistance is urgent or has become urgent due to longer non-execution; in cases of European Arrest Warrants, which by nature are always urgent; or in cases where additional clarifying information has to be provided within short and which usually require multiple contacts (e.g. assistance with organising of video conferences or prior clarification of legal requirements for legal assistance). The categorisation into complex or non-complex cases is quite subjective - there is a lack of clear criteria. The majority of requests for assistance to the Austrian desk at Eurojust are made, once a letter rogatory has been sent or unclear letters rogatory have been received.

Sometimes third country contacts via Eurojust are used, such as a contact with Australian authorities via the Austrian desk and the British national member at Eurojust.

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

Eurojust is mainly chosen in urgent and complicated cases, and in cases which are expected to require multiple contacts with authorities abroad or which require the resolution of legal issues. Moreover, Eurojust is used to establish and supervise joint investigation teams (JITs) and mainly in establishing contacts to such Member States, where EJM currently or in the past could not provide any successful solution (in this context Italy is mainly mentioned by the EJM contact points). There are no written national guidelines.

The EJM is being used in bilateral cases, mainly for the speeding up of executions, getting further information on MLA requests and information on foreign law. The EJM contact point are being used as an information service when searching the competent authority for MLA or execution of decisions in application of the instruments based on the principle of mutual recognition.

Cases, which are submitted to Eurojust by national public prosecutors or courts and which fall into the scope of EJM, are being forwarded to the competent EJM contact point by the Austrian member at Eurojust in an informal manner. Eurojust and the EJM-contact points notify thereof the requesting national authority. In turn, it can also happen that in cases which were initially submitted to an EJM contact point, such contact point will forward the case to Eurojust, if appropriate.

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

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

The Austrian desk submits no formal requests in terms of Article 6 (or Article 7) to Austrian authorities. So far, cooperation has happened exclusively by way of informal contacts, i.e. mainly by telephone or e-mail, aimed at resolving a problem or soliciting a proposed solution. Cooperation with Austrian authorities may be rated as very good.

Informal requests by the Austrian desk to Austrian authorities for information are always responded to with expediency. Among others, this may be due to the fact that the Austrian desk at Eurojust is being positively perceived by the competent authorities as “service centre”. Occasional delayed responses can be generally ascribed to the extreme workload mainly of public prosecutors. An (increased) submission of “formal” requests pursuant to Article 6 (or Article 7) bears the risk of compromising the trust of the competent authorities in the problem solving capacity of Eurojust, which has been built up in the past, which may lead to a reduction in the number of cases in which Eurojust is being employed.

Neither the national member, nor the deputy or assistant of the Austrian desk have any powers under national law pursuant to Articles 9c to 9e. It is, however, an important part of the daily work of the members of the national desk to receive, transmit, facilitate, follow up and provide supplementary information in relation to the execution of requests for, and decisions on, judicial cooperation (pursuant to Article 9b (1)), and to request supplementary measures in case of inadequate execution of a request (pursuant to Article 9b (2)).

5.4.2. Requirements for cooperation between Austrian national authorities and Eurojust

In general, no formal requirements for the communication between national judicial authorities and Eurojust are foreseen. However, if a public prosecutor intends to deny a request by Eurojust to take over or transfer criminal prosecution, to coordinate between the competent authorities of Member States, to establish a joint investigation team or to transmit required information, a prior report in this matter including justification shall be submitted to the Federal Ministry of Justice. The Federal Ministry of Justice may decide to either approve the intention of the public prosecutor or to issue different instructions. Only in urgent cases such a report may be waived; in such a case, the Federal Ministry of Justice has to be informed about the denial in retrospect. In any case, the contact between national authorities and Eurojust will be a direct one. In order to record the involvement of Eurojust, the public prosecutor shall prepare a memorandum or the e-mail correspondence shall be attached to the files of the public prosecutor (the so-called “diary”).

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

The Austrian desk does not submit any formal requests in terms of Article 6 to Austrian authorities. In general, informal requests for information are generally being answered by the competent authorities in an expeditious and complete manner. Concerning the exercise of other tasks not related to the provision of information mentioned in Article 6 (1), clause a, the members of the Austrian desk shall endeavour to discuss the respective proposals with the competent Austrian authorities, and to submit supplementary explanations, if needed. But the final decision rests with the competent authorities.

No request in cases where the College of Eurojust has been asked to issue a written non-binding opinion on the solving of issues concerning conflicts of jurisdiction has been submitted to the Austrian desk at Eurojust and neither has the Austrian desk to date requested a non-binding opinion; Austrian authorities were not involved in any request to the College to issue a non-binding opinion on the solving of issues concerning conflicts of jurisdiction. Through the coordination activity of Eurojust and with the support of the national desks involved, a mutually agreed solution between the national authorities involved could always be found for issues of jurisdiction, which frequently occur in operational work.

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

In recent years Austrian authorities have not been involved in the few cases that have been dealt with under Article 7.

