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THE EUROPEAN UNION**

**Brussels, 22 April 2013**

**7249/1/13  
REV 1**

**RESTREINT UE/EU RESTRICTED**

**GENVAL 14**

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 Denmark

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**1. EXECUTIVE SUMMARY**

1. In line with Article 2 of the Joint Action 97/827/JHA of 5 December 1997, the Working Party on General Matters including Evaluations (GENVAL) decided at the Meeting on 22 June 2011 that the sixth round of mutual evaluations will be devoted to the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters.
2. As regards Denmark, it has not been necessary to amend national legislation in order to bring Danish law in conformity with the Council Decisions. An analogy of the Danish Administration of Justice Act (AJA), which does not contain specific rules on international judicial cooperation, is applied, i.e. the scope of AJA is extended to international cases. As a general rule, national legislation can be applied to all international requests, as if they were national. There are some exceptions for example when it comes to executing international requests on search and seizure where double criminality does not apply, according to the MLA Convention. This might create obstacles or hinder cross-border cooperation by delaying or even preventing the effective execution of a request from another Member State. However, so far this has not proven to be a practical obstacle.
3. In addition the implementation of the Eurojust Decision is done in a practical manner by issuing instructions to the prosecutors. As to the organisational requirements following from the Council Decisions, these are implemented not by amendments to Statute Law, but by administrative decisions and instructions, thus following the general approach in Danish law, where more detailed institutional matters concerning the Danish Prosecution Service and matters related to mutual legal assistance in criminal matters are not generally regulated in the Danish Administration of Justice Act. The Ministry of Justice has also issued instructions regarding many questions concerning investigations. One of them is devoted to the international legal cooperation in criminal matters.
4. The Danish system of international co-operation in criminal matters is to a great extent well-functioning and informal. There is some legislation applicable to mutual legal assistance, and the analogy of AJA is applied. The co-operation itself is mostly based on personal contacts and customary procedures.

5. Judges are not directly involved in international criminal co-operation. During the trial they instruct the prosecutor to contact the foreign authorities or the EJM/Eurojust contact points rather than contact them directly themselves. Accordingly, in Denmark judges are not appointed as EJM contact points.
6. All outgoing MLA requests are copied to the Director of Public Prosecutions who chooses which requests are further sent to the Danish desk at Eurojust under Article 13. In order to avoid "reporting fatigue" amongst local authorities, the reporting obligation according to Article 13 has been centralised and lies with the Office of the Director of Public Prosecutions.
7. There are no general rules or guidelines on the allocation of cases to Eurojust or the EJM. Decisions are taken on a case-to-case basis. A document outlining the basic considerations in this regard is under preparation. The EJM is considered to be the less expensive solution that should be used for smaller cases in order not to overburden Eurojust. However, in urgent cases preference is given to Eurojust over the EJM because results can be achieved faster. In practice once the relevant authorities have received effective assistance from either the EJM or Eurojust, they tend to use these again, irrespective whether the case is for example affecting more than two countries or is involving serious organised crime.
8. The prosecutors and police officers have a direct contact with the national member at Eurojust. In many cases they know each other and work together very well. National authorities consult in advance and discuss any particular cases with the national member at Eurojust. That the national member is part of the prosecution services is an advantage in the daily work. It helps in establishing contact with him and contributes to smooth proceedings.
9. JITs are an increasingly important tool used by the Danish authorities. Eurojust national member plays an important role in co-ordinating the organisation of JITs and also as regards promoting the use of JITs as well as the relevant success stories. This is extremely important since the police and the prosecutors with whom the evaluation team met during the mission clearly expressed that only those tools that have proven their practical added value will be used again.

10. Coordination meetings are used frequently and with apparent concrete success. The Eurojust national member is effectively promoting the use of such meetings among practitioners.
11. As a general rule, the national Member at Eurojust does not participate in the implementation of controlled deliveries. According to the information provided by the Danish authorities, the division of tasks is clear: the national member facilitates and initiates contacts, when necessary, and practical cooperation is done by the local police and prosecution districts.
12. According to the Danish authorities Eurojust should focus more on supporting cross-border judicial cooperation and operational activities than concentrating on administrative issues. Despite improvements in recent years, according to the Danish authorities, there is still a disproportion between on the one hand the number of operational cases, coordination meetings and JITs established via Eurojust, and on the other hand the size of the non-case related activities.
13. Training and awareness regarding international judicial cooperation, Eurojust and the EJN seems to be effective and well-organised in Denmark, especially as regards the Director of Public Prosecution. However, in addition to some parts of the information having been made available to the police, it is not clear how well the police is integrated in the training and awareness framework. Additionally, even though the judges in the Danish system do not deal with international judicial cooperation directly but via the prosecutor, training at least on the specific tools might also be beneficial to be provided for judges. It is not clear if this kind of training is currently being provided.
14. According to the evaluation team, the local prosecutors might not always be fully aware of all the benefits and possibilities of international judicial cooperation and especially of all the forms of support provided by Eurojust.

