



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5 November 2012**

**15741/12**

**GENVAL 79  
EUROJUST 97  
EJN 80**

**NOTE**

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from:	the Federal Republic of Germany
to:	Working Party on General Matters, including Evaluations (GENVAL)
Subject:	Declaration of the Federal Republic of Germany regarding the adoption of the evaluation report on Sweden (Council document 13666/12 GENVAL 64) within the framework of the sixth round of mutual evaluations of the Council Working Party GENVAL

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In its meeting on 22 June 2011, the GENVAL Council Working Party decided that the sixth round of mutual evaluations should be devoted to the implementation in the Member States of the existing Council Decisions on Eurojust of 2002 and 2008 and the Decision on the EJN of 2008 (see Council Document 13666/12 GENVAL 64, p. 7).

Therefore, the Federal Republic of Germany understands the evaluation report on Sweden to the effect that the subject matter of the evaluation is consistent with the GENVAL decision although the report title does not mention the subsequent amendments to the 2002 Decision on Eurojust, particularly the current Decision on Eurojust of 2008, and reads differently: „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”.

The Federal Republic of Germany takes the view that the evaluation report on Sweden contains conclusions which go beyond the mandate of the sixth round of mutual evaluations and therefore cannot claim general validity. This applies, for example, to the findings that the added value of Eurojust (for Sweden) is greater than that of EJM (see Council document 13666/12, p. 6 and 51), and that the EU should readjust the relationship between the two institutions (p. 56 (no. 12); cf. p. 58 (no. 9) regarding the call for Eurojust to organise the EJM Secretariat). It is the understanding of the Federal Republic of Germany that the aim of the sixth round of mutual evaluations is not to establish a ranking of Eurojust and EJM or to redefine the legal framework. According to the Council Decisions of December 2008, both institutions should co-exist on equal footing.

Legal or practical particularities in the Member States of the European Union which are not based on the stipulations of the Decisions on Eurojust or the Decision on the EJM of 2008 are not the subject matter of the sixth round of mutual evaluations. As a result, they cannot be used in the evaluation report as a model for successful implementation of European legislation. The Federal Republic of Germany takes note with interest of the statements on page 17, third bullet point, and page 36, last paragraph, of the evaluation report on Sweden regarding the scope of the powers transferred to the Swedish national member. However, it is our view that these statements cannot be incorporated in the subsequent overall result of the sixth round of mutual evaluations.

The Federal Republic of Germany understands the evaluation report on Sweden to mean that the recommendation to issue guidelines on the implementation of the 2008 Decision on Eurojust (see Council document 13666/12, p. 22, p. 55 (no. 1), p. 56 (no. 8) and p. 58 (nos. 2 and 7)) is mainly directed at those Member States which have not legally implemented the 2008 Decision on Eurojust. In the Federal Republic of Germany, particularly in view of the obligations to exchange information under Article 13 of the 2008 Decision on Eurojust, implementation by way of statute was necessary since the national authorities' power to exchange information requires an express legal basis in view of the constitutionally protected positions of the persons concerned. Under these circumstances the Federal Republic of Germany views the implementation of European-law stipulations by way of statute as a clearer and more transparent approach than implementation through guidelines.

From Germany's point of view, a distinction is generally to be made between exchanges of police and judicial information, also to the extent that such exchanges are made via Eurojust. Germany therefore reads calls for intensifying exchange of information between the police and the judiciary (see Council document 13666/12 p. 34, p. 42 (first bullet point), p. 43 (last bullet point) and p. 57 (no. 14)) to mean that exchanges of information must be carried out on the basis of the existing legal framework and must be necessary and appropriate in the individual case.

Finally, the Federal Republic of Germany would like to point out that the sixth round of mutual evaluations started shortly after expiration of the time limit for implementing the Eurojust Decision and the EJM Decision of 2008. References to the low number of notifications (see Council document 13666/12, p. 54 (no. 4) must be evaluated in the light of this.

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