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**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 BELGIUM**

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**1. EXECUTIVE SUMMARY**

At the time of the on-site visit Belgium had not yet implemented 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 (also referred to hereafter as the "new" Eurojust Decision or abbreviated 'EJD'). Although the preparations at the level of the ministry of justice for the implementation had been at an advanced stage, they were still pending at the political level at the time when this report was drafted.

Therefore the evaluation took place on the basis of the legal regime in force although certain preparatory measures e.g. the setting up of the Eurojust National Coordination System (ENCS) had already been put into place in order to align the organisational structures with the anticipated changes. Even though not yet formally established, certain members of the ENCS were already appointed and they have met periodically since February 2010. Belgium has opted for a centralised system, having placed the ENCS within the Federal Prosecution Service.

In the meantime the 2004 Law transposing the 2002 Eurojust Decision remains applicable, whereas the European Judicial Network (EJN) structures in Belgium have been set up by means of circulars (so-called "COLs") that are adopted by the College of General Prosecutors. On 25 June 2012 COL 10/2012 on the EJN entered into force and replaced COL 12/2004 and COL 3/2002.

Even in the absence of an updated implementing legislation collaboration between representatives of the judicial system in preparing to apply the provisions of the new Eurojust Decision appeared to be sound. Regarding the future law transposing this Decision, there appeared to be consensus on the major changes to be introduced that would also subsequently affect the status and competences of the national desk at Eurojust, primarily by bestowing upon the national member at Eurojust the status of federal prosecutor.

the Federal Prosecutor's Office plays a key role in the work with Eurojust. Between the national judicial authorities and the Belgian desk at Eurojust, it serves as help desk and filter.

With regard to the information exchange *ex* Article 13 the evaluation has revealed certain scepticism regarding its full implementation with a notion to limit the transmission of information to certain categories.

The obligation to transmit information to Eurojust in accordance with Article 13(5-7) EJD still requires legislative implementation.

With respect to exercising the tasks under Articles 6 and 7 EJD, the Belgian authorities reported that no use has been made so far of Article 6 while Article 7 has been used on one occasion only. The participation of Europol experts in a joint investigation team was perceived as an essential added value through the services that they can lend to the investigation and the synergies they are able to create.

Particularly at the level of the local courts there seems to be a need for training on the possibilities offered by Eurojust, the EJM, and other instruments of international cooperation.

Overall the flexible and rapid cooperation via Eurojust and the EJM are considered as an added value for Belgium in that it greatly facilitates international judicial cooperation on criminal matters. In view of its specific geographical location Eurojust and the EJM are seen as being particularly important for Belgium within the context of judicial cooperation between Member States.

## 2. INTRODUCTION

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

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

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust and 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.

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<sup>1</sup> Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15/12/1997 pp. 7 - 9.

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

<sup>3</sup> Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 245, 29.09.2003, pp. 44-46.

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

<sup>5</sup> Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network, OJ L 191, 07.07.1998, pp. 4-7.

<sup>6</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, pp. 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. Belgium was the third 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 Laura Felicia Ceh (Romania), Mr Zoltán Péter (Hungary) and Mr Georges Heisbourg (Luxembourg). Four observers were also present: Ms Elsa Garcia-Maltrás (DG Justice, European Commission), Ms Sylvie Petit-Leclair and Mr José F. Castillo Garcia (Eurojust) and Mr Bart De Buck (Europol), together with Mr Hans G Nilsson and Mr Peter Nath from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Belgium between 25 and 28 June 2012, and on Belgium's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.



### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. General information

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

The 2002 Council Decision on Eurojust was implemented by the ‘Law of 21 June 2004 transposing the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime’<sup>1</sup>. This law chiefly governs the appointment of Belgian representatives at Eurojust, i.e. the national member, possibly an assistant, and the national correspondent at Eurojust, as well as relations between Eurojust and the public prosecution service (handling requests and exchanging information).

In addition, Circular № COL 15/2004 from the College of Principal Public Prosecutors at the Appeal Courts specifies the practical details, largely in relation to communication between the public prosecution service and Eurojust, the processing of Eurojust requests and exchanges of information.

Finally, Article 8(2) of the ‘Law of 9 December 2004 on international mutual legal assistance on criminal matters amending Article 90b of the Code of Criminal Procedure’ governs Eurojust requests relating to the setting up of a joint investigation team.

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

At the time of the evaluation the Belgian authorities have informed the expert team that in order to transpose the 2009 Eurojust Decision (the ‘new’ Eurojust Decision) into national law, an amendment to the Law of 21 June 2004 was about to be prepared. The main proposed amendments that were still under consideration during the time of the drafting of this report and had yet to be formally adopted by the Council of Ministers related to the following issues:

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<sup>1</sup> 21 Juin 2004. - Loi transposant la décision du Conseil de l’Union européenne du 28 février 2002 instituant Eurojust afin de renforcer la lutte contre les formes graves de criminalité, Moniteur Belge, 02.08.2004, pp. 58554-58557.

- 1) The Belgian national member at Eurojust and the deputy will receive the status of federal magistrate, allowing them to exercise the same operational powers that are granted to federal magistrates working within the Federal Prosecutor's Office (e.g. the power to authorise a controlled delivery).

In this respect the Belgian authorities have emphasized that in order to avoid any conflict between the operational powers of Eurojust and that of the Belgian federal prosecution service the powers granted to the Eurojust national member and the deputy in their role as federal magistrates should be exercised under the supervision of the federal prosecutor.

- 2) The Belgian desk at Eurojust should be strengthened: in addition to one national member, one deputy and one assistant should be appointed to Eurojust with the deputy enjoying the same powers as the national member who will subsequently be able to replace the national member when the latter is absent. In this regard, the deputy's position is equivalent to that of an assistant, as defined by the current law of 21 June 2004; the assistant however, will not be able to replace the national member. A seconded national expert is currently posted to the Belgian desk at Eurojust.
- 3) The obligations relating to exchanging information with Eurojust in accordance with Article 13 of the new Eurojust Decision will be strengthened.
- 4) Moreover, Circular №. *COL 15/2004* will also be replaced once the Law of 21 June 2004 has been amended.

At the time of the drafting of this report (beginning of November 2012), it is still unclear when these changes will possibly be tabled in Parliament.

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

### *3.2.1. Federal Prosecutor's Office*

Despite that most of its members have already been designated, the Eurojust National Coordination System (ENCS) has not yet been formally established.

The ENCS will be formally created through a joint circular ('COL') that will be drafted and issued by the College of the General Prosecutors and the ministry of justice once the draft law transposing the new Eurojust decision has been adopted.

Since February 2010 certain members of the future ENCS have been meeting on a regular basis to monitor the transposition of the new Eurojust decision and mainly to discuss the setting up of the system for exchanging information with Eurojust.

The Belgian authorities upheld that it was not considered necessary to create a new body to implement the ENCS. The reasons for this decision are simple: they are to be found in the role of the Federal Prosecutor's Office (i.e. facilitating international cooperation) and therefore the intrinsic link between the Belgian desk at Eurojust and the role fulfilled by the Federal Prosecutor's Office in judicial cooperation in criminal matters with Member States of the European Union. For these reasons, the ENCS will be based within the Federal Prosecutor's Office and its members will principally be federal magistrates.

In general, the federal magistrates who are ENCS members experience a considerable workload that stems from the cooperation with Eurojust. This is particularly the case for those working in the international section of the Federal Prosecutor's Office.

This workload is illustrated by the statistics on the cooperation of the Belgian judicial authorities that were presented to the visiting team.

Nevertheless, it remains difficult to finally quantify the ENCS members' workloads with regard to operation of the ENCS, since it has not yet been formally established.

### *3.2.2. Other authorities designated within the ENCS*

Belgium considers it essential to include an OLAF contact point in order to facilitate cooperation between Eurojust and OLAF. An OLAF contact point is therefore invited to the ENCS meetings. A federal magistrate who is in charge of the organised crime section and who has been appointed by the federal prosecutor to oversee cooperation with OLAF assumes this contact point function.

In Belgium, cooperation between OLAF and the judicial authorities takes place via the Federal Prosecutor's Office. In addition, almost all criminal prosecutions relating to OLAF files are carried out by the Federal Prosecutor's Office (organised crime section).

One of the ENCS members is also the EUROPOL contact point. This member is a federal magistrate in the international cooperation section.

According to the information received from the Belgian authorities this would comply with Article 12(5)(d) of the new Eurojust Decision, under which the role of the ENCS is to facilitate the tasks carried out by Eurojust, in particular by maintaining close relations with the Europol National Unit.

### *3.2.3. National correspondents*

In Belgium, the Minister of Justice has appointed two national correspondents for Eurojust, upon a proposal from the federal prosecutor:

- One national correspondent for organised crime matters, and
- One national correspondent for terrorism matters.

Both national correspondents for Eurojust are federal magistrates.

#### *3.2.3.1. Appointment methods*

Article 3 of the Law of 21 June 2004 transposing the Decision setting up Eurojust establishes the role of Belgian national correspondent for Eurojust, who is also the national correspondent for organised crime.

There are certain prerequisites that need to be fulfilled for a candidate to be appointed as national correspondent for Eurojust: The person in question must be a magistrate working for the public prosecution service, either as a federal magistrate or as a magistrate assigned to the Federal Prosecutor's Office in application of Article 144(3) of the Judicial Code, and must have been given a mission within the Federal Prosecutor's Office.

The national correspondent for terrorism matters is appointed by the Minister of Justice, upon the proposal from the Federal Prosecutor. This position was created by Circular № COL 15/2004 from the College of the General Prosecutors.

3.2.3.2. *Tasks of the National correspondent for Eurojust / National correspondent for organised crime matters*

The main task of the national correspondent for Eurojust is to ensure the exchange of information between Eurojust and the Belgian judicial authorities. This information is generally exchanged through the Federal Prosecutor's Office (except in very urgent cases). This national correspondent is in charge of organising the ENCS and works closely with the "organised crime" and "specialist missions" sections of the Federal Prosecutor's Office.

According to the law currently in place and as long as no assistant to the national member has been designated, the national correspondent for Eurojust becomes assistant to the national member in cases where the latter is unavailable.

This national correspondent for Eurojust combines several roles, namely those of federal magistrate, heading the "international cooperation" section, national correspondent for the European Judicial Network (EJN), JIT national expert, contact point for liaison officers and member of the "international cooperation" experts' network (cf. also chapter 8 of this report).

The national correspondent is thus in daily contact with the national desk at Eurojust, and invests a lot of time in preparing for and following up on coordination meetings at Eurojust, working with the Belgian judicial and police authorities and the seconded national expert at Eurojust.

3.2.3.3. *The national correspondent for terrorism matters*

The national correspondent for terrorism matters ensures that information is exchanged with the national member at Eurojust on the basis of Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences

<sup>8</sup>. However, Belgium had at the date of the on-site visit not transposed this Council Decision into Belgian law.<sup>9</sup>

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<sup>8</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, OJ L 253, 29.9.2005, pp. 22-24.

<sup>9</sup> Following the on-site visit to Belgium an addition has been made to the law project implementing the Eurojust Decision to provide for a legal basis for the obligation to exchange information in the field of terrorism as foreseen in Council Decision 2005/671/JHA.

The national correspondent for terrorism matters is also the contact point for the national member at Eurojust for any issues relating to coordination or mutual legal assistance, and for any legal advice and monitoring relating to terrorism and the statistics in Eurojust's Terrorism Convictions Monitor, the Europol TE-SAT report, etc. The national correspondent also takes part in the annual strategic meetings of the Eurojust national correspondents for terrorism matters.

#### *3.2.4. Operation of the ENCS and connection to the CMS*

Under the Belgian system no specific legal basis is required for setting up the ENCS. However, the Circular yet to be drafted that will in future replace Circular № COL 15/2004 once the Law of 21 June 2004 has been amended, will *inter alia* regulate the official establishment of the ENCS.

The work on establishing the ENCS began in 2009 on the basis of a fact sheet put together by the Belgian national correspondent for Eurojust and the ministry of justice, which gave details of the composition of the ENCS, its tasks and its mode of operation.

The provisional ENCS meets under the chairmanship of the federal prosecutor and is being established in stages.

The first ENCS meeting took place at the Federal Prosecutor's Office and involved only the federal magistrates concerned.

Since then membership of the ENCS has been expanded and it currently comprises the following members:

- Federal prosecutor
- Belgian national member at Eurojust
- National correspondents for Eurojust
- A representative of the general prosecutor with responsibility for international cooperation
- National correspondents and certain contact points for the EJM
- JIT national expert
- Contact point for the anti corruption network and OLAF
- Director of the Seizures and Confiscations Office
- Contact points for the genocide and war crimes network
- Representatives from the ministry of justice

So far the provisional ENCS has met on three occasions since February 2010 and the following subjects have been covered in these meetings:

- The interpretation of Articles 12 and 13 of the new Eurojust Decision;
- The creation of a working group, led by the national correspondent, to discuss a formal implementation of the obligation for national competent authorities to exchange information with Eurojust, on the basis of Article 13(5) to (7) of the Eurojust decision;
- Reviewing the state of play regarding the draft amendment to the law transposing the new Eurojust decision.