## 2. INTRODUCTION

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

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

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

The questionnaire<sup>1</sup> 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<sup>2</sup>. The questionnaire to Eurojust was adopted by GENVAL on 12 April 2012.

The order of visits to the Member States was adopted by GENVAL on 31 October 2011.<sup>3</sup> Denmark was the sixth (6) Member State to be evaluated during this round of evaluations.

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

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

<sup>3</sup> Doc. 13040/2/11 GENVAL 82 COPEN 184 EUROJUST 111 EJN 91.



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

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

The experts charged with undertaking this evaluation were Tünde Forman (Hungary), Ivanka Kotorova (Bulgaria) and Solveig Wollstad (Sweden). Two observers were also present: Stephanie Bovensiepen (Eurojust) and Hans-Holger Herrnfeld (Eurojust), together with Mari Hämäläinen and Anne Cecilie Adserballe 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 Denmark between 24 and 27 September 2012, and on Denmark'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

For the evaluation, the Member States were requested to indicate all relevant legal or statutory provisions, if any, they had to introduce or amend in order to bring national law into conformity with the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and its amendments according to Decision 2009/426/JHA on the strengthening of Eurojust, or indicating intentions in this respect, and all relevant legal or statutory provisions, if any, which they had to introduce or amend in order to implement Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network as well as Council Decision 2008/976/JHA adopted on 16 December 2008 and repealing the Joint Action.

As regards Denmark, it has not been necessary to amend national legislation in order to bring Danish Law into conformity with the Council Decisions. In international judicial cooperation, an analogy of the Danish Administration of Justice Act (AJA) applies; as a general rule, national legislation can be applied to all international requests, as if they were national. After the adoption of the Council Decisions on Eurojust, minor amendments have been made directly to the AJA, namely regarding the participation of foreign police officers in Danish investigations and interception of telecommunication. All other provisions were already in conformity with the Council Decisions and required no changes. However, there is specific legislation transposing several Framework Decisions in the field of mutual recognition, e.g. on the European Arrest Warrant (EAW). No problems have been encountered in practice so far.

In practice the proper implementation of the Eurojust Decision is done in a practical manner ensured by the Office of the Director of Public Prosecution for example by issuing instructions to the prosecutors. The Ministry of Justice has also issued instructions regarding many questions concerning investigations. One of them is devoted to the international legal cooperation in criminal matters. For example, Article 13 of the Eurojust Decision has been implemented through the administrative instruction no. 3/2011 of 22 December 2011 issued by the Director of Public Prosecution. This instruction is binding to all prosecutors and police officers.

### 3.2. Implementation of the Eurojust national coordination system (ENCS)

With respect to the implementation of the Eurojust national coordination system (ENCS), in Denmark the formal designation of members of the ENCS only covers the representatives of authorities referred to in Article 12 of the Eurojust Decision. However, the contact point for the JIT network is a Danish investigator, who is in his daily work in close cooperation with the national desk at Europol, and therefore constitutes a practical link between the ENCS and the Danish desk at Europol. The contact point is also in very close contact with the National Member at Eurojust and the Deputy, who is also the National Correspondent for Eurojust and EJM Contact Point.