5.5. Practical experience related to coordination meetings

5.5.1. Qualitative perception

5.5.1.1. Perceived advantages

The coordination meetings were rated as very valuable by the public prosecutors interviewed. Through direct contact with representatives of the judicial and police authorities of other Member States and the use of interpreters also complex legal problems can be resolved and a joint strategy for conducting investigations and the entire proceedings can be formulated. Detailed records of progress and results of these meeting are helpful. Due to the important standing of Eurojust, other Member States have repeatedly been persuaded of the necessity of cooperation and of conducting joint investigations, furthermore goals can be defined the implementation of which are being monitored by Eurojust to some extent. Eurojust can often achieve consensus if there are differences of opinion about how investigations should be conducted.

5.5.1.2. Perceived disadvantages

One public prosecutor stated that the coordination meetings were very time-consuming and it should possibly be considered to hold the meetings by video-conferencing.

5.5.2. Role of the Eurojust National Coordination System

The Eurojust National Coordination System (ENCS) has not yet been established in Austria.

5.6. Use of the On-Call Coordination

On a monthly rotating basis, the national member and the deputy of the national member are available for on-call coordination. So far, no calls from Austrian authorities have been recorded at the On-Call Coordination (OCC) telephone number. Even before establishing the OCC and also in the future, the national member, the deputy and the assistant of the national member are available in urgent cases outside the usual office hours by e-mail or by telephone via the Eurojust mobile phones.

Information on the OCC was provided by way of an intranet headline and contact information details on the intranet. In addition the periodic Eurojust-Newsletter informed about the new service at Eurojust.

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

As the ENCS has not yet been established in Austria, there is no experience in this matter. The Austrian desk at Eurojust maintains good contacts with the Austrian liaison office at Europol, and information on cases of potential interest for the counterpart is being exchanged in individual cases.

5.8. Conclusions

5.8.1. Statistics

- The Austrian desk at Eurojust keeps detailed statistical data on contacts with the competent Austrian authorities. Furthermore, an internal register – in addition to statistical data on College cases - is kept.
- It was confirmed during the on-site visit that owing to the direct character of contacts with Eurojust there are no central statistics with regard to the contacts of the national judicial authorities with Eurojust.

5.8.2. *Practical experience in relation to Eurojust*

- The general assessment of the quality and efficiency of the support received from Eurojust by the competent Austrian authorities was very positive. The added value of Eurojust in this field is greatly appreciated throughout the country. The domestic judicial authorities perceive the Austrian desk at Eurojust as “service centre”, with which the frequent contacts can be conducted in an informal, easy and fruitful manner. The Austrian practitioners have reported that in general, obtaining answers via Eurojust accelerated the proceedings and a case would go to court faster (described by one prosecutor as Eurojust having the effect of a “booster rocket”); responses were said to be always swift and flawless.
- During the deliberations with practitioners at the Regional Criminal Court in Vienna there was broad agreement that future cross-border judicial cooperation would definitely benefit from an unhindered and uncomplicated flow of information. As this meeting has revealed, obtaining a timely response to MLA requests – if obtaining a response at all - still seems to be a common and often encountered phenomenon that was perceived as very inefficient and time consuming. The evaluation team would therefore recommend that those Member States whose authorities are recurrently late should consider making the execution of MLA requests a priority and render the authorities that are responsible for such shortcomings more accountable.

5.8.3. *Allocation of cases to Eurojust, the EJM and others*

- The Austrian national desk is not only used for "Eurojust cases" but very often for simple bilateral, i.e. EJM cases. This leads to the conclusion that allocation of cases in which prosecutors (or judges) need assistance regarding international co-operation between Eurojust and EJM could be improved.
- In the opinion of the experts, this could be done in two ways: On one hand the Austrian national member could forward "EJM cases" to the competent Austrian EJM contact point, on the other hand the situation could probably be improved through a better promotion of the EJM in Austria.

- Both ways should be used. The experts are convinced that it does not make any sense to overburden the Austrian desk with work while the EJM is not used in the way it could and should be used. This concerns especially Vienna. The expert team has heard from prosecutors that they would rather contact their national member at Eurojust, should they seek assistance in international cases without beforehand having consulted the competent EJM contact point who might be a prosecutor at the same prosecutor's office and works in the same building. In such a case it would be much more sensible to talk to the EJM contact point first and forward only those cases to Eurojust where Eurojust is in a better position to solve the problems than the EJM.

5.8.4. Practical experience related to coordination meetings

- The role of the Eurojust National Coordination System (ENCS) could not be assessed as it was in a preparatory phase during the time of the on-site visit.
- Coordination meetings organized by the Austrian desk are considered to be effective and organized in a professional manner. The national member for Austria at Eurojust does not take part in the operational work of coordination meetings and meetings of the joint investigation teams (JITs), but rather provides assistance in logistics, in coordination (if needed) and in applying for financial help.
- During the evaluation visit and discussions with practitioners, the experts learnt that at the same time, some resistance by Austrian public prosecutors can be observed to seek coordination with competent authorities in other involved Member States for fear of even increasing their enormous workload.

5.8.5. Use of the on-call coordination

- So far, no calls have been received through the on-call coordination (OCC).
- The members of the national desk take monthly turns to be on duty, should a call be received outside office hours. It is thus ensured that the national desk can be reached at all times without putting too much of a burden on one person's shoulders.