### *3.2.5. Cooperation of the ENCS with the Europol national unit*

Once the ENCS has been formally established, a representative from the Europol national unit will also be invited to take part in the ENCS meetings on an ad hoc basis<sup>10</sup>, in order to encourage the exchange of information and experience, and to strengthen relations between Eurojust and Europol. There is already regular operational contact between the Federal Prosecutor's Office, the Europol national unit and the SIRENE bureau in the federal police and other entities. However, no consultation structure is currently in place.

More specifically, the cooperation includes:

- Structured cooperation: when an Analytical Work File (AWF) is opened, any information from the judicial authorities can be included in it, upon the condition that the general prosecutor with responsibility for international relations has given his prior permission.
- Ad hoc cooperation: meetings are organised between the Federal Prosecutor's Office (most ENCS members are members of this entity) and the Europol national unit.

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<sup>10</sup> The evaluation team was informed after the on-site visit that during the ENCS meeting of 21 December 2012, in which a representative of the Europol national unit participated, it was agreed on that a representative from the Europol National Unit would be invited to take part in the ENCS meetings on a ad hoc basis when the agenda is of interest for them.

### 3.3. National desk at Eurojust

#### 3.3.1. Organisation

At present two persons are appointed to the Belgian national desk at Eurojust: one national member, one seconded national expert. Furthermore, a secretary is supporting the work as a Eurojust staff member.

Belgium intends to expand its current delegation to Eurojust by appointing, alongside the national member who will become a federal magistrate, another federal magistrate appointed as deputy to the national member, and a lawyer from the federal prosecution service appointed as assistant. This expansion is expected to take place once the draft amendment to the law transposing the new Eurojust decision has been adopted.

#### 3.3.2. Selection and appointment

Currently, to be appointed as the Belgian member or assistant to the Belgian member of Eurojust, the candidate must be a magistrate working for the public prosecution service, with at least ten years' judicial experience, the last six years of which must be as a magistrate in the courts. According to Article 2 of the Law of 21 June 2004 transposing the Council Decision setting up Eurojust Candidates are appointed by the Minister of Justice, upon the proposal from the competent general prosecutor or the federal prosecutor, as appropriate.

The national member at Eurojust carries out his duties under the authority of the general prosecutor with responsibility for international relations. Mainly on the basis of reports from and consultation with the Belgian Eurojust member, the College of the General Prosecutors evaluates how this member puts into practice directives on criminal policy and fulfils his role in line with Eurojust's tasks and objectives. For this purpose, the Belgian member for Eurojust is compelled by Article 9 of the Law of 21 June 2004 to submit a detailed bi-monthly report on his work within Eurojust to the Minister of Justice, the federal prosecutor and the general prosecutor with responsibility for international cooperation.



Under the proposed draft legislative amendment, the appointment and assessment of representatives to the Belgian desk at Eurojust is intended to take place in future as follows:

- The Minister of Justice will appoint the Belgian member of Eurojust and the deputy to the Belgian member of Eurojust from amongst the federal magistrates, upon proposal from the federal prosecutor and the general prosecutor with responsibility for international relations.

Members will be appointed for a five-year term, which can be renewed once, upon proposal from the federal prosecutor and the general prosecutor with responsibility for international relations.

However, if the Belgian member is President or Vice President of Eurojust, his appointment will remain valid at least until the end of the mandate as President or Vice President.

The Belgian member of Eurojust and his deputy will carry out their duties under the authority and immediate supervision of the federal prosecutor.

- In addition, the Minister of Justice, on the advice of the federal prosecutor and the general prosecutor with responsibility for international relations, will appoint a lawyer working for the Federal Prosecutor's Office as assistant to the national member.

Assessment will continue to be carried out by the College of the General Prosecutors on the basis of a report by and consultation with the Belgian member of Eurojust.

### *3.3.3. Powers granted to the National Member*

#### *3.3.3.1. General powers*

As stipulated by Circular 15/2004 the national member for Belgium at Eurojust only has the power to receive, transmit, facilitate and follow up in relation to the execution of requests for judicial cooperation (so the national member does not enjoy any operational powers at the moment).

The main novelty to be implemented by the draft legislative amendment will involve the granting of federal magistrate status to the Belgian member and the deputy. They would then have all the powers granted to a federal magistrate.

3.3.3.2. *Access to national databases*

As other magistrates working for the public prosecution service the national member at Eurojust is authorized to access the criminal records database (Article 12 of the Law of 21 June 2004 transposing the Decision setting up Eurojust, and amending Article 593 of the Code of Criminal Procedure). However, there is no direct access to the criminal records database from the Eurojust headquarters.

Under the draft legislative amendment, the Belgian Eurojust member and deputy will have access to national databases<sup>11</sup> in exactly the same way as federal magistrates. This includes *inter alia* access to the national register, company register, central criminal records database, the vehicle registration database (*DIV*) and the ADBA/TPI database. The ADBA/TPI database is part of the TPI/REA IT system and contains records of past legal cases, allowing the case files in existence relating to a specific person to be identified. It has been introduced at the Federal Prosecutor's Office and the 27 local prosecution services.

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

Only members of the Belgian desk at Eurojust (i.e. national member, seconded national expert and secretary) have access to the restricted part of the Case Management System (CMS) that only relates to cases involving Belgium. As analysts from the Case Analyst Unit at Eurojust do also have access to the CMS the restricted part is therefore managed exclusively by the Belgian national member at Eurojust.

The Belgian authorities informed that for the future the objective was to allow certain members of the ENCS - in principle the national correspondents of Eurojust and the federal prosecutor - to directly access the CMS.

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<sup>11</sup> A more detailed description of databases that are available for consultation by Belgian law enforcement authorities is contained in doc. 9518/1/10 REV 1 CRIMORG 91 (Evaluation report on the fifth round of mutual evaluations "Financial crime and financial investigations" report on Belgium), pp 48-54.

### 3.4. EJM contact points

Circular № COL 3/2002 from the College of General Prosecutors at the Appeal Courts was drafted and adopted in order to comply with the Joint Action on the creation of a European Judicial Network<sup>12</sup>. In addition, a Circular № COL 12/2004 was adopted in relation to the website, in order to make its content clearer and encourage its use by the judicial authorities.

These circulars have been replaced by Circular 10/2012 that has entered into force on 25 June 2012.

#### 3.4.1. Selection and appointment

Belgium has opted to have a limited number of EJM contact points, as well as a system for centralising contact points within the Federal Prosecutor's Office and the ministry of justice.

Experience and specialist knowledge of international cooperation, as well as the ability to master several languages, are taken into consideration when the Minister of Justice and federal prosecutor appoint an EJM contact point. In addition, special attention is paid to keeping a balance between operational contact points (Federal Prosecutor's Office) and legislative contact points that maintain regular contact with the European Institutions (Federal ministry of justice).

The Belgian authorities have emphasised that a contact point has been appointed within the national desk at Eurojust (currently the seconded national expert), in order to promote and maintain a strong relationship between Eurojust and the European Judicial Network, in accordance with Article 10 of the 2008 Council Decision on the EJM.

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<sup>12</sup> Joint Action 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 (98/428/JHA), OJ L 191, 07.07.98, pp. 4-7.

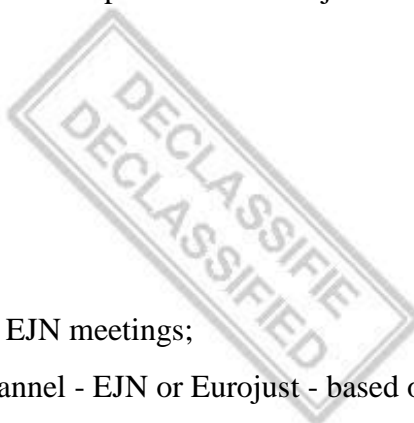
The 1998 Joint Action has been repealed by Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.08, pp. 130-134.

### *3.4.2. Practical operation of the EJM contact points in Belgium*

#### *3.4.2.1. National correspondent*

The national correspondent (NC) for EJM is also the national correspondent for Eurojust. He carries out the following tasks:

- Coordination between EJM contact points;
- Distribution of tasks;
- Attendance at meetings of national correspondents;
- Maintaining regular contact with the EJM secretariat;
- Ensuring that the Belgian delegation is represented at EJM meetings;
- Giving opinions on the most appropriate choice of channel - EJM or Eurojust - based on the criteria established by the circulars and best practice;
- Ensuring that information on the EJM from various sources (EJM, Federal Prosecutor's Office, ministry of justice) is circulated by the competent general prosecutor to the national experts' network of reference magistrates involved in international cooperation;
- Collecting the available statistics on EJM and sending them to the EJM secretariat for use in the bi-annual EJM report.



#### *3.4.2.2. National tool correspondent*

The national tool correspondent is also an EJM contact point. He carries out the following tasks:

- Updating the EJM website, in close collaboration with the national correspondent;
- Consulting the EJM webmaster;
- Participating in the annual meetings of national tool correspondents.

*3.4.2.3. EJN contact points*

The EJN contact points are active intermediaries whose role is to facilitate judicial cooperation between Member States. In practical terms, they carry out the following tasks:

- They respond to various requests from other Member States' EJN contact points (relating to operational or legislative issues, or requests for judicial addresses) and, if necessary, forward requests to the appropriate contact point or the competent authority;
- They are available to local judicial authorities and other competent authorities in Belgium, to enable them to establish direct contact in the most appropriate way;
- They take part in EJN meetings (plenary meetings, regular meetings, etc.). The composition of the Belgian delegation at each meeting varies according to availability and the topic of the meeting. In addition, particular attention is paid to ensuring equal participation by all contact points, in order to allow each of them to maintain personal contact with contact points from other Member States. The aim is also to have a balance between representatives from the Federal Prosecutor's Office and the ministry of justice.

*3.4.2.4. National meeting of EJN contact points*

When the on-site visit took place the expert team had been informed that the first national meeting of EJN contact points and members of the national experts' network for international cooperation in criminal matters was expected to take place in October 2012. The EJN has provided financial support for the organisation of this meeting.

This meeting was expected to be an opportunity to discuss the following topics:

Between EJN contact points only:

- Handling questions from other contact points - implementing a system which would provide an overview of the content of these questions;
- Updating the information on Belgium on the EJN website.

Between all participants:

- Information on recently adopted Belgian legislation transposing European instruments on matters of criminal law and international cooperation on criminal matters (e.g. Transposition of the Framework Decision on the transfer of sentenced persons)

- Discussion of operational and practical problems encountered in relation to international cooperation on criminal matters (e.g. European arrest warrant, JITs, videoconferences, etc.)
- Promoting the European Judicial Network and its website.

The Belgian authorities have confirmed after the on-site visit that the meeting had taken place as foreseen. Furthermore, they have been informed that the Belgian EJM contact points have decided on this occasion to meet in the future twice a year.

#### *3.4.3. Updating of the EJM website*

The national tool correspondent is responsible for managing and updating the information relating to Belgium contained in the EJM website. He notifies the EJM secretariat of changes relating to the contact points and makes the necessary changes to update the site with regard to the information on Belgium contained within the different tools (e.g. Atlas and information on the Belgian judicial system).

Updating the information contained in the EJM website is one of the topics to be discussed during the national meeting of contact points.<sup>13</sup>

In addition, the EJM website was expected to become one of the recurring topics for the quarterly ENCS meetings.

### **3.5. Conclusions**

#### *General*

- Belgium has not yet implemented 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 and, particularly with a view to the preparatory work that has already been accomplished, the experts would recommend to maintain the momentum of the implementation process.

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<sup>13</sup> The Belgian authorities have been informed after the on-site visit that the manner in which the 'fiches belges' will be updated has been discussed and that the other information on Belgium contained within the different tools was up to date.

- The legislative framework for an implementation of the ‘new’ Eurojust Decision remains incomplete, pending the adoption of the specific legislation for achieving this goal. During the on-site visit the expert team was informed by the ministry of justice that the text had been completed and was due to be presented to the Council of Ministers by the 21 July 2012. However, this goal was not achieved. Owing to its pending adoption the experts were unable to access and subsequently study the text. Despite the fact that the public availability of the draft law, following the adoption by the Council of Ministers had been announced for July 2012 by the Belgian authorities, the process had not yet been finalised at the time this evaluation report had been drafted and the project law implementing the Eurojust Decision was still pending on the political level. (January 2013)
- In the meantime, the 2004 Law transposing the 2002 Eurojust Decision remains applicable, whereas the European Judicial Network (EJN) structures in Belgium seem to have been put in place by means of a number of circulars (or: "COLs" - *Circulaires du Collège des procureurs généraux* n.3/2002 and 12/2004). On 25 June 2012 COL 10/2012 on the EJN entered into force and replaced COL 12/2004 and COL 3/2002.
- The circulars as governing instruments are supplemented by memoranda that do not require to be adopted by the College of General Prosecutors and are therefore easier to adopt.
- As regards the pending implementation of the new Eurojust Decision the experts would see certain advantages in implementing the provisions by means of a law rather than by a circular. As compared to a circular, a law would be applicable to all national competent authorities whereas a circular presently does not address investigating judges, as the example of Circular 15/2004 from the College of the Prosecutors General regulating among others the information exchange with Eurojust shows.
- Even in the absence of an updated implementing legislation the expert team noted a sound collaboration between representatives of the judicial system (i.e. ministry of justice, Federal Prosecutors Office, Police) in preparing to apply the provisions of the 2009 Eurojust Decision. Regarding the future law transposing this Decision, the experts noted that there was consensus on the major changes to be introduced that would subsequently affect the status and competences of the national desk at Eurojust.