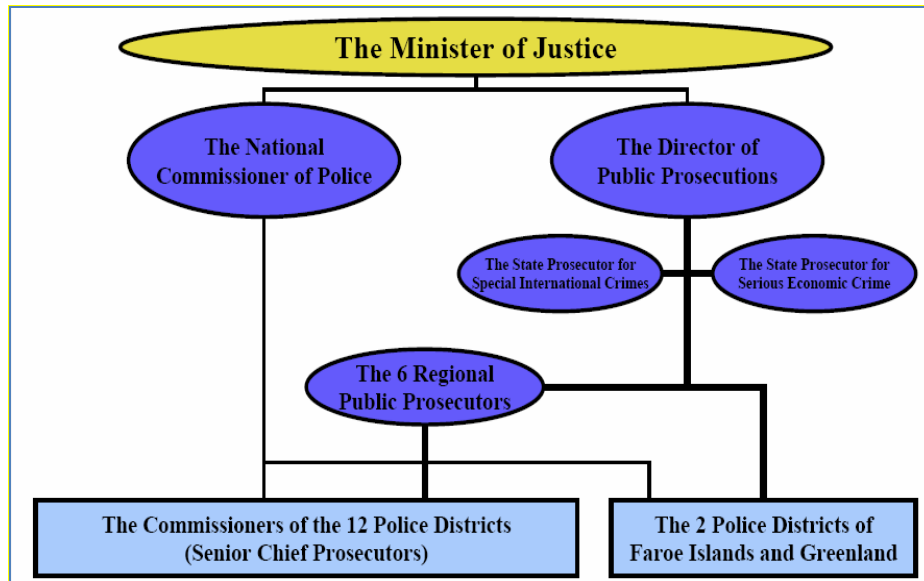
Members are against this background designated from the following authorities:

- Contact points of persons responsible for genocide, crimes against humanity and war crimes: **The State Prosecutor for Special Economic and International Crimes**<sup>4</sup>
- Contact point for the network against corruption: **The State Prosecutor for Special Economic and International Crimes**
- Contact point of the network for Joint Investigation Teams: **The National Commissioner of Police**
- Contact point of the network of cooperation between Asset Recovery Offices: **The State Prosecutor for Special Economic and International Crimes**
- Contact point of the European Judicial Network: **The Danish Ministry of Justice**
- Contact point of the European Judicial Network and national correspondent for Eurojust: **The Office of the Director of Public Prosecutions**
- National correspondent for Eurojust for terrorism matters: **The Danish Security and Intelligence Services**

The national member of Denmark at Eurojust and staff from the International Section at the Director of Public Prosecutions, including the deputy national member and the assistant, also directly participate in the activities and meetings of the ENCS.

The following diagram illustrates the overall structure of the police and prosecution services in Denmark:

<sup>4</sup> From 1 January 2013 the six regional state prosecutors will be reduced to two as a consequence of a reform of the prosecution system. This reform will also lead to the merge of the the two specialised state prosecutors.



The tasks of the **national correspondent** follow the tasks defined in Article 12 of the Eurojust Decision. Against this background, the main objective is to facilitate the work carried out by the national member for Denmark at Eurojust, and the tasks defined in Article 12(5) (a) to (d). The main task is to provide and exchange information on relevant cases and to participate in relevant fora of international judicial cooperation. Furthermore, the national correspondent has the task, together with the assistant, to promote knowledge and awareness among practitioners about Eurojust and EJN, thereby advocating their use.

The national correspondent is not, however, on a daily basis systematically involved in direct operational tasks related to specific cases connected to Eurojust, as no need for this has been identified thus far.

The ENCS operates through two annual meetings where all ENCS members meet and exchange information on the latest developments etc. in the various EU networks. The ENCS meetings are also used as a platform for general information sharing between practitioners dealing with cases involving international cooperation. Moreover, the members of the ENCS can on ad hoc and case-by-case basis share information with the relevant members, if so required.

The members of the ENCS do not have direct access to the Eurojust Case Management System (CMS). The national member for Denmark, the deputy and the assistant however have access to the CMS and participate in the ENCS. According to the Danish authorities no need for the ENCS to have direct access to the CMS has been identified until now.

The tasks and time involved in ENCS is assessed and allocated on an ad hoc basis. The members, however, normally allocate time for two half-day meetings every year.

The representative from the National Commissioner of Police is directly connected to the Europol national unit and the Danish SIRENE bureau, since the representative is part of the National Centre of Investigation (NEC) of the National Police, which also houses the Danish National Police Communication Centre being the Europol, Interpol, SIRENE etc. unit in Denmark.

### **3.3. National desk at Eurojust**

Four persons are currently appointed to the national desk at Eurojust, consisting of the national member stationed at Eurojust in The Hague, one deputy national member stationed at the Director of Public Prosecutions in Copenhagen, one assistant to the national member stationed at the Director of Public Prosecutions in Copenhagen, and one secretary stationed at and employed by Eurojust in The Hague. Since the beginning of September 2012, a Danish lawyer has been working as a Eurojust intern at the Danish Desk.