6. COOPERATION

6.1. Cooperation with EU agencies and others

There is no fixed policy with respect to the involvement of Eurojust in cases involving OLAF or other EU agencies such as Europol and Frontex. Whether the competent national authorities see any need of involving Eurojust in individual cases is for those competent authorities to decide.

6.2. Cooperation with third states

6.2.1. Policy with respect to the involvement of Eurojust

There is no fixed policy with respect to the involvement of Eurojust in cooperation with third states. Whether the competent national authorities see any need of involving Eurojust in such cases is for those competent authorities to decide.

6.2.2. Added value of Eurojust involvement

Regarding the added value of a Eurojust involvement in cases related to third countries, the Austrian authorities have referred to their experience derived from individual cases. In the majority of requests for assistance in cases related to third countries the Austrian desk at Eurojust could make a contribution in accelerating the legal assistance, among others by clarification of issues on short notice. In one case involving several Member States and the former Yugoslav Republic Macedonia (FYROM), FYROM – after initial resistance – could be encouraged to initiate domestic proceedings with the help from Eurojust; moreover, the counselling and support from Eurojust was crucial for establishing a joint investigation team consisting of members from Austria, two further Member States and FYROM.

6.3. Practical experience of the EJN

6.3.1. Cooperation between the national member and the EJN

The national member, the deputy and the assistant of the Austrian desk are in regular contact with the Austrian contact points of EJM and the national correspondent of EJM. The members of the Austrian desk at Eurojust participate in the annual regional EJM meeting organised by the Austrian contact points in cooperation with the contact points of neighbouring countries. The members of the Austrian desk at Eurojust maintain regular professional exchange with the national correspondent of EJM and, as warranted, also with the other contact points of EJM. If requests for assistance are received by the Austrian desk, which would be more appropriately handled by the EJM, the members of the Austrian desk enter into consultation with the competent EJM contact point in Austria and transfer the request for assistance to the EJM.

6.3.2. Resources of Austrian EJM contact points

The Austrian contact points within the Prosecution Service and the Courts get a reduction of their normal workload by 15 per cent for the performance of their duties within the network; this allocation is re-assessed every six months by the staff senate. The envisaged national correspondent and tool correspondent are located in the Federal Ministry of Justice so their duties within the EJM form part of their routine workload. The EJM contact point has to use the technical and personal resources of an ordinary Court or prosecution office in Austria, so no extra resources are provided as EJM contact point.

6.3.3. Operational performance of EJM contact points

6.3.3.1. Competence of EJM contact points

The EJM contact points are authorised to contact all authorities in Austria and to exchange information, to be able to fulfil their tasks.

6.3.3.2. Vienna Higher Regional Criminal Court District

An average of 150 incoming cases/request and 45 outgoing cases/request are being processed every year, with the numbers being difficult to specify and probably much higher, as in Vienna the jurisdiction of the EJM contact point overlaps with supervision of the international group (responsible for all incoming requests for legal assistance, transfer and extradition) and supervision of the inspection body (responsible for checking the entire foreign correspondence).

The following cases/requests are being processed:

- Enquiries about any pending proceedings, status or result of proceedings, national legal position, the preconditions or the willingness to take over criminal prosecution;
- Requests for transmitting copies of judgments and criminal records;
- Requests for notification whether a specific person is in detention;
- Organising and coordinating video-conferences;
- Assistance in formulating letters rogatory and European Arrest Warrants, and in executing European Arrest Warrants;
- Handling requests for legal assistance;
- Determining the competent authorities abroad;
- Forwarding particularly urgent requests to the competent authorities.

There were no requests, which were not granted and could not be answered directly.

Only with requests for transmitting criminal records, legal assistance proceedings will be initiated and processed there.

6.3.3.3. Graz Higher Regional Criminal Court District

As explained in chapter 3.4.2.2 of this report, a reference point for members of authorities and other judicial bodies in the district of Graz is first established in the framework of its activity as EJM contact point, when legal or practical problems related to cross-border criminal cases have occurred.

6.3.3.4. Linz Higher Regional Court District

The EJM contact point Linz has to handle between 70 and 140 domestic requests for assistance. From abroad there are frequent reminders and enquiries about procedures in individual cases, some cases of legal assistance, e.g. the request for handing over seized Etruscan cultural objects to Italy sometimes require several years of processing. From Austria, there are frequent reminders to Italy and problem cases relating to extraditions and taking over enforcement of sentences. Some contact points from other Member States are “black holes” and do not respond at all. There is a very good cooperation with the Directors of Public Prosecution in Munich and Berlin, with the contact points in Slovenia and the Ministry of Justice in Budapest.

6.3.3.5. Innsbruck Higher Regional Court District

As a rule, cooperation between the EJM contact points works fine; obviously the cooperation with those EJM contact points is easiest, where personal contacts have been established. In some countries (Italy) it is relatively difficult to establish contacts through the EJM, in others (Germany, Slovenia, Poland) such contacts are quite straightforward and expedient.