- One of the main points of the reform will be to give the Belgian national member at Eurojust the statute of federal prosecutor. It seems that this will give the national member direct prosecutorial powers (e.g. to order controlled deliveries), at least for the type of cases that fall under the competences of the federal prosecution office. The experts deemed it necessary to ensure that the material scope of such competences is wide enough to comprise all cases that can fall under Eurojust's scrutiny. This statute will comprise the national member and the deputy but in principle not their assistant.

*Implementation of the Eurojust National Coordination System*

- The ENCS is not yet formally in place. It will be formally established via a circular issued by the College of Prosecutors General and the Minister of Justice of Belgium, after Council Decision 2009/426/JAI has been implemented into national law.
- Even though the ENCS has not yet been formally established, certain members of the ENCS were already appointed and they meet periodically since February 2010. Belgium has opted for a centralised system, having placed the ENCS within the Federal Prosecution Service.
- The main task of the National Correspondent for Eurojust for organised crime matters, responsible for the functioning of the ENCS, is to ensure the exchange of information between Eurojust and the Belgian authorities: information exchange takes place via the Federal Prosecution Service, except for urgent cases where national competent authorities can directly communicate with Eurojust. The National Correspondent for Eurojust is also the federal magistrate responsible for the section “international cooperation” of the Federal Prosecution Service. He is also the National Correspondent for the European Judicial Network, national expert of the Network for JITs, contact point for liaison officers and member of the expertise network “international cooperation”.
- It is foreseen that the Europol contact point at the Federal Prosecution Service will participate in the meetings of the ENCS once it is formally established. For the time being, operational contacts regularly take place between the Federal Prosecution Service, the Europol National Unit and the SIRENE bureau (located within the Federal Police). Given the expected added value of such involvement the expert team would also see it fit encouraging Member States to integrate the national contact points of OLAF and Europol as members of the ENCS.
- According to the information received it will in future be foreseen to allow certain members



of the ENCS - in principle the national correspondents of Eurojust and the federal prosecutor - to directly access the CMS. Bearing in mind the character of the information stored therein the experts would recommend an approach where the group of ENCS members that are granted CMS access is exactly defined and Eurojust be notified in due course.

- Although direct contacts with Eurojust are not "banned", they seemed to be limited to urgent cases. The federal prosecution office is in practice set up as a "central" point, which is put in copy and to an extent "filters" the requests (i.e. by addressing them to Eurojust or to the EJN). This channel seems compulsory for prosecutors but does not comprise investigative judges. Should this be considered a good practice, as for example it allows to have an overview on requests for cooperation and eventually could also be useful to get feedback regarding follow-up, other professionals could be encouraged to follow it.
- The designation of specific members of the Federal prosecution members as Eurojust correspondents or to deal with international judicial cooperation could also be considered positively, and their specialisation and permanence fostered.
- At present the ENCS seems to have been set up informally but some uncertainty remains regarding its role, way of operation and added value. It is foreseen that its formal creation will not take place by means of a law but by means of a circular ("*COL*") from the College of the Prosecutors General. It also remains unclear whether this would suffice to impose the obligation to transmit information that in any case will not cover the investigating magistrates.<sup>14</sup> The experts found it noteworthy that it was foreseen to include an OLAF contact point and deemed this being a good practice.

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<sup>14</sup> Furthermore, they stated after the on-site visit that the president of the assembly of investigating magistrates will be informed about the future circular of the College of the General Prosecutors, once it has been adopted, and about the obligation to transmit information contained in it.

- Although it has not been transposed, some provisions of the new Eurojust Decision are already applied, or at least tested. Despite the fact that it has not been formalized yet, the ENCS works in practice, and the federal prosecution office is running a pilot project on information exchange. Templates on several subjects indicated in article 13 of the new Eurojust decision are sent to the Belgian desk of Eurojust in federal files.

*National Desk*

- A key role in the work with Eurojust is played by the Federal Prosecutor's Office. Between the national judicial authorities and the Belgian desk at Eurojust, the Federal Prosecutor's Office serves as help desk and filter. This mission is based on several reasons; on the one hand, at national level, the Federal Prosecutor's Office is the main administrator of the international judicial cooperation, as indicated by the magistrates who participated in the evaluation. On the other hand, the idea is to send complex files to Eurojust, which are ready and adapted to its functions. In the same time, there is also an obvious correspondence between the operational powers of Federal Prosecutor's Office and the competences of Eurojust. Therefore, giving to the national member the status of federal magistrate in the future law appears to be a logical solution.
- Although the Belgian national member at Eurojust has access to the criminal records database like any other magistrate from the public prosecution service, a possibility to consult the criminal records database from the Eurojust headquarters in The Hague (e.g. via remote access) had not been implemented at the time of the on-site visit; the experts therefore deemed it appropriate to recommend that such technical access be installed.
- The Belgian practice for the recruitment and appointment of the national member at Eurojust or an assistant to the member of Eurojust shows the high standards that are required by potential candidates. Great importance is being attached to the longstanding practical experience that any candidate must have in order to be taken into consideration for any of the posts. The experts deemed it appropriate recommending it as 'best practice' to be taken note of by other Member States.

## RESTREINT UE/EU RESTRICTED

- The composition of the Belgian desk at Eurojust does not yet correspond with the requirements of Article 2 of the Eurojust Decision. Presently, the National Desk is composed of a National Member and a Seconded National Expert.
- It is foreseen that following the adoption of the implementing law, Belgium will appoint a deputy national member and an assistant. The assistant, however, will not be entitled to replace the national member. Given the increased capacity and operational value of such a staff complement the expert team would recommend the swift appointment following the implementation of the new Eurojust decision.
- For the time being, the national member for Belgium at Eurojust only has the power to receive, transmit, facilitate and follow-up in relation to the execution of requests for judicial cooperation (the national member does not have any operational powers). The main novelty of the draft implementing law is that it will grant the national member and the deputy, when acting as competent national authorities, the status of federal magistrates, with all the powers that are attributed to this function in Belgium. They will work under the authority of the Federal Prosecutor and the evaluation of their work will be exercised by the College of Prosecutors General on the basis of the report of activities of the national member (which is already the case for the national member).
- The national member for Belgium at Eurojust, in her capacity as national competent authority, will therefore be entitled to exercise the powers which fall under Articles 9a to 9c of the Eurojust Decision, with the exception of those which would need to be necessarily exercised by an investigating judge in Belgium.

- Although the answers to the questionnaire seem to indicate that the national member and the deputy would be able to autonomously exercise operational powers granted to federal magistrates the discussions during the on-site have revealed that the national member would have to do so within the limits of directives from the federal prosecutor which could be considered possibly as being non-compliant with Article 9d of the 2009 Eurojust Decision.<sup>15</sup>
- Under the assumption that the draft law will be implementing the 2009 Eurojust Decision and would allocate the status of federal magistrate to the national member at Eurojust consideration should be given whether these powers fully implement Articles 9 b), c) and d) of the 2009 Eurojust Decision;<sup>16</sup>
- Under the legal regime in force at the time of the on-site visit, the Belgian national member at Eurojust had no access to the entirety of databases mentioned in Article 9(3) of the new Eurojust decision. The experts therefore saw fit to recommend that such possibility be created in due course.

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<sup>15</sup> With regard to the issue raised in this conclusion, the Belgian authorities have stated the following: " The operational powers of the Belgian member and its deputy will be exercised under the immediate authority and the supervision of the federal prosecutor, as also is the case for the federal magistrates working at the Federal Prosecutor's Office. Precise directives will deal with the degree of autonomy given to the national member and its deputy and more specifically concerning the decisions that he will be able to take autonomously and the ones for which he will need to do prior consultation. These guidelines will prevent that different or even contradictory decisions would be taken, at the one hand by the federal magistrate (or local prosecutor) on guard and at the other hand by the federal magistrates of the Belgian desks at Eurojust (for example in the case of a controlled delivery).

The federal prosecutor will have to be informed of the decisions which have been taken and be consulted when necessary.

The law project implementing the new Eurojust Decision makes a distinction between the autonomy of the Belgian member as a member of the College of Eurojust for strategic matters and the function of representative for Belgium under the authority of the federal prosecutor for operational matters."

<sup>16</sup> With regard to the issue raised in this conclusion the Belgian authorities have stated that the current powers of a federal magistrate are in accordance with and even go beyond the minimum operational powers as foreseen in Article 9 b) - d) of the new Eurojust Decision.

*EJN*

- Circular №. *COL 3/2002* of the College of Prosecutors General implements the Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network. In addition, circular №. *COL 12/2004* explains the content of the EJM website and encourages Belgian authorities to use it. On 25 June 2012 *COL 10/2012* on the EJM entered into force and replaced *COL 12/2004* and *COL 3/2002*.
- The EJM contact points in Belgium are located at the Federal Prosecution Service and at the ministry of justice (Belgium has opted for a centralised system). In total, 12 Contact Points have been nominated so far (a combination of operational and legislative contact points)<sup>17</sup>. It should be noted that one of them is the Seconded National Expert at the Belgian desk at Eurojust and another one is the Belgian Liaison Magistrate in Morocco.
- The National Correspondent for EJM is located at the Federal Prosecution Service and the Tool Correspondent at the ministry of justice.
- The list of contact points of Belgium is regularly updated and can be found at the EJM website.
- The regular update of the information concerning Belgium in the EJM tools is one of the tasks of the EJM Tool Correspondent. No particular issues were identified in this respect.
- The EJM tool most frequently used is the Atlas. The Belgian authorities suggested that it could be further developed by including the language in which competent national authorities need to receive MLA requests.

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<sup>17</sup> The Belgian authorities have informed after the on-site visit that a new EJM Contact Point has been nominated, which brings the total number of Contact Points to 13.

#### 4. EXCHANGE OF INFORMATION

As the new Eurojust Decision had not been fully implemented in Belgium at the time of the evaluation, the aspects provided regarding the exchange of information have been given with specific relation to Article 13 of the 2009 Eurojust Decision on the basis of the draft legislation that is still under preparation in Belgium.

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

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

There is currently no national database relevant to Eurojust's competences (i.e. on serious or organised crime and terrorism).

The databases, which could be relevant at national level, are the local and federal police's general database (*BNG*) and a certain number of specific databases.

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

Due to the pending adoption of the proposed draft legislative amendment, there is currently no real information exchange achieved through the implementation of Article 13(5) to (7). Moreover, the IT and technical aspects for this kind of information exchange were still under development at the time of the on-site visit. It was assumed that, given the anticipated volume of information, their readiness was decisive in order to safeguard the efficient exchange of information.

The Belgian authorities have emphasised however, that information is regularly exchanged, independently of the obligation established by Article 13(5) to (7). This information exchange takes place "*à la carte*", that is to say that Eurojust or the Belgian judicial authorities ask for information on certain issues or in certain situations.

*4.1.2.1. Article 13(5) – JITs*

The obligation to inform the national desk at Eurojust of the conclusion of protocols for the setting up of a joint investigation team is met. This obligation to inform is in fact already met by Article 8(5) of the Law of 24 December 2004 on international mutual legal assistance on criminal matters amending Article 90b of the Code of Criminal Procedure.

The obligation to inform is fulfilled by the national JIT expert, who is also a national correspondent at Eurojust, once the Federal Prosecutor for the setting up of a joint investigation team has given prior approval.

A circular from the College of Principal Public Prosecutors on the application of legal provisions relating to the joint investigation team<sup>18</sup> and a JIT manual have been circulated via the national experts' network. A service note has also been distributed to the police services.

*4.1.2.2. Article 13(6) – Coordination with other MS*

The present Belgian regime corresponding to the obligation of Member States to inform the national member in cases as laid down in Article 13(6), both to and from Eurojust, when one or more judicial authorities need specific information in the context of a request for Eurojust coordination on a specific case file.

In the majority of cases the decision to inform Eurojust and to submit a coordination request is made by the Federal Prosecutor's Office in consultation with magistrates from the prosecutor's offices concerned and/or the examining magistrates concerned. In principle this flow of information is centralised through the Federal Prosecutor's Office (mandatory intermediary).

*4.1.2.3. Article 13(7) – Information about particular cases*

At coordination meetings, Eurojust occasionally examines conflicts of jurisdiction, controlled deliveries and recurring problems relating to mutual legal assistance.

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<sup>18</sup> *Col. № 5/2005: Circulaire commune de la Ministre de la Justice et du Collège des Procureurs généraux concernant l'entraide judiciaire internationale en matière pénale du 10 février 2005.*

Under the proposed draft legislative amendment, a centralised information exchange system would be set up between the Federal Prosecutor's Office and the Belgian desk at Eurojust, with an obligation (to be established by a circular) for local prosecutors' offices to forward the necessary information to the Federal Prosecutor's Office.