The national member is nominated by the Danish Ministry of Justice and the Director of Public Prosecutions. The position is currently one of the four Deputy Director of Public Prosecutions posts at the Director of Public Prosecutions. The position as national member for Denmark thus requires qualifications equal to being appointed as Deputy Director of Public Prosecutions. Furthermore, the position requires knowledge and skills within international judicial cooperation.

The Director of Public Prosecutions carries out the supervision of functions and tasks carried out by the national member since the position is part of the general organisational structure of the Director of Public Prosecutions.

The deputy national member is nominated by the Danish Ministry of Justice and the Director of Public Prosecutions.

Currently the appointment follows the position as head of the International Section of the Director of Public Prosecutions. The position as deputy national member for Denmark, against this background, requires qualifications as a prosecutor equal to the ones required to be appointed as Assistant Deputy Directors. Furthermore, the position requires knowledge and skills within international judicial cooperation.

The supervision of functions and tasks carried out by the deputy relating to acting in the capacity as deputy national member is being carried out by the national member, the direct responsible Deputy Director of Public Prosecutions, and the Director of Public Prosecutions.

The assistant to the national member is appointed by the Director of Public Prosecutions. The assistant is in practice appointed among staff in the International Section of the Director of Public Prosecutions. The position as assistant requires qualifications as a prosecutor and special qualifications and experience working in the field of international judicial cooperation.

The supervision of functions and tasks of the assistant acting in the capacity as assistant to the national member is carried out by the national member and the deputy national member.

As indicated in the appointment letters to the Council of the European Union, the national member holds the formal powers as is required according to the Eurojust Decision. The national member is furthermore designated as a judicial authority according to the 1959 European Convention on Mutual Legal Assistance.

Furthermore, it should be noted that the national member in his capacity as the Deputy Director of Public Prosecutions is part of the hierarchy of the Danish Prosecution Services, thus formally vested the power of supervision over local police and prosecution districts of Denmark. Furthermore, in Denmark, prosecutors formally hold police powers.

The deputy national member and the assistant to the national member are granted relevant powers, related to the Eurojust Decisions, from and under the supervision of the national member.

Furthermore, the deputy national member in his capacity as the Assistant Deputy Director of Public Prosecutions is part of the hierarchy of the Danish Prosecution Services, thus formally vested the power of supervision over local police and prosecution districts of Denmark.

All powers related to the assistant is derived from and supervised directly by the national member and the deputy.

As regards access to databases, the national member has, due to technical restrictions related to data protection and security issues, access to relevant national databases only by proxy via the Director of Public Prosecutions. The national member has direct personal access to the databases mentioned below when accessing these via a secure connection in Denmark.

The deputy member and the assistant stationed in Copenhagen have direct access to all relevant databases.

The databases to which direct access is granted are the national civil registration system and the national register of criminal records. Access is also available to the internal database and case management system at the Director of Public Prosecutions.

The national member, the deputy member and the assistant on a case-by-case basis have indirect access to other police databases through relevant personnel by contacting the Danish National Police. Access to specialised databases at the State Prosecutor for Special Economic and International Crimes is also granted on a case-by-case basis via relevant personnel.

Staff stationed at Eurojust (the national member and the secretary) have access to the Eurojust CMS. Indirect access to the national authorities via the national member or the secretary is granted and assessed on a case-by-case basis by the national member. The deputy national member and assistant have access to the CMS from the national desk only when performing their tasks in The Hague.

Direct access from Denmark to the CMS is currently not being assessed as vital or necessary for operational purposes. Thus, cases have not arisen where access to the CMS has been deemed necessary or useful. In line with this, none of the competent authorities in Denmark have access to the national part of the CMS. No need for this has so far been identified.

The Danish legal system in criminal cases is based on the accusatorial and adversarial principles leaving only a very small active role for judges in international cooperation. The courts are only involved during investigations when a court order is needed, e.g. regarding pre-trial detention, or when it is necessary to decide on a conflict between the defence and the Prosecution Service. Danish judges do not have a role comparable to that of an investigative judge known in other legal systems. Any decision from a judge requiring action to be taken will be executed by the Prosecution. Therefore, the Danish courts and judges will, as a main rule, not have direct contacts with Eurojust or the EJN. Because of the Danish legal system in criminal cases, according to the Danish authorities, there is currently no need to involve the courts more actively in the work of Eurojust or of the EJN.