In the last two years the EJM contact point processed an average of 30 requests per year. Requests mainly deal with delays in requests for legal assistance, preparation of letters rogatory and questions concerning domestic law. In questions concerning extradition/EAW the EJM contact point is also contacted directly, as it is the competent public prosecutor in this authority, so that sometimes it cannot be distinguished whether a request was made as EJM contact point. An important area of activity is the participation in meetings, events and seminars, as personal contacts are crucial for the success of the EJM.

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

According to one EJM contact point only the Atlas is being used in practice. This tool is highly appreciated by the practitioners and should be extended to the other instruments based on the principle of mutual recognition as soon as possible. The data in the Atlas, however, are not always correct and some addresses/locations abroad cannot be found at all. With regard to other tools the Austrian authorities do not use them a lot due to the fact that they do not find them very user-friendly.

Even if with regard to the Framework Decisions based on the principle of mutual recognition in the meantime the status of implementation can be found additional useful information for the application of those instruments, such as declarations, notifications is still missing.

One prosecution service contributed: The website is relatively difficult to understand for users who only rarely handle international cases, and in particular the structure of case-law searches is quite confusing. The plethora of investigation activities to be selected, but also the split between legal assistance Atlas and EAW Atlas, creates a lot of confusion in practical work. Moreover, a complete translation into German language would be desirable and would reduce the reservations of the users. The fact that the language selection “German” is not maintained during use of the Atlas and always jumps back to “English” is considered being quite disruptive. Moreover, a kind of search function to addresses of all judicial authorities would be useful, as often the competent authority is known, but not its address.

6.4. Conclusions

- It was obvious that in Austria a number of cases, which would have been appropriate to be channelled into the EJM, have been submitted to Eurojust. Most of the practitioners interviewed (the majority dealing with economic and organised crime) preferred direct contacts with the national member of Eurojust and usually do not use possibilities of assistance of the EJM contact points. It was the general impression of the evaluation team that the knowledge about the EJM and its activities appeared to be fairly low among the practitioners in Austria. It was the opinion of the experts that one way to address this issue would be to produce written guidelines providing updated, simple and practical guidance to assist the competent authorities to find the best solution for the allocation of cases between Eurojust and the EJM. This however, would not only apply to the Member State visited but indeed all Member States of the EU.
- As regards the EJM website, the visit to Austria also has revealed that it was only useful if Member States were entering information that was up to date and could therefore be used operationally. The experts deemed it therefore necessary that Member States should ensure a proper and regular updating of the EJM contact points’ list on the EJM website, as well as the accuracy and the completeness of the national data available on the EJM website.

- Practitioners in Austria have perceived the meetings of the contact points as a particularly crucial success factor for the EJM as it is still the personal contacts that facilitates later practical cooperation and therefore smoother functioning of the system. In the opinion of the evaluation team Eurojust should therefore consider ways of allocating sufficient resources to the EJM in order to maintain its functioning, particularly its ability to co-finance meetings of the contact points.

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7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

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

In case of an on-going investigation in Austria the competent public prosecution service would issue an order to approve a controlled delivery. In case of a request for mutual legal assistance (and if there is no on-going investigation in Austria in the same matter) the competent public prosecution service to issue an order or approve a controlled delivery can be defined either by the location in Austria from where the controlled delivery will start or by the location where the delivered goods are meant to cross the border to Austria. If this place cannot be determined the public prosecution service in Vienna would be the competent public prosecution service.”

7.1.1. Practical experience

The national member so far has no power to authorise controlled deliveries.

In practice, the coordination of controlled deliveries in Austria is performed by a special competent body in the Federal Bureau of Criminal Investigation. In cases in which the Austrian desk at Eurojust received requests for assistance from desks of other countries, the Austrian desk first established contact with the Federal Bureau of Criminal Investigation, which in all cases had already been informed and had contacted the competent Austrian public prosecutors. Subsequently, the Austrian desk also contacted the competent public prosecution services and offered its assistance. In all these cases, the public prosecutors had already started to process the requests for legal assistance. So far all requests for authorisation of controlled deliveries could be processed by the competent Austrian authorities within the timeframe available. Based on previous experience, it is therefore not considered necessary to grant the Austrian national member the power to authorise controlled deliveries – among others because in the framework of the stand-by duty of police, public prosecutor and judges, accessibility of the competent national authorities is ensured on a 24/7 basis. In a few cases, in which requests by other Members States to authorise controlled deliveries and additional information were also transmitted via Eurojust, even confusion arose, as via the police channels different and more current information was transmitted than via Eurojust.

7.1.2. Added value

With regard to the practical arrangements described above, no referrals to Eurojust have been made with a view to following a controlled delivery in another Member State.

On the basis of Austrian experience and against the background of the Austrian system to ensure accessibility of the competent authorities around the clock (24/7) by way of standby services of police, public prosecutors and judges, such use is not needed. The assessment of this question may – depending on the respective national system – be different for other Member States.

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

7.2.1. Practical experience

Austrian judicial authorities have so far participated in seven investigation teams (JIT), and have in all cases achieved positive results. From the viewpoint of the public prosecution services involved, this tool proves to be complicated, so that the assistance of the national member of Eurojust is highly appreciated in establishing the JIT. Financial assistance from the EU was only sought for in one case, the granting of which is still under consideration.