The technical and practical aspects of this information exchange between the Federal Prosecutor's Office and the Belgian desk at Eurojust were under discussion by the ENCS which meets in restricted session, chaired by the national correspondent, in order to organise this exchange in stages (S-Testa monitoring, Eurojust template, identifying crime phenomena, pilot prosecution offices, assessment of workload). Particular care is being taken in order to implement an information exchange system that is pragmatic, realistic and effective, avoiding limitations and encouraging feedback.

In this context, a pilot project for information exchange is currently underway at the Federal Prosecutor's Office, the aim being to complete the Eurojust template and send these templates to the Belgian desk at Eurojust. For the time being the focus of this pilot project is on the following topics:

- The setting up of a joint investigation team (Article 13(5));
- Fraud within the EU (OLAF), money laundering and arms trafficking (Article 13(6));
- Problems and repeated refusals to give mutual legal assistance in federal cases, or instances in which these refusals or problems have been referred to the general prosecutor with responsibility for international cooperation.

As far as conflicts of jurisdiction are concerned (Article 13(7)), it has been agreed that standardised information exchange using the template will be temporarily put on hold owing to the pending implementation of the Framework Decision on Conflicts of Jurisdiction<sup>19</sup>.

There is ongoing internal consultation on the subject of information exchange on controlled deliveries, since there are issues relating to the identification of the Member State responsible for completing the Eurojust template, and to the added value of sending this information to Eurojust.

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<sup>19</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings; OJ L 328, 15.12.2009, pp. 42-47.



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

The terrorism section of the Federal Prosecutor's Office has *de facto* responsibility for all terrorism cases in Belgium (exclusive competence).

In accordance with Decision 2005/671/JHA of 20 September 2005 on the implementation of specific measures for police and judicial cooperation to combat terrorism<sup>20</sup>, there is a centralised system through which the national correspondent for terrorism at Eurojust, head of the terrorism section of the Federal Prosecutor's Office, provides the Belgian member of Eurojust with all relevant information on federal terrorism cases (infringements of Articles 137 to 141 of the Criminal Code) in which:

- A request for international mutual legal assistance has been issued;
- A European arrest warrant or default international arrest warrant is issued;
- From the start of the case (the initial report), there are serious indications of criminal acts of a terrorist nature, covered by Articles 137 to 141 of the Criminal Code, which concern or are likely to concern two or more Member States;
- During the investigation, there are serious indications of criminal acts of a terrorist nature, covered by Articles 137 to 141 of the Criminal Code, which concern or are likely to concern two or more Member States.

Such information is forwarded by using the Eurojust template.

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<sup>20</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, OJ L 253 29.9.2005, pp. 22-24.

The joint circular<sup>21</sup> from the ministry of justice and the College of General Public Prosecutors on the judicial approach to terrorist matters mentions the obligation to provide information on criminal investigations on terrorist matters with a European dimension<sup>22</sup>.

To allow the efficient management of fact sheets, each fact sheet created within a case file has the reference number corresponding to Decision 2005/671/JHA followed by the words "Eurojust fact sheet", followed by another number: 1 (i.e. first fact sheet for the case), 2 (second fact sheet for the case), etc., thus highlighting the chronological order of the fact sheets. The fact sheets will then be completed in line with developments in the case/investigation: new identities, drafting of a request for international mutual legal assistance and for European arrest warrants, procedural rules, summons, ruling, arrest, etc.

It has been agreed with the Belgian member of Eurojust that the sixth recital of Decision 2005/671/JHA of 20 September 2005 on the implementation of specific measures for police and judicial cooperation to combat terrorism fully applies, that reads:

"In the execution of the exchange of information, this Decision is without prejudice to essential national security interests, and it should not jeopardise the safety of individuals or the success of a current investigation or specific intelligence activities in the field of State security."

Therefore, a special section designated handling codes is provided on the Eurojust template, to be used to bring files to the attention of the Belgian member of Eurojust. This reference explicitly indicates that a genuine threat to national security, an ongoing investigation or the safety of individuals exists.

This would certainly be the case if the criminal investigation on terrorist matters underway at federal level in Belgium were subject to a judicial embargo<sup>23</sup>.

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<sup>21</sup> *Circulaire commune du Ministre de la Justice et du Collège des procureurs généraux relative à l'approche judiciaire en matière de terrorisme.*

<sup>22</sup> Following the on-site visit to Belgium an addition has been made to the law project implementing the Eurojust Decision to provide for a legal basis for the obligation to exchange information in the field of terrorism as foreseen in Council Decision 2005/671/JHA .

<sup>23</sup> Cf. Law of 10.07.2006 - Analysis of the threat - Article 11 and Law of 05.08.1992 - Role of the police - Articles 44(5) and (8).

The Belgian member of Eurojust will comply with these "handling codes" when exchanging the Eurojust fact sheets forwarded with Eurojust itself.

This information is received by the Belgian desk at Eurojust and fed into the case management system (CMS) as a temporary work file (TWF), which means that only the Belgian desk has access to it.

#### *4.1.4. Channels for information transfer to Eurojust*

##### *4.1.4.1. General*

In cases relating to organised crime, the Belgian desk at Eurojust is informed via the Federal Prosecutor's Office, either by email, fax or post. There is also a secure channel between the Federal Prosecutor's Office and Eurojust, but this is only used for (strictly) confidential information. The national correspondent at Eurojust has a user name and password allowing him to use this secure channel.

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

The structured exchange of information is still in the initial stages. The Belgian authorities explained that one reason for this was the recent receipt of the template created by Eurojust for the application of Article 13(5) to (7).

At short term, Belgium intends to forward information in a structured way (via the Eurojust template) using the S-Testa network. A working group composed of representatives from the ministry of justice and the Federal Prosecutor's Office has been tasked to develop the IT and technical side of this structured information exchange.

This group is currently examining the setting up of an information transfer based on S-Testa, as well as possible links with the databases available at the Federal Prosecutor's Office and the information required for the Eurojust template, in order to allow this information to be inserted automatically.

In the long run, Belgium would prefer its national correspondents to have direct access to the CMS, subject to validation by the Belgian member of Eurojust.

Belgium is also taking part in the *E POC V* project<sup>24</sup>. This involvement makes the exchange of information with Eurojust a priority for Belgium, and will facilitate the development of the IT and technical aspects of this exchange.

Belgium is also looking into the possibility of using the NAS software developed by the *E POC IV* project.

#### *4.1.4.3. Exchange of information on terrorism*

Terrorism related files are sent to the Belgian member of Eurojust automatically and via secured channels. As mentioned above, this information is transferred using the Eurojust templates.

#### *4.1.5. Concrete content in practice of the information provided to the national members according to Article 13(5) to (7)*

Owing to the non-transposition of the 2009 Eurojust Decision, the Belgian authorities were not in a position to answer what the concrete content in practice of the information provided to the national members according to Article 13(5) to (7) of said Decision was.

## **4.2. Feedback by Eurojust**

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

Owing to the fact that the new Eurojust decision had not been fully implemented during the time of the evaluation, the obligation to provide information established by Article 13a [Information provided by Eurojust to competent national authorities] is not yet being systematically applied. The Belgian authorities have therefore regarded it as difficult to assess the feedback from Eurojust on the basis of Article 13a and in terms of the links established by the CMS.

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<sup>24</sup> In August 2012 Belgium was informed that the proposal for an action grant under the specific programme of Criminal Justice was denied for the EPOC V project by the European Commission. Eurojust has indicated that it will continue to investigate ways by which they can go forward with the project.

In matters relating to terrorism, they had not noted any feedback from Eurojust on the links established by the CMS following the transfer of fact sheets. In general the fact sheets which reach Eurojust are complete enough to allow any need for coordination to be detected quickly.

Consequently, feedback from Eurojust only becomes relevant when coordination is needed, or in the context of a specific question relating either to organised crime or to terrorism.

When there are urgent one off actions relating to requests for mutual legal assistance and/or extradition, feedback from Eurojust is dependent on the nature of the problem and essentially on the State involved, but, in general, information circulates quickly.

Moreover, Member States are generally informed of the results of information analysis and of case law connected to terrorism via Eurojust's "Terrorism Convictions Monitor" and Europol's EU Terrorism Situation and Trend Report (TE-SAT).

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

The Belgian authorities found it difficult to give a qualitative assessment of the information flows under Article 13(5) to (7).

With regard to the information flows relating to terrorism, the information provided by Eurojust to the national correspondent for terrorism is always information of definite interest. As mentioned above, it relates to requests for mutual legal assistance on terrorist matters, requests for participation in coordination meetings on terrorism of interest to Belgium, and the forwarding of the Terrorism Convictions Monitor, which gives the national correspondent for terrorism and the terrorism section of the Federal Prosecutor's Office an overview of terrorism related case law in the European Union, etc.

This case law is of particular interest in combating terrorism. The national correspondent for terrorism therefore requested, at the strategic meeting in June 2011, that a database containing all case law be set up within Eurojust, to which all national correspondents would have access on a permanent basis.

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

Since the exchange of information based on Article 13(5) to (7) is not yet being applied in Belgium, the Belgian authorities were unable to answer the question regarding practical or legal difficulties encountered when exchanging information with Eurojust.

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

In addition to the proposal for a database of existing European Union case law on terrorism, the Belgian authorities made the following suggestions:

A Eurojust template for feedback from Eurojust under Article 13a of the new Eurojust decision should be created, following the example of the template created for the exchange of information with Eurojust, in order to give a structure to Eurojust feedback as well.

An explicit indication of the origin and character of the information and of the possibility to use it in criminal proceedings should be made mandatory.

*4.2.5. The E POC project*

Belgium has not been a partner in the E POC IV project but took part in the final conference on the project on 29 and 30 March 2012. The expert team was informed that Belgium was looking into the possibility of using the NAS software developed by the E POC IV project.

Belgium is a partner to the E POC V project.

**4.3. Conclusions**

- With regard to the information exchange ex Article 13 the evaluation has revealed certain scepticism regarding its full implementation. The intention encountered within the Belgian judicial services seemed to be to limit the transmission of information to certain categories, e.g. where this was considered both feasible and useful (i.e. to JITs and to difficulties in judicial cooperation) in form of a “pilot” project.

## RESTREINT UE/EU RESTRICTED

The fact that information on recurrent difficulties in judicial cooperation is centralised by the General Prosecutor of Gent was on the other hand noted as a good practice. However, the usefulness of transmitting other information (i.e. on potential conflicts of jurisdiction or *a posteriori* on controlled deliveries) appeared questionable to Belgium. It was however noted that the Eurojust Decision is binding in its entirety.

- The representatives of the Belgian authorities have expressed the need for improving the feedback on cases where information had been sent to Eurojust.
- The obligation to transmit information to Eurojust in accordance with Article 13(5-7) EJD requires legislative implementation in Belgium and has not yet been implemented into national law. The draft implementing law foresees a centralised system for information exchange from the Federal Prosecution Service to the Belgian desk at Eurojust. In order to ensure its application, local prosecution services will be requested, via a circular, to transmit the necessary information to the Federal Prosecution Service. During the evaluation visit, Belgian local authorities stated that they were not aware of this obligation.
- In this context, a question which remained to be clarified is whether the draft implementing law will also be binding upon Belgian investigating judges, in particular when it comes to exchanging information with Eurojust. The evaluation team was informed that the instructions issued by the College of Prosecutors General of Belgium do not bind investigating judges and that, for example, investigating judges could refuse exchanging information with Eurojust falling under Article 13(5-7) EJD.<sup>25</sup>
- While awaiting adoption of the draft implementing law, information exchange is being carried out ‘à la carte’, i.e. whenever Eurojust or the Belgian competent authorities require any information for the performance of their tasks, for example in view of the organisation of a coordination meeting at Eurojust.

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<sup>25</sup> As previously noted, the Belgian authorities have informed that the president of the assembly of investigating magistrates will be informed about the future circular of the College of General Prosecutors, once it has been adopted, and about the obligation to transmit information contained in it.

## RESTREINT UE/EU RESTRICTED

- The use of the Article 13 form (prepared by Eurojust) for the structured transmission of information to Eurojust is welcome, although it will not be used temporarily with respect to the transmission of information on cases where conflicts of jurisdiction have arisen or are likely to arise (it was stated that this is due to the considerable number of files in this particular field in Belgium and the fact that this would entail an important workload which at the moment cannot be faced).
- With respect to the obligation to inform Eurojust about controlled deliveries, the Belgian authorities indicated that they consider it difficult to determine which Member State should be responsible to complete the form and they wondered what is the added value of the transmission of this information to Eurojust.
- The Belgian authorities reported that a few forms were already sent to Eurojust, but were not yet inserted in the Case Management System (CMS) of Eurojust. It was also stated that it takes quite a long time to complete the form and that it is not user friendly.
- With respect to Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, the national correspondent for Eurojust for terrorism matters transmits the necessary information to Eurojust via the Eurojust form. The obligation to transmit this information to Eurojust is included in a circular of the Minister of Justice and the College of Prosecutors General.<sup>26</sup> Belgian authorities comply with their obligation to transmit the necessary information to Eurojust.
- In view of the importance of the case law of national courts in the field of counter-terrorism, the National Correspondent for Eurojust for terrorism matters suggested that Eurojust creates a database on the case law of national courts in the field of counter-terrorism and makes it available at all times to National Correspondents.
- With a view to improving information exchange with Eurojust in the future, the Belgian authorities suggested that Eurojust should explicitly indicate what is the source/origin of the information to be exchanged and whether it would be possible to use it in a criminal proceeding.