### 3.4. EJM contact points

The EJM contact points are appointed by the Danish Ministry of Justice. Contact points are selected among prosecutors etc. with experience in dealing with cases related to judicial cooperation, extradition and mutual legal assistance. An important criterion for selection is furthermore that the contact point is strategically positioned in the local organisation.

In Denmark, four contact points have been appointed:

- One from the office of Director of Public Prosecutions (also acting as the EJM national correspondent, Eurojust deputy national member and Eurojust national correspondent),
- one from the Danish Ministry of Justice,
- two from the Copenhagen Police (one of them also acting as the EJM tool correspondent)

The overall organisation and general work related to the EJM contact points is handled by the Office of the Director of Public Prosecutions. Against this background, the Office of the Director of Public Prosecution normally handles most contacts with the EJM secretariat and Eurojust relating to general matters.

The direct bilateral work related to judicial cooperation and mutual legal assistance is handled directly by the appointed contact points when contacted by other contact points or by the requesting authorities from other Member States.

The task is designated to the appointed tool correspondent in close cooperation with the Director of Public Prosecutions.

### 3.5. Conclusions

- As regards Denmark, it has not been necessary to amend national legislation in order to bring Danish Law into conformity with the Council Decisions. An analogy of the Danish Administration of Justice Act (AJA) applies in international judicial cooperation, i.e. the scope of AJA is extended to international cases. As a general rule, national legislation can be applied to all international requests, as if they were national. There are some exceptions for example when it comes to executing international requests on search and seizure where double



criminality does not apply, according to the MLA Convention. This might create obstacles or hinder cross-border cooperation by delaying or even preventing the effective execution of a request from another Member State. However, so far this has not proven to be a practical obstacle.

- This applicable legal basis for international legal cooperation does not contain specific rules on international legal cooperation. The implementation of the Eurojust Decision is done in a practical manner by issuing instructions to the prosecutors. The Ministry of Justice has also issued instructions regarding many questions concerning investigations. One of them is devoted to the international legal cooperation in criminal matters.
- The Danish system of international co-operation in criminal matters is to a great extent well-functioning and informal. There is some legislation applicable to mutual legal assistance, and the analogy of AJA is applied. The co-operation itself is mostly based on personal contacts and customary procedures.
- It is a basic feature of the Danish legal system that prosecutors are working in close co-operation with the police. Prosecutors and police officers work in the same buildings, sometimes in the same offices, and have direct contact with each other during the handling of the cases also in relation to international cases. It was, however, difficult for the evaluation team to distinguish properly the competences and to conclude, how well in practice this cooperation works. It seems in any case that the Danish prosecutors can relatively effectively ensure the legality of the investigations in their everyday work and cooperation with the police.
- The Standing Committee on International Cases meets once or twice a year. There are participants also from the district and regional levels, as well as all four EJM contact points and the Eurojust national member. The Committee exchanges information and experience regarding international cases and can be used to resolve practical issues, also related to specific cases.
- The national desk at Eurojust works with very few persons but it proves its effective performance during the daily co-operation with national bodies.

- The everyday work of the Eurojust national member is highly appreciated by the Danish authorities as clearly indicated by the representatives of the police and the prosecutor during the evaluation mission. Denmark has clearly chosen an approach regarding its Eurojust national desk based on the national member being a facilitator and a contact point for finding the right authorities in the Member States and assisting in mutual legal assistance cases that for various reasons have taken too long to address. The national member does not take part in planning or executing operational activities, this is explicitly allocated to the competent national authorities.
- For the above reason the discussion on for example the national member's powers as a prosecutor or access to national databases does not seem quite relevant for Denmark. However, it is not quite clear to the evaluation team how well the national member is linked to the national coordination of operational cases for which the National Centre of Investigation (NEC) is responsible and to what extent he is informed of those cases that can have cross-border implications. Since the Eurojust national member and deputy national member exercise their full powers in their capacity as prosecutors, the Danish authorities saw no need for specific national implementation of the powers deriving from the Eurojust Decision.
- The EJM national correspondent is at the same time appointed as the Deputy National Member to Eurojust as well as the Eurojust national correspondent. Thus, close connections are ensured.
- The plenary meetings of the EJM are regarded as essential to establish personal contacts between the contact points from all Member States.
- The EJM contact points are less in focus in the Danish system than the Eurojust national member. It should be mentioned however that some prosecutors use the EJM website and Atlas directly in their daily work.
- Judges are not directly involved in international criminal co-operation. During the trial they instruct the prosecutor to contact the foreign authorities or the EJM/Eurojust contact points rather than contact them directly themselves. Accordingly, in Denmark judges are not appointed as EJM contact points.