7.2.2. Added value

Eurojust can provide added value prior to establishing a joint investigation team (e.g. by clarification and counselling) and during the formulation of the agreement. The members of the Austrian desk at Eurojust do not take part in the operational work of the joint investigation teams, but rather provide assistance in logistics, in coordination (if need be through coordination meetings) and in applying for financial help. So far as it can be assessed, experience with participation of Europol experts is limited, however valuable logistical assistance can be provided by Europol in such cases.

7.3. Other special investigative techniques (SITs)

Regarding the cooperation during special investigative measures (such as telephone surveillance or the like), the Austrian authorities saw fit to mention that this was part of the daily work of the Austrian desk at Eurojust in cooperation with the competent national authorities.

7.4. Conclusions

- Generally, all persons interviewed have considered that the fact that Eurojust is involved in a joint investigation team (JIT) brings a substantial added value because it makes the establishment of a JIT easier and enhances the operation of the JIT. The members of the Austrian Desk do not participate in JITs, but provide logistical support.
- At the time of the drafting of this report, the Austrian authorities have been involved in seven JITs so far, and funding from the European Union has been applied for in the case of one JIT.
- With regard to the funding of JITs the evaluation team thought that this instrument would further benefit and enjoy a wider application if Eurojust would continue to actively promote the financial and logistical support that can be afforded to JITs by them.

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8. TRAINING AND AWARENESS RAISING

8.1. Promoting the use of Eurojust and the EJN

8.1.1. Training

In the context of general initial and continuous training of judges and prosecutors there is no specific training in relation to Eurojust and the EJN value, operation and website provided to the persons involved in the international cooperation or respectively the national member, deputy or assistant or EJN contact points. However the role and value of these institutions are subject to general criminal law courses within the framework of the initial and continuous judicial training. In addition seminars and workshops hosted by Eurojust are offered to and frequently attended by Austrian judges and prosecutors, which raise the awareness of the existence and role of Eurojust.

8.1.2. Other measures

The Justice-Intranet has a section on Eurojust and the EJN containing contact details and describing services offered by those two entities. A circular letter has been issued some years ago about the use of the EJN Atlas - at that time providing a translation of the menu of the Atlas (because there was only an English/French version available. Due to the fact that the German translation of the Atlas is not always accessible (technical problems at the website) this circular letter is still in use by practitioners.

The practitioners at national level receive a regular Eurojust Newsletter several times a year via the Internet informing them about best practices and experiences in the use of Eurojust and more general information on on-going developments in the field of international cooperation in criminal matters. The members of the Austrian desk at Eurojust pay visits in regular intervals to Austrian public prosecutor's offices and regional courts to present the support opportunities afforded by Eurojust and the EJN. In addition, a Eurojust-EJN Newsletter has been published since November 2008 in irregular intervals, which is edited by the Austrian desk at Eurojust in cooperation with the EJN contact points, and reports among others about new developments at Eurojust, personnel changes, the new EJN homepage, and available support opportunities. This Newsletter is being sent to all Austrian public prosecutors and courts, and is also published in the Justice Intranet.

National authorities are informed via Intranet and the above-mentioned periodic newsletter about the projects on which Eurojust or the EJM are working.

8.2. Conclusions

- The Austrian national member at Eurojust is actively approaching the domestic authorities to make the possibilities of Eurojust assistance widely known. Although the national Eurojust desk does not organise “marketing seminars” (seminars organised in cooperation with Eurojust), all regional prosecution offices and courts have been visited over the course of the last few years courts to present the support opportunities afforded by Eurojust, and the experts would recommend other Member States to follow the example of such regular visits as they represent a good practice.
- The evaluators felt that notwithstanding the current, very efficient, policy of promoting Eurojust among the practitioners in Austria, Eurojust should consider organising “marketing seminars” or other trainings on different aspects of cooperation with Eurojust in the Member States on a regular basis.
- A small part of training on Eurojust and the EJM is included in the basic training received by all prosecutors and judges, and this training is mandatory.
- Furthermore, as the example of the Linz Regional Court has shown, international cooperation matters (including Eurojust, EJM and MLA) are addressed in yearly organised refresher seminars, the responsibility for which lies in the hands of the presidents of the courts.
- The Vienna Regional Criminal Court, characterised by a large number of international cases and a high fluctuation of staff was also holding regular seminars and presentations on international cooperation. Furthermore the Public Prosecution Service at the Regional Criminal Court in Vienna has produced a manual for newly arrived prosecutors covering the area of MLA and containing all ordinances and legal bases; this manual however, does apparently not cover Eurojust and the European Judicial Network while the evaluation team would recommend their inclusion in such an otherwise very valuable instrument.
- In the context of continuous training of judges and prosecutors there is no specific training in relation to Eurojust and the EJM value in Austria. In some regions two hours per year are devoted to international cooperation in criminal matters. Hence, Eurojust and the EJM issues are not included.