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<sup>26</sup> Cf. also footnote 26.



- The Belgian authorities informed the evaluation team that so far no “hits” were reported by Eurojust from cross reference of data inserted in the Eurojust Case Management System (CMS). It was acknowledged that this is due to the fact that the obligation to transmit information to Eurojust in accordance with Article 13(5-7) EJD is not applied systematically in Belgium.
- In the field of terrorism, however, Belgium fully complies with its obligations but so far they were not informed of any hit possibly detected by Eurojust.
- Generally, Eurojust provides feedback every time there is a need for coordination or in the framework of specific questions in the field of organised crime and terrorism. Feedback is also provided by Eurojust when assisting national authorities in the facilitation of the execution of MLA and extradition requests.
- In this context, Belgian authorities suggested that Eurojust prepares a form for the (structured) transmission of feedback to national authorities in accordance with Article 13a EJD.
- According to the information received, the Member State obligation to inform Eurojust of the installation of a JIT as outlined in article 13(5) EJD is met by Article 8(5) of the Law of 24 December 2004 on international mutual legal assistance on criminal matters, amending Article 90b of the Code of Criminal Procedure. Article 13(5) EJD does not provide any indication with regard to the moment when Eurojust needs to be informed. During the onsite-visit it was discussed whether the provision is best implemented by informing Eurojust (and Europol) after the signing of a JIT. The expert team saw some benefits to rather disseminate the information at an early stage when the installation of a JIT is already considered as this would allow Eurojust (and Europol) to assist the national competent authorities more efficiently in their assessment regarding the usefulness of a JIT and its possible later implementation.

## 5. OPERATIONAL ASPECTS

### 5.1. Statistics

#### 5.1.1. Federal Prosecutor's Office

The Federal Prosecutor's Office keeps updated statistics on the following items:

- Own contacts with Eurojust;  
in that regard, each request or message from the Belgian Eurojust member prompts the opening of a case-file at the Federal Prosecutor's Office. The Belgian authorities have informed that there has been an annual increase in the number of case files opened by the Federal Prosecutor's Office concerning requests to or from Eurojust. The numbers rose from 81 in 2005 to 165 in 2011.
- The number of requests for coordination meetings sent by a Belgian authority to Eurojust;
- The terrorism case files sent to Eurojust;  
in 2010 (2011), 28 (5) terrorism case files (templates) have been forwarded to Eurojust by the national correspondent.

The Eurojust operational and strategy meetings on terrorism attended by the national correspondent or a federal magistrate from the terrorism department are also recorded in special case files.

#### 5.1.2. Belgian desk at Eurojust

At the Belgian desk at Eurojust the following statistical data are available:

- The bi-monthly report from the Belgian Eurojust member;  
it contains more detailed statistics concerning cases dealt with by the Belgian desk at Eurojust;
- Up to date statistics concerning Belgian authorities (i.e. national member, Federal Prosecutor's Office, general prosecutors' offices, local prosecutors' offices, examining magistrates, Federal Police, ministry of justice) which have sent requests to Eurojust, comprising both the number and nature of those requests (coordination, international letters rogatory, complaints, extraditions, exchange of information, joint investigation teams, European arrest warrants, particular concerns, etc.) and the number of coordination meetings attended as a requesting or requested Member State.

## 5.2. Practical experience in relation to Eurojust

The Belgian desk at Eurojust keeps updated statistics on the number of cases and the type of requests (bilateral or multilateral).

Most of the organised crime cases referred to Eurojust mainly involve priority concerns in this area such as itinerant criminal gangs, drug trafficking, human trafficking, serious economic and financial fraud, and arms trafficking. Most of these cases, whether bilateral or multilateral, are urgent or complex.

Cases are referred to Eurojust at differing stages of proceedings, though usually whilst judicial investigations are underway, i.e. once sufficient information is available to provide initial guidance for the enquiry and contacts have been made with a number of other Member States or third States (e.g. requests for mutual legal assistance).

In terrorism cases, the Federal Prosecutor's Office will, as a matter of principle, suggest holding a coordination meeting as soon as at least three Member States are involved. It will generally be clear whether that is the case once the initial information has been confirmed by a series of investigations and information is available on the perpetrators, the nature and structure of the terrorist group and its operating methods, etc.

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

The guidelines for allocating cases to Eurojust, the EJM or others are set out in circular 15/2004 on Eurojust<sup>27</sup>:

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<sup>27</sup> *Circulaire n° COL 15/2004 du Collège des Procureurs généraux près les Cours d'appel sur: Coopération internationale en matière pénale – Eurojust, 08.12.2004.*

"Although Eurojust has broadly defined objectives and tasks covering a whole series of crimes, as soon as at least two EU Member States are involved in a case consideration must first be given to the options available to the Crown Prosecutor (or the general prosecutor) under international cooperation in criminal matters within the European Union, such as sending direct requests for mutual legal assistance and making direct contact with the foreign colleague, or calling on support from the Federal Prosecutor and from the European Judicial Network.

It will therefore not normally be appropriate to call on Eurojust simply in order to speed up the execution of international letters rogatory or an extradition request, or to obtain assistance with the actual sending of such requests.

Conversely, Eurojust will tend to be asked to deal with complicated multilateral cases in which it can provide added value, for instance where various Member States need to execute a series of letters rogatory simultaneously or to coordinate criminal proceedings, or where there is a need to assess various criteria in order to decide which country is best placed to initiate prosecution."

According to the information received, these guidelines will also be fleshed out in the circular that will be served once the draft legislative amendment for transposing the new Eurojust decision has been adopted.

In practice, it is mainly the competent judicial authority that chooses the channel. The competent magistrate chooses, based on his/her experience and personal contacts, between a series of channels: either direct contacts between the police and/or judicial authorities, or the European Judicial Network directly (i.e. an EJM contact point) or indirectly (via the Federal Prosecutor's Office), or liaison officers or the liaising magistrate (only in Morocco), or else Eurojust or OLAF, either directly or indirectly (via the Federal Prosecutor's Office).

In the event of uncertainty, the competent magistrate can always revert to the Federal Prosecutor's Office, and more specifically, to the national correspondent for Eurojust and the EJM, who will be the magistrate best able to decide the most appropriate channel.

The Belgian authorities have explained that within their practice the key criteria determining the decision to call upon Eurojust were the following:

- (a) Urgency (person in provisional custody, deadlines for execution of an EAW, etc.) and
- (b) The need for coordination (mainly where more than 2 Member States or a third State are involved),

regardless of the bilateral or multilateral nature of the cases and of their relative complexity.

In bilateral cases (whether complex or not) contacts will generally be established with the competent foreign authorities in the EU, where necessary following the intervention of a magistrate or liaison officer via the EJM or the Federal Prosecutor's Office. In most cases, direct contacts already would already exist between the appropriate police authorities. In the event of failure to reply or obstacles, recourse will generally be made to Eurojust.

The request for Eurojust to intervene usually comes at a second stage, i.e. where the need for coordination arises or where other channels have failed.

In terrorism cases a request for assistance would be forwarded to Eurojust if other means have failed to identify the correspondent in the State where enforcement is sought. If the correspondent is well known, the request for mutual legal assistance is usually forwarded directly to the judicial authority of that State. Eurojust receives a copy of that request via a terrorism file.

The Federal Prosecutor's Office is also a member of the four-country-network comprising Morocco, Spain, France and Belgium for exchanging terrorism related information between the designated contact points.

The Belgian desk at Eurojust receives only requests concerning operational cases (coordination requests, provision of information, exchange of information about enquiries, help with execution of a European arrest warrant, etc.) and, very exceptionally, requests for straightforward provision of legal or practical information, such as the address of a judicial authority in another Member State. The experts were informed that the Belgian authorities may also send general questions addressed to all Member States (so-called "topics"), though this happened very infrequently while other Member States would send such requests regularly.

#### 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 national member is in charge of operational cases concerning terrorism and maritime piracy and attends the coordination meetings dealing with cases of particular interest for the future of Eurojust, such as those on EU fraud where OLAF is involved. The seconded national expert, who organises and also chairs coordination meetings on them, handles other operational cases.

##### 5.4.1.1. Requests sent by the Belgian authorities:

The order in which requests sent by the Belgian authorities are being tackled by the Belgian desk were explained as follows:

- 5) Receipt of the request (usually by the Federal Prosecutor's Office) and registration in the case management system (CMS)
- 6) Notification from the general prosecutor with responsibility for international cooperation that a new case has been opened (and from the Federal Prosecutor's Office where the request has been sent directly by a judicial authority).
- 7) The request is sent to the national desk of the State in which enforcement is sought.
- 8) The reply is sent to the Federal Prosecutor's Office or directly to the requesting Belgian judicial authority in urgent cases (with a copy to the Federal Prosecutor's Office).

##### 5.4.1.2. Requests sent to the Belgian authorities:

Conversely, the order in which requests sent to the Belgian authorities are being handled in the following manner:

- 1) Receipt of the request;

- 2) Notification of the general prosecutor with responsibility for international cooperation that a new case has been opened;<sup>28</sup>
- 3) Transmission of the request to the Federal Prosecutor's Office or, in urgent cases, directly to the Belgian judicial authority addressed (with a copy to the Federal Prosecutor's Office);
- 4) Transmission of the reply to the national desk of the requesting Member State.

*5.4.2. Requirements for cooperation between Belgian national authorities and Eurojust*

Cooperation with Eurojust is governed by the law and by circulars from the College of Principal Public Prosecutors.

As explained above, since it is a centralised authority, the Federal Prosecutor's Office has a mandatory role to play as intermediary for contacts between Eurojust and the Belgian authorities. Written copies must be kept of all requests for intervention and of all information provided, whether incoming or outgoing.

The decision on whether or not to enforce a request from Eurojust is taken, in a reasoned manner, by the person handling the request and, except in cases of extreme urgency, following consultations between the Federal Prosecutor and the Crown Prosecutor (or the general prosecutor)<sup>29</sup>. This mandatory consultation is needed in order to ensure coordination of the implementation of criminal proceedings.

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<sup>28</sup> The Belgian authorities have informed after the on-site visit that the general prosecutor with responsibility for international cooperation is informed of both requests sent by the Belgian authorities and requests sent to the Belgian authorities. According to Article 8(1) of the 2004 Eurojust Law the Belgian Eurojust member notifies the general prosecutor with responsibility for international cooperation about any request from Eurojust. This means, in practice, that each time a new request is sent to the Federal Prosecutor a copy is sent to that general prosecutor.

<sup>29</sup> Cf. Article 8(2) of the Law of 21 June 2004, transposing Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA).

According to Article 8(1) of the 2004 Eurojust Law the Belgian Eurojust member notifies the general prosecutor with responsibility for international cooperation about any request from Eurojust. This means, in practice, that each time a new request is sent to the Federal Prosecutor a copy is sent to that general prosecutor.

Pursuant to Article 19(2) of the Law of 19 December 2003 on the European arrest warrant<sup>30</sup>, where the final decision concerning the execution of the European arrest warrant has not been taken within 90 days of the date on which the person was arrested, the public prosecutor's office notifies the Federal Prosecutor, who in turn notifies Eurojust and gives the reasons for the delay.

The Federal Prosecutor informs Eurojust of the creation of a joint investigation team, where that team comprises Belgian members and members from at least one other EU Member State.

In terrorism cases, "terrorism" case files are sent by the national terrorism correspondent to the national member. Direct contacts are usually made between the national correspondent and the Belgian Eurojust member.

Reports are made on coordination meetings, mainly setting out their conclusions, and they are sent to all the participants at the coordination meeting.

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

According to Article 6 of the Eurojust Decision, a number of tasks have been conferred on Eurojust acting through its national member. Such procedure was however, at the time of the on-site visit not applicable in practice, since the Belgian Eurojust member has so far not made use of the option of sending a request to the Belgian judicial authorities pursuant to Article 6 of the Eurojust Decision.

Owing to the pending implementation of the new Eurojust Decision experiences related to the powers exercised by the Belgian national member were confined to the old regime.

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<sup>30</sup> *Loi belge du 19 décembre 2003 relative au mandat d'arrêt européen (Moniteur belge du 22 décembre 2003, p. 60075).*



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

With regard to experiences related to Article 7 of the Eurojust Decision, the Belgian authorities have informed about a case that fell into the category as stipulated by Article 7(b) of the new Eurojust Decision, namely that Eurojust shall, when acting as a College: “(...) ensure that the competent authorities of the Member States inform each other of investigations and prosecutions of which it has been informed and which have repercussions at Union level”.

In 2010, the Belgian national member was informed of an investigation in Belgium into a possible serial killer who might have killed people in several other Member States. A case file was opened accordingly by the Belgian desk at Eurojust for the attention of all the Member States and submitted to the Eurojust College, which eventually gave its agreement.

Up to the time of the on-site visit Belgium had so far not had any practical experience of 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 to the extent that this is not covered by the Commission Study on the Strengthening of Eurojust.