#### 4. EXCHANGE OF INFORMATION

The main relevant national databases used by the national member of Denmark at Eurojust when receiving and exchanging information is the Danish Criminal Records Register and the special register at the State Prosecutor for Serious Economic Crime. The national member could be directly connected to the case management system of the local police and prosecutions districts. So far no need has been identified to establish this connection.

The obligation to exchange information under Article 13(5) to (7) of the new Eurojust Decision has been implemented through instruction no. 3/2011 of 22 December 2011 issued by the Director of Public Prosecutions. It provides that the 12 local police and prosecution districts, the six regional state prosecutors and the two specialised state prosecutors for special international crime and serious economic crime are obliged to send copies of any outgoing request for mutual legal assistance to the Director of Public Prosecutions.

On the basis of the received requests, the Director of Public Prosecutions forwards relevant requests to the national desk at Eurojust, which then screens and assesses the requests and the information that is relevant under Article 13, and then enters relevant information into the CMS.

It should be noted that an evaluation of the instruction and scheme of information exchange is planned to take place in 2013. This planned evaluation may include a qualitative analysis of the exchanged information.

Relevant information is provided directly from the Danish Security and Intelligence Services on relevant information and judgements to the national member. No instruction regarding this bilateral exchange of information has been issued.

According to the Danish authorities, all requests and information are for security and protection of personal data reasons usually sent by ordinary mail or by fax. The national member at Eurojust also has a Danish WebMail account enabling him to send and receive information from the Danish police and prosecutor via a secure connection.

Information according to Article 13 is structured at the national desk at Eurojust. The information is considered exchanged by the Danish authorities when it is entered into the CMS in a structured manner by the national desk. Thus far, information on one case has been inserted.

No overall analysis has been conducted thus far, and there are no indications that information to a general degree has been excluded based on Article 13(8).

#### **4.1. Exchange of information within Denmark**

According to the information provided to the evaluation team, the competent authorities are always encouraged to take direct contact with the national member, and all contacts both ways between Eurojust (both the national member and the desk) and the national authorities are direct.

Apart from official Eurojust statistics, Denmark does not collect and keep statistics on the exchange of information. According to the Danish authorities, this could complicate matters, and the approach is also in line with the practice in purely national cases. In this regard, it should be noted that many contacts between the national authorities and the national member and desk are done by phone or mail and do not involve personal data.

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

According to the Danish authorities, the contact between the national authorities and the national desk, and between the Danish national desk and other desks and administrative offices of Eurojust, functions very well. In general contacts between the police and the Eurojust national member are very close. Due to the integrated nature of the local police and prosecution districts in Denmark, the national member is very often communicating directly with the police investigators and others when appropriate. Other authorities, such as customs authorities have none or very few executive powers in criminal cases. Consequently, if international cooperation would be needed and Eurojust be involved, contacts/action would be taken via the police and prosecution services.

In line with the information provided to the evaluation team, the Office of the Director of Public Prosecutions is continuing its efforts to explain to practitioners that a systematic reporting of information according to Article 13 will eventually enable Eurojust to provide valuable feedback on specific cases, as well as information of a more general or analytical nature. Thus, Article 13 is discussed during the meetings of the Standing Committee on International Cases as well as during more informal contacts.

The Office of the Director of Public Prosecutions receives a number of questions related to Article 13 and uses these opportunities to promote and explain the importance of observing the reporting obligation. The decision to centralise the reporting obligation according to Article 13 was based on a wish to avoid "reporting fatigue" amongst local authorities. In line with the Danish authorities, it is not clear how well the authorities have thus far come to understand this obligation, even though they seem to be relatively well aware of it and submit information accordingly in line with the centralised system.

#### 4.3. Feedback by Eurojust

Generally, there is a significant flow of information to and from Eurojust in relevant operational cases, which is very useful for practical case work. The information is deemed to be of a high quality.

According to the assessment of Danish authorities, it is premature to assess the experiences on information exchange from Eurojust to Danish authorities under Article 13a. So far, no feedback has been received from Eurojust according to Article 13a, following the provision of information by Danish authorities in line with Article 13 (5) to (7).