- Advanced trainings on MLA, including more detailed information on Eurojust, are offered, but not mandatory. It is within the authority of the president of each Higher Regional Court in Austria to determine which training is offered to the prosecutors and judges of that region.
- In order to strengthen these aspects of training and awareness raising, the evaluation team would therefore recommend strengthening the training of prosecutors, judges and other practitioners on international judicial cooperation, covering both Eurojust and the EJM.
- Detailed information on Eurojust is available to prosecutors and judges on the intranet.
- New developments are shared with the national authorities also via the Newsletter published by the national desk.
- During the on-site visit it was repeatedly mentioned that the EJM website was not always up to date. As regards the EJM, the Member States should ensure a proper and regular updating of the EJM contact points' list on the EJM website, as well as the accuracy of the national data available on the EJM website.

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9. GENERAL OBSERVATIONS AND FINAL REMARKS BY AUSTRIA

9.1. Overall assessment

The Austrian authorities have expressed no doubt that Eurojust and the EJM in general promote, facilitate and accelerate international cooperation.

It was the view of the Austrian authorities that the EJM was not working in all Member States as effectively as in Austria, and for this reason a number of cases, which would have been appropriate for EJM support, had been submitted to Eurojust. At the same time, some reservation can be observed among Austrian public prosecutors to seek coordination with competent authorities in other Member States in cases of criminal organisations operating across borders, for fear of increasing the already very heavy workload by doing so. On the other hand, the Austrian authorities have maintained that only through a joint coordinated approach of competent authorities in all Member States involved, criminal acts can be prosecuted in their entirety and a criminal organisation be dismantled for good.

The EJM contact point Linz has maintained that due to the large number of so-called minor cases (ranging from theft of cultural objects to murder), in which the EJM could help in an expeditious, un-bureaucratic and efficient manner, there was no alternative to an EU-wide activity of the EJM. It was stated however, that it was a crucial challenge for the EJM in the future, to eliminate so-called “black holes” among the EJM contact points, i.e. contact points that for whatsoever reason do not respond to requests.

9.2. Further suggestions from Austria

In the past it could be observed that representatives of Austrian authorities were sometimes reluctant to accept invitations to attend Eurojust coordination meetings organised by other national desks. This reluctance – apart from the heavy workload – goes back to the fact that in such cases the representative of Austrian authorities were not aware of the entire latitude and dimension of the cross-border facts and could not be made aware thereof prior to the coordination meeting.

The Austrian desk therefore proposed a legally binding obligation to attend coordination meetings, whenever the Austrian desk at Eurojust considers the presence of the competent Austrian authorities essential. Such legally binding obligation is foreseen in section 64 of the draft bill of implementation of the new Eurojust decision.

Furthermore, it was proposed to make use of the opportunity to second national experts (SNEs) to the Austrian desk at Eurojust, the more so as the required financial means have been provided by Eurojust. The Austrian desk at Eurojust has a very high workload of cases in comparison with desks of other Member States, but it is one of a few which have not received any SNEs.

The national members of some Member States cannot or no longer obtain information, whether criminal proceedings are pending in such Member State in any individual case. Such information is however, indispensable for Eurojust to be able to fulfil its coordination task. It was therefore proposed to suggest to those Member States to allow their national members to gain access to such required information.

The EJM contact point Vienna emphasized that it was important to promote personal contacts and exchange of experience among the contact points thereby referring to previous experience that had shown, that international cooperation works best if good personal contacts exist among those contact points.

The EJM contact point Graz stressed that it was important to promote a stronger networking of EJM contact points in other countries. Presently, budgetary restraints would normally not allow all of the six Austrian contact points to participate in the semi-annual EJM plenary sessions. As time and again great fluctuations occur among the EJM contact points, also in other countries, resulting in a substantial change of representatives in the plenary sessions, it has become increasingly difficult to keep track of those persons that – if needed - can be contacted personally.

The EJM contact point Linz was highlighting the important role of the EJM contact point regional meetings that have proved to be most valuable for cross-border cooperation. In the view of the contact point, these regional meetings should be promoted in a decisive and effective manner as they provide an exchange platform for those persons who actually have to work together as the cases arise.

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10. RECOMMENDATIONS

The evaluation team thought it fit to make a number of suggestions for the attention of the Austria authorities. This does not detract from the fact that Austria has a justly deserved reputation for adopting a policy with regard to promoting Eurojust and the European Judicial Network. It appeared to the evaluation team that the practitioners who are working in this field are highly motivated and dedicated to their tasks and duties.

The experts would like to summarise their suggestions in the form of the following recommendations:

10.1. Recommendations to Austria

1. Should accelerate the implementation process of Council Decision 2009/426/JHA and also review whether all Articles of Council Decision 2002/187/JHA have been fully implemented; (cf. 3.5.1)¹²
2. Should take the necessary steps to establish the Eurojust national coordination system (ENCS) in line with Article 12 of the Eurojust Decision and to organise meetings of the ENCS to share information and exchange best practices; (cf. 3.5.2)
3. Should, with regard to the case load, reconsider the allocation of staff to the Austrian national desk at Eurojust in order to match the workload, particularly by seconding national experts; (cf. 3.5.2)
4. Should consider granting full powers to the national member as a competent national authority in accordance with the Eurojust Decision; (cf. 3.5.3)
5. Should, notwithstanding the otherwise comprehensive access to data bases, consider granting the national member at Eurojust access to the information held by the specialised prosecution office for economic crime; (cf. 3.5.3)
6. Should raise the awareness among the prosecution offices and courts about the obligation under Article 13 of the Eurojust Decision to send information to Eurojust and ensure its proper application, e.g. by issuing practical guidelines; (cf. 3.5.4)

¹² The amendments of the federal law cited above will enter into force on 1 August 2013.