Neither has there been the occurrence of a case where Belgium had asked for or received a written non-binding opinion of the College of Eurojust in relation to recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

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

5.5.1. *Qualitative perception*

5.5.1.1. *Key points for ensuring success*

In their written replies, the Belgian authorities have highlighted the following key points that they deemed essential for ensuring a successful coordination meeting:

- Organisation of consultations between the requesting magistrate and the Federal Prosecutor's Office prior to sending a request to Eurojust (information on whether or not it is necessary, on the timing and conduct of the coordination meeting and on possible links to other cases at national level, etc.);
- Presence of the national members and their deputies or national seconded experts at the coordination meeting with a view to actively participate in the discussions;
- Effective follow-up to coordination meetings and compliance with the agreements reached; The report on a coordination meeting must reflect the views of all parties, set out the agreements reached and be sent out quickly;
- Clear agreements must be reached regarding the use and confidentiality of the information exchanged and of the report on the coordination meeting.

#### *5.5.1.2. Perceived advantages*

- There are no formal requirements for requests; they may be sent by e-mail, by fax, by post or by hand. This system provides the benefits of flexibility and speed.
- Cooperation with the Belgian desk at Eurojust on organising a coordination meeting is straightforward, pragmatic, flexible and informal.
- The participants at coordination meetings are generally satisfied with the results in terms of information exchange and coordination (agreements on practical matters).
- In terrorism cases, participants are notified well in advance of the objective of the meeting and of any contributions that should be made in an oral presentation.
- After the meeting, a clear report is written on the subject matter and the decisions taken. Experience has shown that attention is also devoted subsequently to whether the decisions taken have in fact been implemented and whether it is necessary to hold a follow-up meeting.

#### *5.5.1.3. Perceived disadvantages*

- The main difficulty concerns the deadline for organising coordination meetings and the Eurojust internal procedure for setting a date for a coordination meeting (need to find two available meeting rooms and to obtain agreement on the date from other Member States). As a general rule, a period of two or three months at most should elapse before such a date is fixed; otherwise the examining magistrates are likely to plan their operations without any coordination.

- Where the date of a coordination meeting is decided following agreement with the Belgian authorities, which are generally contacted by the Federal Prosecutor's Office, an invitation to attend the meeting is sent by the Belgian desk at Eurojust to the Federal Prosecutor's Office and the other prosecutor's offices concerned. That invitation does not contain any explanation or personal data, since there have already been previous exchanges of e-mails with the Federal Prosecutor's Office and/or the other judicial authorities involved.<sup>31</sup>

#### *5.5.1.4. Suggestions*

In order to render coordination meetings more efficient and effective, the Belgian authorities have made some suggestions triggered by their experience.

In their view,

- A. Consideration should be given to producing a standard form for requesting a coordination meeting (e.g. along the lines of the standard form used for Article 13(5) to (7)); a structured request does provide some clear advantages (e.g. as regards supplementary information, information sufficient for coordination purposes, justification of a request, other channels, contact details of competent channels abroad, possible inputting of data from national databases - by a deadline - and in the CMS, etc.)
- B. The option of participating in a coordination meeting by means of a videoconference should (often) be preferred where it is not easy to transport a delegation to The Hague, particularly where the Member State only has a passive role to play.

#### *5.5.2. Role of the ENCS*

In their replies the Belgian authorities have stated that in their opinion the role of the Eurojust National Coordination System (ENCS) tended to be restricted to establishing the framework, operating rules and rules governing information exchange between Eurojust and the judicial authorities. It therefore did not have a real role in the coordination meetings.

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<sup>31</sup> The Belgian authorities have explained that with regard to Eurojust's strict obligations concerning data protection, an invitation to attend a coordination meeting cannot contain any personal data. In practice to resolve this problem, the Belgian national desk will send an accompanying mail with further information on the subject of the planned coordination meeting.

The Federal Prosecutor's Office, on the other hand, will attend all Eurojust coordination meetings covering a federal case. As far as other cases are concerned, the Federal Prosecutor's Office is not able to attend every coordination meeting to which it is invited owing to a lack of resources.

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

As things stand, only the Belgian national member is involved in the permanent system of the On-Call Coordination (OCC) as stipulated in Article 5a of the new Eurojust Decision.

In the view of the Belgian authorities, the establishment of the OCC has not changed the national authorities' organisational arrangements at all, since the examining magistrates, local prosecutors' offices and the Federal Prosecutor's Office all have duty offices.

Information concerning the implementation of the OCC is sent to all the local prosecutors' offices via a memorandum<sup>32</sup> sent by the general prosecutor with responsibility for international cooperation to all the reference magistrates involved in international cooperation.

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

Cooperation with the Europol national unit is on the ENCS agenda. As mentioned above, a federal magistrate is a contact point for Europol and also a member of the ENCS.

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<sup>32</sup> Memo 301/2011 of 25.08.2011, issued by the general prosecutors on: Eurojust – On Call Coordination.

## 5.8. Conclusions

- No problems have occurred in Belgium with respect to the allocation of cases to Eurojust or the EJN. Instructions addressed to national competent authorities have been issued (Circular № COL 15/2004) that advises not to contact Eurojust to expedite the execution of an MLA request or an extradition request, or for transmitting these types of requests. Cooperation between Eurojust and the EJN is also facilitated by the national correspondent for Eurojust and the seconded national expert at the Belgian desk at Eurojust who is also an EJN contact point.
- As stated above, the Federal Prosecution Service acts as a ‘filter’ between national competent authorities and Eurojust in order to ensure that Eurojust only receives cases falling under its competence. The national correspondent for Eurojust plays an essential role in this respect.
- In certain cases where it was clear that the matter should have been resolved via the EJN contact points, the Belgian authorities reported that they preferred to use the Eurojust channel, as there was no guarantee of obtaining a response within a reasonable timeframe from the EJN contact point of another Member State.
- With respect to exercising the tasks under Articles 6 and 7 of the Eurojust Decision, the Belgian authorities reported that no use has been made so far of Article 6. Article 7 was used on one occasion at the request of the Belgian desk at Eurojust.

## 6. COOPERATION

### 6.1. Cooperation with EU agencies and others

The Belgian authorities have stressed that given the central role of the Federal Prosecutor's Office as an interface with Eurojust, OLAF and Europol (and the judicial authorities), its goal is to ensure coordination and interaction between Eurojust, OLAF and Europol cases.

Europol and OLAF are regularly invited to the coordination meetings on cases that concern them (involving an EAW or EU fraud). So far Frontex has not participated in cases involving Belgium that have been referred to Eurojust.

A memorandum of understanding (MoU) has been signed by the Belgian desk at Eurojust and the Belgian Europol liaison office<sup>33</sup>.

One of the liaison officers has been specifically put in charge of relations with Eurojust and is invited to the coordination meetings. The Belgian Europol liaison office and the Belgian desk at Eurojust inform each other about any Europol meetings involving Belgium. Wherever a meeting is of judicial interest, the Belgian desk at Eurojust will be attending.

The Belgian judicial authorities regarded the fact that information could be exchanged more quickly between the European agencies as an improvement over the *status quo ante*.

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<sup>33</sup> Memo 283.2011 of 28.04.2011 issued by the general prosecutors on: MoU EJ - EP belge.

## 6.2. Cooperation with third states

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

Several case files were opened by the Belgian Eurojust office in respect of third States. The following States attended coordination meetings held on Belgium's initiative: Morocco, Sri Lanka, Algeria, the United States, Switzerland and Turkey (on the subject of terrorism), Japan and Brazil (drug trafficking), the Russian Federation, Ukraine and Switzerland (cyber crime). In addition, case files were opened with regard to Croatia, the United States and Norway.

The fact that, on some case files, there are third States with which there is no direct contact or with which cooperation presents a problem is precisely why Eurojust's involvement is sought. At a number of coordination meetings, the Federal Prosecutor's Office and the judicial authorities have gained useful experience with third States such as Japan, Turkey, Russia, etc. In such case files Eurojust has shown considerable added value as to contributing to them.

On the other hand, the Belgian authorities have maintained that they have little information about Eurojust's contacts and position vis-à-vis other third States. As a result, the Belgian judicial authorities are reluctant to pass on to Eurojust any information on their privileged bilateral contacts with third States.

Thus in the context of government action against itinerant criminal groups, Belgium has developed close relations with Balkan countries such as Romania, Serbia, Albania and Moldova, for the most part without the involvement of Eurojust.

### 6.2.2. Added value of Eurojust involvement

As already explained the Belgian authorities have emphasised that it was foremost the coordination meetings, which allow direct contact with the judicial or police authorities of these third States that provide a clear added value. Likewise, direct contact outside coordination meetings between the Belgian desk at Eurojust and the judicial authorities of third States greatly facilitates international cooperation.

In their answers to the questionnaire, the Belgian authorities have given the following a concrete example of the added value of a case file opened in respect of third States:

In connection with a drug trafficking case file involving Belgium, France, the United Kingdom, Brazil and Japan, the Brussels examining magistrate requested a coordination meeting with those countries (excluding Brazil). A joint investigation team comprising the three European Union Member States was set up. The fact that this team was funded by Eurojust enabled the Belgian authorities to send letters rogatory to Japan and Brazil and to enable the magistrate to accompany the rogatory letter.

Given its relations with third States, Eurojust also has considerable added value in the context of certain terrorism case files.

### **6.3. Practical experience of the EJM**

#### *6.3.1. Cooperation between the Belgian member and the EJM*

Operational cooperation between Eurojust and the EJM (choice of channel, information exchange, etc.) is conducted at the level of the seconded national expert (SNE), who simultaneously acts as EJM contact point, rather than between national members. In this regard the SNE responded to some twelve requests from other EJM contact points, where necessary consulting the EJM (contact points, national correspondent, internet site). This cooperation between Eurojust and the EJM also takes place at the level of the Eurojust national correspondent who is at the same time EJM national correspondent.

One way of rationalising cooperation between Eurojust and the EJM might be to organise strategic meetings together at the same time. That offers certain advantages (saving money, putting out a single message, avoiding double agendas, restricting participation at meetings to those who are "double-hatted", etc.). The same applies to the joint investigation team network.



*6.3.2. Resources of Belgian EJN contact points*

Broadly speaking, the members of the Belgian EJN contact points have recourse to the budget of the ministry of justice for the purpose of carrying out their tasks, including those of national correspondent, EJN contact point and national correspondent responsible for the technical aspects. They do not have specific resources for performing their tasks in the framework of the EJN.

*6.3.3. Operational performance of EJN contact points*

The Federal Prosecutor's Office maintains statistics on contact point requests in the annual report. However, the Belgian authorities maintained that the number of responses were difficult to estimate as many were channelled through telephone and e-mail and went therefore statistically unrecorded.

Nevertheless, where requests for assistance are more significant and come solely from EJN members, case files are sometimes opened. This has led to the opening of twenty eight case files in 2010. The Federal Prosecutor's Office also makes very frequent use of the EJN contact point network in performing its task of facilitating international cooperation on behalf of the Belgian judicial authorities. While the Federal Prosecutor's Office approaches the EJN's foreign contact point on very many occasions, the frequency cannot be estimated given that case files on requests for assistance are opened on the basis of the requesting authority, not the channel used for providing assistance. Some contact points also keep statistics (although this is not representative one Belgian contact point had reported the following figures for 2011: incoming requests:– 11; outgoing requests: 2). The number of requests received varies widely from one contact point to another depending on the contact point's principal duties; for example, the contact points at the Federal Prosecutor's Office receive more requests. While the 2008/2010 bi-annual report on the EJN's activities and management also contains statistics on Belgian requests, it does not give the actual full number of requests. That explains the low figures in the EJN report for Belgium (e.g. for 2010: some ten requests related to foreign law and at least ten were for assistance with a view to preparing an European Arrest Warrant (EAW)). This issue was flagged as being on the agenda for the national meeting of contact points that was scheduled for October 2012, the objective being to support the introduction of comprehensive statistics on requests sent and received by all EJN contact points.

The EJN contact points deal with operational and legislative issues. They also supply information on detained persons in Belgium and if necessary refer the requesting contact points to the competent national authority.

In general, Belgian contact points are able to respond to requests themselves or otherwise refer them to the competent authority. The Belgian authorities have however, reported that the processing of general, legislation-related requests to the entirety of Member State contact points has at times led to confusion regarding the responsibility for the reply and resulted – in the worst case - in multiple efforts or no reply at all. They have therefore suggested that in such situations the Network for Legislative Cooperation between the Ministries of Justice of the European Union (NLCEU) would seem a more appropriate channel for managing requests of this kind.

By and large, the contact points of the other Member States reply within a reasonable time and in the manner that might be expected. However, with certain case files Eurojust was the preferred channel because there was no guarantee that a reply via the EJN could be obtained within a reasonable time.

The EJN's operational contact points perform their tasks at the Federal Prosecutor's Office and are therefore able to exchange any information with other authorities automatically. The other contact points refer all other operational matters to designated contact points at the Federal Prosecutor's Office, except for designated contact points within the central authority for international judicial assistance in criminal matters at the ministry of justice, which also deal with individual case files (extradition, prisoner transfers, service of judicial documents, international letters rogatory).