All information that may be received under the wide scope of Article 13a would however be assessed and forwarded to the relevant authorities in Denmark. The information could provide very useful by supplementing the bilateral contact between Danish authorities and authorities in other Member States and by initiating cases which could have implications in several states and provide an initial platform for cooperation.

As to the exchange of information not related to operational cases, the situation is more difficult to assess. According to the Danish authorities, Denmark provides information to different projects, questionnaires etc., whenever requested. The feedback from Eurojust is, inter alia, in the form of reports, guidelines, output of seminars and tactical meetings. The importance of such output for Danish law enforcement authorities varies and the most important criterion is whether this information is of real added value in operational work. Quite often it seems that the output is of a quite general nature thus referring to what is already common knowledge among practitioners. It is not very often that the output addresses more difficult issues, perhaps because such issues could have implications for some national legal systems.

#### 4.3.1. *E-POC project*

Denmark does not participate in the E-POC project.

#### 4.4. **Conclusions**

- As expressed by the Danish authorities, all outgoing MLA requests are copied to the Director of Public Prosecutions, and that in order to avoid "reporting fatigue" amongst local authorities, the reporting obligation according to Article 13 has been centralised and lies with the Office of the Director of Public Prosecutions. According to the Director of Public Prosecutions this centralised reporting system works well: information received is then further forwarded to Eurojust to the extent that this is required according to Article 13.
- The Danish authorities seem to appreciate the CMS assisting in looking for and finding links between separate cases in different countries. Accordingly, the Danish authorities consider it very important to receive feedback under Article 13a, also in order to justify the additional administrative burden of reporting information to Eurojust.
- The national member at Eurojust has direct access to the CMS. The national member could be directly connected to the national case management system of local police and prosecutions districts. Especially if the amount of national cases submitted under Article 13 of the Eurojust Decision increases in the future, establishing this direct connection might prove useful and effective for introducing this data in the CMS.
- The members of the ENCS do not currently have direct access to the CMS, due to technical issues. If the members and the Danish authorities deem this connection necessary, it should be established without further delay.
- There is a fear of a duplication of work because most of the information may have already been sent to Europol in the earlier stages of an investigation.

## 5. OPERATIONAL ASPECTS

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

### 5.1. Practical experience in relation to Eurojust

There are no statistics available of Danish authorities' contact with Eurojust. The national desk at Eurojust only registers cases that are opened at Eurojust.

It should be noted that the Danish desk assesses on a case-by-case basis whether contact from Danish authorities should be registered as a case, which means that not every contact between the desk and national authorities is registered.

In general, all types of cases, i.e. complex, simple, bilateral and multilateral, may be referred to the national desk. The majority of cases in this regard are bilateral involving only Denmark and one other Member State.

Reasons for a referral or request for assistance from the national desk at Eurojust are many, but normally cases concern practical issues related to, for example, a mutual legal assistance request where no answer has been received or where the correct judicial authority cannot be identified. Other cases relate to the facilitation of cooperation with another Member State through contact with other Member States' national desks, and finally some cases relate to the need of information on legal provisions etc. in other Member States.

There is no general tendency on whether the involvement takes place at an early or late stage of an investigation or during the prosecution or court proceedings phase. Cases relating to both coordination meetings and the setting up of JITs, however, normally imply that the national desk is involved at a very early stage in investigations.

According to the Director of Public Prosecutions, for the time being it is still important for national authorities to build up knowledge on Eurojust, not to mention trust the functionality of Eurojust. It is therefore seen as important that as many cases as possible are referred to Eurojust. Thus, no official instructions have been issued in order to limit the involvement of Eurojust regarding cases falling directly within the main scope of the Eurojust Decision.

The Director of Public Prosecution, however, assesses the referral of cases to the national desk on an on-going basis. The Director of Public Prosecution has frequent and often informal consultations with the national member at Eurojust on whether requests or cases should be referred back to the Director of Public Prosecution for further handling, or if a case could more easily be handled via the EJM.

When contacted directly by local authorities on matters related to judicial cooperation, extradition and mutual legal assistance, the Director of Public Prosecution refers these cases to its International Section which then assesses how to best proceed and if and how to involve for instance Eurojust or the EJM.

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

It should be noted that the deputy national member of Eurojust for Denmark is also the EJM contact point and the EJM national correspondent of Denmark and also acts as the head of the International Section of the office of the Director of Public Prosecutions.