7. Should produce written guidelines providing updated, simple and practical guidance to assist the competent authorities to find the best solution for the allocation of cases between Eurojust and the EJN; (cf. 5.8.3 and 6.5)
8. Should increase efforts on awareness raising about the usefulness of the EJN and continue promoting regional meetings of contact points of the EJN from other countries; (cf. 5.8.3 and 9.2)
9. Should consider whether additional awareness-raising regarding EJN and its tools (e.g. the Judicial Atlas) be conducted, in particular at the level of the courts; (cf. 6.4 and 8.2)
10. Should complement the laudable manual of the Public Prosecution Service at the Regional Criminal Court in Vienna on mutual legal assistance for new prosecutors with references to Eurojust and the EJN; (cf. 8.2)
11. Should strengthen the training of prosecutors, judges and other practitioners on international judicial cooperation, covering both Eurojust and the EJN; (cf. 8.2)

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

12. Member States should take note of the way in which the Austrian authorities have facilitated direct access for their national desk to various databases, including the future Automation of Court Procedures by which all judicial files will eventually be stored electronically; (cf. 3.5.3)
13. Member States should take note of the awareness raising efforts undertaken by the Austrian authorities, such as the regular visiting of local authorities and the posting of newsletters on the judicial intranet; (cf. 3.5.3 and 8.2)
14. Member States should take note of the regular EJN regional meetings organised by the Austrian EJN contact points that are a good example how to foster good relationships with contact points of other countries; (cf. 3.5.7).
15. Those Member States whose authorities are recurrently late should consider making the execution of MLA requests a priority and render these authorities more accountable; (cf. 5.8.2)
16. Member States should ensure that the national data available on the EJN website is kept up to date; (cf. 6.5 and 8.2)

17. Member States should produce written guidelines providing updated, simple and practical guidance to assist the competent authorities to find the best solution for the allocation of cases between Eurojust and the EJM; (cf. 6.5)

10.3. Recommendations to Eurojust/the EJM

18. The EJM Secretariat should, in view of needs raised by practitioners, address certain deficiencies regarding the user-friendliness of the EJM website; (cf. 3.5.8 and 6.3.4)
19. Eurojust should consider posting Eurojust liaison magistrates to third countries according to the needs expressed by Member States; (cf. 3.5.6)
20. Eurojust should consider providing common guidelines on the reference of cases to Eurojust or the EJM to all Member States; (cf. 6.4)
21. Eurojust should consider ways of allocating sufficient resources to the EJM in order to maintain its functioning, particularly its ability to co-finance meetings of the contact points; (cf. 6.4)
22. Eurojust should continue to actively promote the financial and logistical support that can be afforded to JITs by Eurojust; (cf. 7.4)
23. Eurojust should, notwithstanding the current, very efficient, policy of promoting Eurojust among the practitioners, consider organising "marketing seminars" or other trainings on different aspects of cooperation with Eurojust on a regular basis; (cf. 8.2)

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

Sixth round of mutual evaluations - Visit to Austria

MONDAY 10 DECEMBER 2012

10.30-13.30 INTRODUCTORY MEETING WITH REPRESENTATIVES OF THE CENTRAL UNIT

Brief general introduction to the Austrian court system

Implementation of the Decisions on EUROJUST and EJM by means of the Federal Act on Mutual Legal Assistance in Criminal Matters with the Member States of the European Union (EU-JZG) and introductory circulars

Electronic information tools/intranet/registers

Staffing aspects of EUROJUST and EJM

Statistics

EUROJUST and EJM in initial and advanced training

15.00-17.00 VISIT TO THE CRIMINAL INTELLIGENCE SERVICE OF THE FEDERAL MINISTRY OF THE INTERIOR

Welcome by the Director of the authority

Meeting with officers and discussion of any experience of cooperation with EUROJUST and EJM, taking EUROPOL into account

TUESDAY 11 DECEMBER 2012

10.00-12.00 VISIT TO VIENNA REGIONAL COURT FOR CRIMINAL MATTERS AND VIENNA PUBLIC PROSECUTOR'S OFFICE

Welcome by the Director of the authority/President of the Court

Meeting with judges and public prosecutors,

Discussion about experience with EUROJUST and EJM

14.00-16.00 VISIT TO THE CENTRAL PUBLIC PROSECUTOR'S OFFICE FOR PROSECUTION OF ECONOMIC CRIME AND CORRUPTION

Welcome by the Deputy Director of the authority

Meeting with public prosecutors,

Discussion about experience with EUROJUST and EJM

WEDNESDAY 12 DECEMBER 2012

Morning

09.03-11.33 Transit Vienna-Graz

12.00-13.15 VISIT TO GRAZ REGIONAL COURT FOR CRIMINAL MATTERS

Welcome by the President of the Court

Meeting with judges,

Discussion about experience with EUROJUST and EJM

14.30-16.00 VISIT TO GRAZ PUBLIC PROSECUTOR'S OFFICE

Welcome by the Director of the authority

Meeting with public prosecutors,

Discussion about experience with EUROJUST and EJM

18.25-21.03 Transit Graz-Vienna

THURSDAY 13 DECEMBER 2012

09.30 CONCLUDING MEETING AT THE FEDERAL MINISTRY OF JUSTICE

11.30 End of evaluation visit

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ANNEX B: PERSONS INTERVIEWED/MET