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

The judicial authorities refer mainly to the European Judicial Atlas, which is frequently used and proves very useful. Adding a function to the Atlas indicating the language in which the competent authorities wish to receive requests for assistance would prove extremely useful for practitioners and would also save time and money. At present the competent authorities regularly receive requests for assistance in an inappropriate language.

The other tools are less frequently used. Belgian authorities stated that the computer programs to help draft the European arrest warrant or requests for assistance are time-consuming and practitioners therefore prefer to complete such requests using a Word<sup>®</sup> template.

The library will become an essential tool since such information is not provided via other channels.

The secure part of the site with the information on contact points seems to be used mainly by contact points since they can easily access the password.

#### **6.4. Conclusions**

- Cooperation between Europol-Eurojust was considered essential by all parties and given much attention. Duplication of efforts and information channels should be avoided and information flows improved. The Belgian desk at Eurojust and the Belgian national desk at Europol have in fact signed a MoU to complement at national level the Agreement between Eurojust and Europol that can be identified as a good practice.
- Minutes of coordination meetings are regularly prepared by the Belgian desk and distributed to participants. Representatives from a Belgian local authority stated during the on-site visit that the minutes of a coordination meeting they had attended at Eurojust were not included in the file they were dealing with. It was acknowledged that national authorities of other Member States follow different approaches.
- The Belgian authorities also pointed out that it should be clear for all national authorities attending a coordination meeting at Eurojust, the use which will be made of the information exchanged and also of the minutes of coordination meetings.
- In addition, the Belgian authorities suggested that Eurojust could develop a standard form (or a check list) for advising national authorities to participate in coordination meetings at Eurojust.

- Practitioners generally referred to experiences involving Eurojust such as JITs and coordination meetings as positive. However lack of feedback/action following coordination meetings and the lack of information flow between Europol and Eurojust were identified as weaker points. There was widespread confidence in and "use" of the EJ national desk, whose intervention was also very positively assessed.
- However owing to the absence of comprehensive statistics there was a lack of evidence concerning the effectiveness of the EJM as such. From the information received it appeared that EJM contacts seemed to refer more to legal questions or to the identification of contact points. The Eurojust BE desk seemed to be used predominantly both in bilateral and multilateral cases. This could derive from the model chosen for EJM: few members centralised in the Federal prosecution office and MoJ as well as in Eurojust.<sup>34</sup>
- A specific system had been put in place for the prompt updating of the information contained in the EJM website, giving responsibility to a concrete person within the MoJ. This could be considered as a good practice as outdated information has been pointed out in other occasions as one of the problems of EJM tools.
- There is also a need of strengthening the active role of Eurojust in coordinating cooperation through a more pronounced involvement in identifying the suitable moment for coordination meetings and a closer observation of their outcome.
- While the European Judicial Atlas was a frequently used tool and has proven to be very useful tool the Belgian authorities commented that it would benefit from a function indicating the language in which the competent authorities of a Member State prefer to receive a request.

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<sup>34</sup> Following the on-site visit, the Belgian authorities have explained that EJM was well known by the Belgian operational practitioners and used by them. They admitted however, that no statistics are available about the use of EJM by investigating magistrates and local prosecutors. The Federal Prosecutor's Office has rather limited statistics about the case files which have been opened using EJM, because case files on requests for assistance are opened on the basis of the requesting authority, not the channel used for providing assistance. Additionally a reply to questions sent via the EJM channel are often dependent on the personal relation with the EJM contact points, as no control or time limits in responding exist. Furthermore they emphasised that for Belgium it was very important that close relations exist between Eurojust and the EJM (the seconded national expert at Eurojust being at the same time EJM contact point, the Eurojust national correspondent for organised crime matters being at the same time EJM national correspondent).

- Furthermore the computer programs to support drafting a European Arrest Warrant or requests for assistance were rated as time-consuming and practitioners therefore preferred their own templates.
- With respect to the cooperation with other EU agencies and bodies, such as Europol and OLAF, the Belgian authorities considered that although information exchange has improved, it should occur much quicker.
- With respect to the cooperation of Eurojust with third States, the importance of strengthening relations with third States was acknowledged. Belgium participated in coordination meetings at Eurojust where third States were also invited (e.g. Morocco, Algeria, United States, Turkey, Japan, Brazil, Russia, Ukraine or Switzerland). The intervention of Eurojust was specifically requested by Belgian authorities in cases where they did not have any contacts in third States or the collaboration with a particular country was considered problematic.
- In a particular case involving different Member States, as well as Brazil and Japan, the Belgian authorities informed the evaluation team about the support provided by Eurojust in the setting up of a joint investigation team. Also thanks to the funding provided, the Belgian authorities could travel to Japan and Brazil in order to ensure the execution of MLA requests.

## 7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

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

Controlled delivery is a special investigative technique used to support certain infiltration operations, which always require judicial consent. Controlled deliveries may refer to the transportation of goods or persons<sup>35</sup>.

The local prosecutor, Federal Prosecutor and investigating magistrate are the competent authorities to authorize controlled deliveries. However, the consent of the Federal Prosecutor is always required in certain cases, e.g. trafficking in human beings.

Under the legal regime in force the Belgian National Member at Eurojust cannot authorise a controlled delivery. There have however been cases, where the National Member has been coordinating controlled deliveries.

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

#### 7.2.1. *Practical experience*

Belgium has considerable experience with joint investigation teams, mainly with France, the United Kingdom and the Netherlands. There have already been teams which have received EU funding. Members of the national experts' network are kept abreast via memos of any information relating to joint investigation teams. Memos<sup>36</sup> were drafted inter alia to notify members of the network of the support provided by Eurojust for the establishment of joint investigation teams and of a JIT Secretariat within Eurojust.

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<sup>35</sup> AR 9.4.03 - Police investigative techniques - Articles 5 a

<sup>36</sup> Memo 264.2011 - JIT Secretariat and Annex 13 - Memo 281.2011 - JIT.

In the area of terrorism, the Federal Prosecutor's Office has signed a JIT agreement on three occasions: two concerned France and Belgium, the third concerned Belgium and Denmark. A fourth - dealing with maritime piracy - had been planned between the Netherlands, Germany and Belgium but has not been finalised as regards Belgium<sup>37</sup>.

In this area Belgium has not received EU funding (which would have been requested if the piracy JIT had been finalised).

The Belgian judicial authorities have stated that the added value of a JIT lies in the fact that, operationally, it saved time by avoiding cross- or repeated requests for assistance and allowed greater coordination of investigations, particularly during the intervention and surveillance-phase. In addition to the JIT agreements relating to a specific case file, the mechanism was seen to enable the police forces concerned to forge personal links that may be very useful for collaboration in the future.

#### 7.2.2. *Added value*

The added value of participation by the Belgian member of Eurojust in a JIT was seen as being somewhat limited. Eurojust provides support and coordination from a distance or on an occasional basis in cases where the need arises. There is no provision for specific funding if the national member wishes to attend a JIT related operational meeting in one of the Member States concerned. Experience has shown that Eurojust's added value comes into play primarily before the JIT agreement is signed by putting the right people in touch with one another when a Member State opts to use this coordination instrument.

Thus far, the national member at Eurojust (the only person authorised to participate in a joint investigation team) has signed just one JIT agreement as a participant in the framework of a joint investigation team involving three Member States.

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<sup>37</sup> The expert team was informed after the on-site visit that Belgium finally decided not to participate in this JIT.

The participation of Europol experts in a JIT, which is much more frequent, has the essential added value of providing an analytical capability for the investigations concerned: eventual "hits" are quickly communicated between ongoing investigations in the respective Member States, *inter alia* by using a mobile office that can move around in one of those Member States.

Although only a few case files have been evaluated, Belgium considers the results of the JITs in which they have taken part as positive.

With the three abovementioned experiences regarding terrorism case files, the JIT instrument has met expectations even though the case files progressed at different speeds, which sometimes compels a Member State participating in a JIT to act when the other Member State is not yet ready. This was considered being an unavoidable disadvantage with a JIT and a risk they were prepared to take.

### **7.3. Other special investigative techniques (SITs)**

According to the information received Belgium did not have any cooperation between her national authorities and Eurojust relating to other special investigative techniques (SIT) up to the date of the evaluation.

### **7.4. Conclusions**

- At the date of the on-site visit the Belgian member at Eurojust had only signed one JIT agreement as a member in the framework of a joint investigation team.
- The participation of Europol experts in a joint investigation team was perceived as an essential added value through the services that they can lend to the investigation and the synergies they are able to create; the experts therefore concluded that it should be noted as best practice to include Europol and thus their capabilities in a JIT.
- Local authorities praised the support provided by Eurojust in the setting up of JITs, in particular when it comes to the preparation of JITs agreements and providing funding.



## 8. TRAINING AND AWARENESS RAISING

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

#### 8.1.1. Training

There is a basic annual training course on international cooperation organised by the National Institute of Judicial Training (*Institut national de formation judiciaire*) which covers the tasks, organisation and operation of Eurojust and the EJM as well as the EJM website. In principle, this training is intended for judicial trainees or young magistrates. The Eurojust national member and seconded national expert, the national correspondents and the EJM contact points are involved as lecturers.

#### 8.1.2. Other measures

In 2009, the experts' network for international cooperation in criminal matters was set up. This network brings together reference magistrates from the 27 districts (*arrondissements*) and 5 public prosecutor's offices in Belgium, the representatives of the ministry of justice and the federal police. Its main function is to support the public prosecution service as a whole by providing relevant information and documentation. To this end, information notes ("memos") are drafted daily and circulated by the general prosecutor with responsibility for international cooperation to the members of the network and placed on the *Omptranet* website (the public prosecution service's secured website). Some of those memos relate to information and updates regarding Eurojust and the EJM (e.g. information on changes in the Belgian EJM contact points, the on call coordination, the Memorandum of Understanding between Eurojust Belgium and Europol Belgium, joint investigation teams, reports on EJM meetings, etc.)

Further measures that are noteworthy include:

- A national meeting of EJM contacts and members of the experts' network will be held in 2012 with the financial support of the EJM.<sup>38</sup>

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<sup>38</sup> The Belgian authorities informed after the on-site visit that this national meeting had taken place on 12 October 2012. Following the meeting it was decided that the experts' network for international cooperation in criminal matters would continue to meet in the future.

- The bi-monthly report that the Belgian member of Eurojust is required to transmit on the activities of the Belgian Eurojust office to the ministry of justice is also circulated to the judicial authorities via the experts' network as a memo (cf. also sub-chapters 3.3.2 and 5.1.2 of this report).
- A national coordination group on international criminal judicial cooperation meets every trimester. The group is made up of the public prosecutor of Ghent with responsibility for international cooperation, the ministry of justice, the federal public prosecutor's office, the Ministry of Foreign Affairs, the federal police, the strategy unit of the ministry of justice, the liaison magistrate and the Belgian member of Eurojust. It deals with all matters relating to criminal judicial cooperation, including Eurojust and the EJM. The reports on those meetings are also circulated to the judicial authorities via the experts' network in the form of memoranda.

It was emphasised however, that despite these various methods of providing information on the existence of Eurojust, magistrates most frequently become aware of the role and added value of Eurojust when they actually take part in coordination meetings.

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

The Belgian authorities have informed that they did not conduct any specific training for their national member, deputy or assistant and EJM contact points with respect to their tasks. They explained that such would only take place at Eurojust or EJM meetings. Furthermore, the Belgian member of Eurojust also takes part in the MPR days organised every year.

## **8.3. Conclusions**

- Eurojust and judicial cooperation is covered in induction training. There is also a network of expertise in charge of circulating information. There seemed to be room for improvement in relation to continuous training and information. However in practice this did not seem to hinder the use of judicial cooperation tools and channels.

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- There seems to be a need (particularly at the level of local courts) for training on the possibilities offered by Eurojust, the EJM, and other instruments of international cooperation. To that end the basic training offered by the National Institute of Judicial Training (*Institut national de formation judiciaire*) appears to be insufficient.
- Still the experts had the impression that knowledge about and awareness of Eurojust within the national competent authorities, in particular those competent authorities at regional level could be improved. At present there appears to be a basic annual training course on international cooperation organised by the National Institute of Judicial Training which covers the tasks, organisation and operation of Eurojust and the EJM. This course is incorporated in the training program of trainee magistrates. However, there seems to be no systematic and periodic training scheme on international judicial cooperation covering also the JHA EU agencies for existing magistrates.

## 9. GENERAL OBSERVATIONS

### 9.1. Overall assessment

The flexible and rapid cooperation via Eurojust and the EJM constitutes a real added value for Belgium in that it greatly facilitates international judicial cooperation on criminal matters. Within the context of judicial cooperation between Member States, Eurojust and the EJM are particularly important for Belgium in view of its specific geographical location. In fact, its geographical location means that Belgium is an important transit country in terms of international organised crime (principally groups of itinerant criminals, drug trafficking and trafficking in human beings). Consequently, Belgium collaborates actively with Eurojust and the EJM and is one of the four most requested States within the framework of the Eurojust coordination meetings. The indisputable added value of Eurojust is perceived in its ability to rapidly identify all the interested parties and to bring them together around the table if necessary. In this sense, the Eurojust coordination meetings provide a real added value in dealing with such cases. Specifically for cases of terrorism, the "Terrorism Convictions Monitor" is an essential tool providing an overview of the relevant case law.