1) Visit to the Federal Ministry of Justice on December 10th and 13th 2012

Mag. Christian PILNACEK	Director of the Directorate for Criminal Justice
MMag. Barbara GÖTH-FLEMMICH	Head of Dept. for International Criminal Cases
Dr. Fritz ZEDER	Head of Dept. for Criminal Legislation
Dr. Judith HESTER	Legal Adviser/ Dept for Criminal Legislation
Mag. Ingrid MASCHL-CLAUSEN	Austrian National Member of EUROJUST
Dr. Birgit TSCHÜTSCHER	Head of Dept for Training
Mag.Dr. Johannes MARTETSCHLÄGER	Legal Adviser/Dept. for International Criminal Cases
Mag. Thomas HAID.	Legal Adviser/Dept for Central Coordination
Mag. Christian GESEK.	Legal Adviser/ Dept for Information Technology
Mag. Thomas GOTTWALD.	Legal Adviser/ Dept. for Information Technology

2) Visit to the Ministry of the Interior/Federal Bureau of Criminal Investigation on December 10th, 2012

Dr. Thomas HERKO	Head of Interpol Bureau Vienna
Mag. Rudolf UNTERKÖFLER	Head of Department for Economic Crime Investigations
Mag. Christian WANDL	Head of Department for Fraud Investigations
Dieter CSEFAN	Deputy Head of Department for Organised Crime Investigations
Mag. Dominik HABITZL	Austrian National Bureau of EUROPOL

3) Visit to the Vienna Regional Criminal Court and the Prosecution Office Vienna on December 11th,2012

Mag.Dr. Friedrich FORSTHUBER	President of the Court
Dr. Klaus Peter BITTMANN	Judge - EJN-CP in Linz
Mag. Martina SPREITZER-KROPIUNIK	Judge
Mag. Thomas VECSEY LL:M:	Vice-Director of the Prosecution Office Vienna
Mag. Heike-Karin HECKL	Public Prosecutor/ Prosecution Office Vienna; EJN-CP
Mag. Jörgen SANTIN	Public Prosecutor/ Prosecution Office Vienna
Mag. Nina BUSSEK.	Public Prosecutor/ Prosecution Office Vienna
Mag. Leopold BIEN.	Public Prosecutor/ Prosecution Office Vienna

4) Visit to the Specialised Prosecution Office for Corruption and Economic Crimes on December 11th 2012

Mag. Ilse-Maria VRABL-SANDA	Director of the Specialised Prosecution Office
MMag. Eberhard PIEBER	Vice-Director of the Specialised Prosecution Office
Mag. Alexandra MARUNA	Public Prosecutor/ Specialised Prosecution Office
Mag. Eva HABICHER	Public Prosecutor/ Specialised Prosecution Office
Dr. Gerald DENK	Public Prosecutor/ Specialised Prosecution Office

5) Visit to the Regional Criminal Court and the Prosecution Office Graz on December 12th,2012

Dr. Friedrich KICKER	President of the Graz Regional Criminal Court
Mag. Andreas ROM	Judge
Mag. Raimund FREI	Judge
Dr. Thomas MÜHLBACHER	Director of the Prosecution Office Graz
Mag. Kathrin HEIDINGER	Public Prosecutor/ Prosecution Office Graz
Dr. Stefan STRAHWALD	Public Prosecutor/ Prosecution Office Graz
DDr. Konrad KMETIC	Public Prosecutor/ Prosecution Office Graz, EJN-Contact Point
Mag. Robert RIFFEL	Public Prosecutor/ Prosecution Office Klagenfurt

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	GERMAN OR ACRONYM IN ORIGINAL LANGUAGE	ACRONYM IN LANGUAGE OF THE MEMBER STATE	ENGLISH
CMS	-/-	-/-	Case Management System
CP	-/-	-/-	Contact point
EAW	-/-	-/-	European Arrest Warrant
	<i>EU-JZG</i>	<i>Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union</i>	Federal Law on Judicial Cooperation in Criminal Matters with Member States of the European Union
EJN	-/-	-/-	European Judicial Network
EJTN	-/-	-/-	European Judicial Training Network
E-POC	-/-	-/-	European Pool against Organised Crime
JIT	-/-	-/-	Joint Investigation Team
OCC	-/-	-/-	On-call coordination
<i>SIT</i>	-/-	-/-	Special investigative techniques
<i>SNE</i>	-/-	-/-	Seconded national expert