The EJM, for its part, is well known to most magistrates and the EJM website is greatly appreciated and widely used. This website facilitates direct contacts. Specific questions can be directed to the contact points, which respond rapidly to the request.

### 9.2. Further suggestions from Belgium

In their answering the questionnaire and during the on-site visit the Belgian authorities, with hindsight to their hands-on experience, saw it fit to forward further suggestions for improving the implementation of the Eurojust Decisions to be included into this report:

- As it has already been suggested earlier in this report the Belgian authorities propose the creation of a standard form for the announcement of a coordination meeting that could result in greater efficiency in this process;

- The Belgian judicial authorities would see benefits from an improved cooperation between Eurojust and the EJM and the possible integration of the latter into the former in the future;
- The cooperation with Europol and OLAF as well as other international institutions and networks should be developed;
- The division of responsibilities between Eurojust and the EJM with regard to information management should be clarified and developed and appropriate links be established;
- Joint strategy meetings with Eurojust, the EJM and JITs should be organised; it was the view of the Belgian authorities that there were too many of such meetings, that they had overlapping agendas, that they were too costly and were consuming too much time;
- The focus should be kept on the key responsibilities of Eurojust and the EJM;
- The exchange of information and transparency with regard to relations with third States promoted;
- The collaboration with police services within the framework of Eurojust (e.g. with the liaison officers) should be promoted;
- In view of the importance of the case law relating to the fight against terrorism, it would be useful if Eurojust had a database comprising all the case law on terrorism and permanently accessible to the national correspondents;
- The language in which the competent authorities would like to receive the requests for assistance should be indicated on a mandatory basis;

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

The fact that the mutual evaluation focuses on operational cooperation with Eurojust and the European Judicial Network was considered constituting a real added value. It was therefore expected to be essential that this evaluation led to an open debate with the magistrates who regularly call upon Eurojust and the EJM.

Furthermore importance was attached to the fact that such an evaluation specifically enumerated the weak points and areas for improvement and thus become a useful tool for improving cooperation between Eurojust and the EJM. The conclusions and recommendations of the evaluation could provide effective support both for Eurojust and the EJM and for the Member States. A follow up to the evaluation was therefore strongly recommended both at national and EU level.

## 10. RECOMMENDATIONS

The evaluation team thought fit to make a number of suggestions for the attention of the Belgium authorities. This does not detract from the fact that Belgium 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 Belgium

1. Should adopt the necessary measures to implement 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; (cf. 3.5)
2. Should enable the Belgian Eurojust member to access the criminal records database from the Eurojust headquarters in The Hague; (cf. 3.3.3.2 and 3.5)
3. Should ensure that the national member at Eurojust has the possibility to access national databases to the extent outlined in Article 9(3) of Council Decision 2009/426/JHA of 16 December 2008; (cf. 3.3.3.2 and 3.5)
4. The possibility for the national correspondents of Eurojust to directly access the CMS should be notified to Eurojust in due course; (cf. 3.3.4 and 3.5)
5. Should appoint a deputy national member and an assistant as soon as Council Decision 2009/426/JHA has been implemented into national law; (cf. 3.5)
6. Should consider encouraging other professionals (e.g. investigating judges) to follow the practice of using the federal prosecution office as a "central" point for channelling requests to Eurojust or to the EJM within the limitations of the national law; (cf. 3.5.)

7. Should consider implementing the provisions of the new Eurojust Decision by means of a law applicable to all national competent authorities rather than by means of circulars in order to make it binding upon all stakeholders; (cf. 3.5)
8. Should implement into national law the obligation to transmit to Eurojust information in accordance with Article 13(5-7) EJD and adopt the necessary instructions in order to ensure its compliance by judiciary; (cf. 4.3)
9. Should encourage among national authorities the proper application of Article 13 of the Eurojust Decision by issuing practical guidelines and by providing the appropriate training; (cf. 4.3)
10. Should consider informing Eurojust and Europol at the stage when a JIT is being considered; (cf. 4.3)
11. Should consider introducing a legal provision that would enable other members of the future Belgian desk at Eurojust to enter into JIT agreements as a participant thus enhancing the operational capabilities of the bureau; (cf. 7.2.2 and 7.4).
12. Should introduce training on the possibilities offered by Eurojust, EJA and other instruments of international cooperation, particularly for the local courts and prosecution officers; (cf. 8.3)

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

13. Member States should take note of the good practice of including an OLAF contact point and other stakeholders in international cooperation in the ENCS and Member States are encouraged to follow that example; (cf. 3.2.4.1. and 3.5)
14. Member States should integrate as members of the ENCS national contact points of OLAF and Europol; (cf. 3.5)
15. Member States should recognize how the Belgian example of combining roles and structures can ensure the economy of resources and optimal coordination; (cf. 3.5)
16. Member States should take note of the practice to only appoint candidates with a long standing practical experience in the prosecution services as national member or deputy; (cf. 3.3.2 and 3.5)

17. Member States should recognize the usefulness of guidelines/instructions on when to refer a case to Eurojust or an EJM contact point; (cf. 3.5)
18. Member States should take note of the Belgian system for the prompt updating of the information contained in the EJM website by assigning responsibility to a specific person; (cf. 6.4)
19. Member States should take note of the Belgian experience to include Europol in joint investigation teams and making best use of their capabilities thereby creating an added value to the investigation; (cf. 7.2.2 and 7.4)

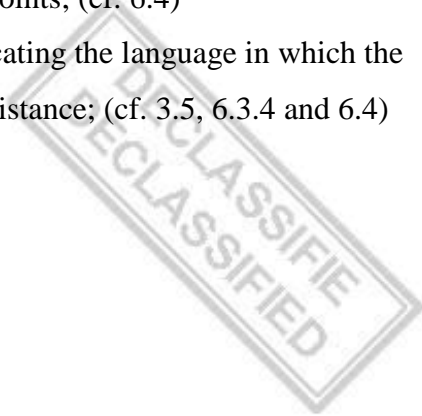
### **10.3. Recommendations to Eurojust/the EJM**

20. Eurojust should consider creating a template for feedback under Article 13a of the 2009 Eurojust Decision that follows the example of the template created for the exchange of information with Eurojust, with a view to structurizing the feedback; (cf. 4.2.4)
21. Eurojust should create a database of case law of national courts in the field of counter-terrorism and make it available at all times to national correspondents; (cf. 4.3)
22. Eurojust should improve the information exchange by explicitly indicating the source/origin of the information to be exchanged and whether it is possible to use it in a criminal proceeding; (cf. 4.3)
23. Eurojust should prepare a form for the structured transmission of feedback to national authorities in accordance with Article 13a EJD; (cf. 4.3)
24. Eurojust should prepare guidelines on information exchange at coordination meetings at Eurojust; (cf. 6.4)
25. Eurojust should prepare a standard form (or a check list) for advising national authorities to participate in coordination meetings at Eurojust; (cf. 5.5.1.4 and 6.4)
26. Eurojust should consider the option of delegations participating in a coordination meeting by means of a videoconference in cases where it would be difficult for them to attend a meeting at the Eurojust premises; (cf. 5.5.1.4)



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27. Eurojust should actively coordinate cooperation through a more pronounced involvement in identifying the suitable moment for coordination meetings and a closer observation and follow-up of their outcome; (cf. 6.4)
28. Eurojust should further strengthen relations with third countries through cooperation agreements and by extending its network of contact points; (cf. 6.4)
29. The EJM should add a function to the EJM Atlas indicating the language in which the competent authorities wish to receive requests for assistance; (cf. 3.5, 6.3.4 and 6.4)



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

LUNDI 25 JUIN 2012

Arrivée des participants

MARDI 26 JUIN 2012

9h30: Visite au SPF Justice

SUJETS:

- = cadre législatif,
- = rôles des acteurs (SPF Justice/Parquet fédéral/Collège des Procureurs généraux),
- = Réseau judiciaire européen (rôle des points de contact, etc.),
- = choix du canal Eurojust/RJE,
- = réseaux d'expertise JIT,
- = réseau d'expertise national

PARTICIPANTS:

- Daniel Flore, Directeur général de la Direction générale de la Législation, des Libertés et Droits Fondamentaux
- Représentants du Parquet fédéral : Thomas Lamiroy et Ann Fransen, correspondants nationaux Eurojust
- Stefaan Guenter, Avocat général près le parquet général de Gand
- Représentants du SPF Justice

14h00-17h: Visite au Parquet fédéral

SUJETS :

- = Rôle particulier du Parquet fédéral,
- = dossiers terrorisme,
- = échange d'informations entre Eurojust et le Parquet fédéral (article 2 de la Décision terrorisme),
- = rôle d'Eurojust et du Parquet fédéral dans la pratique (dossier trafic d'armes)

**PARTICIPANTS:**

- Stefaan Guenter, Avocat général près le parquet général de Gand
- Membres du Parquet fédéral
- Représentants du SPF Justice

**MERCREDI 27 JUIN 2012**

9h00: Visite au Parquet fédéral

**SUJETS:**

- = Relations entre Eurojust et le Parquet fédéral,
- = dossiers criminalité organisé, réunions de coordination,
- = JIT,
- = échange d'informations entre Eurojust et le Parquet fédéral (en général, obligation spécifique relatif à l'article 13 de la nouvelle Décision Eurojust, EPOC V),
- = ENCS,
- = organisation et fonctionnement du bureau national à Eurojust,
- = OCC



**PARTICIPANTS:**

- Stefaan Guenter, Avocat général près le parquet général de Gand
- Daniel Bernard, Expert national détaché auprès d'Eurojust
- Membres du Parquet fédéral
- Représentants du SPF Justice

14h00-17h00: Visite au Parquet de 1ère instance de Bruxelles

**SUJETS:**

- = Relations entre les parquets locaux et Eurojust au travers d'exemples pratiques (communication, lien avec le Parquet fédéral, réunions de coordination),
- = rôle du parquet et du juge d'instruction

**PARTICIPANTS :**

- Luc Festraets, substitut du procureur du Roi près le tribunal de première instance d'Anvers
- Fabienne Laduron, substitut du procureur du Roi près le tribunal de première instance de Bruxelles
- Isabella Van Hoeylandt, juge d'instruction au tribunal de première instance d'Anvers
- Olivier Leroux, juge d'instruction au tribunal de première instance de Bruxelles
- Membres du Parquet fédéral
- Représentants du SPF Justice

**JEUDI 28 JUIN 2012**

9h00: Transport du SPF Justice à la Police fédérale

9h30: Visite à la Police fédérale

**SUJETS:**

- = Relations entre Europol et Eurojust à travers les relations entre :
- = Le Parquet fédéral et la police fédérale
- = « Eurojust Belgian desk » –et le « Europol Belgian national unit » (MoU)

**PARTICIPANTS:**

- Roger Van de Sompel, Europol Liaison Officer
- Peter De Buysscher, Directeur de la Coopération Internationale de la Police fédérale
- Représentants de la Police fédérale
- Membres du Parquet fédéral
- Représentants du SPF Justice

12h-12h30: Transport de la Police fédérale au SPF Justice

14h00-16h00: Visite au SPF Justice

**SUJET:**

- = Débat général, Questions – Réponses

**PARTICIPANTS:**

- Michele Coninx, Membre national belge d'Eurojust
- Daniel Flore, Directeur- Général de la Direction générale de la Législation, des Libertés et Droits Fondamentaux
- Peter De Buysscher, Directeur de la Coopération Internationale de la Police fédérale
- Membres du Parquet fédéral
- Représentants du SPF Justice
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**ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	FRENCH OR ACRONYM IN ORIGINAL LANGUAGE	FLEMISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
ADBA/TPI			Database, part of the TPI/REA IT system, containing records of past legal cases
AWF			Analytical Work File
BNG			Belgian local and federal police's general database
CMS			Case Management System
<i>COL</i>	<i>Circulaire du Collège des Procureurs Généraux</i>		Circular, adopted by the College of General Prosecutors
<i>DIV</i>		Dienst voor Inschrijving van de Voertuigen	Belgian vehicle registration database
EAW			European Arrest Warrant
EJD			Eurojust Decision
EJN			European Judicial Network
ENCS			Eurojust National Coordination System
GENVAL			Working Party on General Matters including Evaluations
<i>JIT</i>			Joint investigation team
MLA			Mutual legal assistance
MoU			Memorandum of understanding

**RESTREINT UE/EU RESTRICTED**

<b>LIST OF ACRONYMS, ABBREVIATIONS AND TERMS</b>	<b>FRENCH OR ACRONYM IN ORIGINAL LANGUAGE</b>	<b>FLEMISH OR ACRONYM IN ORIGINAL LANGUAGE</b>	<b>ENGLISH</b>
NAS			Software developed by the <i>E POC IV</i> project.
NC			National correspondent
NLCEU			Network for Legislative Cooperation between the Ministries of Justice of the European Union
OLAF	<i>Office européen de lutte anti-fraude</i>		European Anti-Fraud Office
SIRENE			Supplementary Information Request at the National Entry,
SNE			Seconded national expert
TE-SAT			Europol's EU Terrorism Situation and Trend Report
TPI/REA			IT system