In many cases related to judicial cooperation and mutual legal assistance where local Danish authorities are involved in and where assistance is required would involve contacting the Director of Public Prosecutions or the Danish Ministry of Justice, and against this background the question of referral to Eurojust or EJM would be considered on a case-by-case basis.

It is furthermore the experience of the Danish authorities that practitioners seem to use the tools that they know and that have proven to be efficient in practice. Once a prosecutor has had a positive experience with either Eurojust or the EJM, they are more likely to use it again.

General efforts are made at national level to inform practitioners of both the EJM and Eurojust. So far, no specific need for national guidelines or instructions has therefore been identified. Cases are allocated in an informal manner on a case-by-case basis.



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

According to the Danish authorities, the tasks of the national member in relation to operational cases are in general related to providing a platform that facilitates swift and efficient exchange and analysis of information connected to operational cases and to ensure cross border coordination where this is needed. Furthermore, the national member's task is also to assess and ensure the quality and to provide guidance on how to proceed in the best and most practical way to ensure that momentum is kept in cases where assistance is needed.

The deputy and assistant mainly act on operational cases where the national member needs assistance related to searching national databases or the assessment of the latest legal developments in areas that are of interest for the operational case. Also, they may be involved in specific cases in the absence of the national member or where it seems more timely or appropriate that the case is being handled from Denmark.

The national member, the deputy and the assistant have more or less daily contact, discussing both specific cases and matters of a more general nature.

The deputy and assistant do also on an *ad hoc* basis have the possibility to participate with and represent the national member in relevant operational meetings in Denmark or at Eurojust, for example in coordination meetings, meetings for setting up JITs, etc.

No formal requirements or specific procedures are foreseen. The informal cooperation is carried out through direct contact with the national member, who will then directly liaise with the relevant authority in Denmark.

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

Contact is normally established directly from the Danish authorities with the national member or from authorities in other Member States.

For incoming requests to Denmark the national member directly contacts the relevant police and prosecution district through the chief prosecutor. The contact with the relevant prosecutor is then established, and direct contact between the national member and the prosecutor etc. is maintained throughout the handling of the specific case.

The main task for the national member is to facilitate cooperation and attempt to create a direct channel of communication for the involved authorities.

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

There have thus far been no Article 7 related cases in Denmark.

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

The national member has the powers of a state prosecutor nation-wide and consequently has the power to make decisions in criminal cases. Powers of the Director of Public Prosecutions are defined in the AJA. The national member thus has the power to, for example, draft an MLA but would normally not do this. If the measure is urgent, in practice the national member would have to liaise with the relevant local prosecutor, also after office hours. In all police and prosecutor districts there are prosecutors on call.

According to the Danish authorities, the decision to have the national member included in the national hierarchy of the prosecution service has proven valuable in order to avoid any shortcomings in national powers.

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

Coordination meetings are seen by Denmark as one of the most valuable elements within Eurojust' activities. Such meetings bring together persons working with actual ongoing cases from different Member States with the specific purpose to exchange information and provide an overview in cases, which again can facilitate decisions on steps to be taken in these cases. In this way, efficiency in the fight against organised crime is considerably strengthened and steps are taken to fight such crime at a wider scale than the traditional national approach. Participants in coordination meetings will probably in many cases also be able to function as "agents of change" in the respective Member States thus promoting the relevance of an internationally based fight against organised crime and also initiating new specific cases within this field.

At coordination meetings Eurojust is furthermore able to gather all actors in casework, i.e. police officers, prosecutors and investigating magistrates, thus enabling binding and final decisions to be taken. The Danish authorities generally see only added value as regards coordination meetings. The question is sometimes to find the right moment for coordination meetings which may not be the same in all participating Member States. The need and right timing for coordination meetings should be carefully considered if a case is basically, in most Member States, only in the intelligence gathering stage and no immediate specific actions are foreseen.

The organisation of the meetings by Eurojust and the Member State requesting a meeting is generally done in a professional and efficient way. According to the Danish authorities, the follow-up is generally good. Agreements among the parties on what to do are respected and the agreed steps are carried out.

Danish authorities were involved in the following number of coordination meetings in 2009-2012:

<i>Year</i>	<i>Requesting</i>	<i>Requested</i>	<i>Total</i>
<i>2009</i>	<i>1</i>	<i>6</i>	<i>7</i>
<i>2010</i>	<i>1</i>	<i>11</i>	<i>12</i>
<i>2011</i>	<i>2</i>	<i>6</i>	<i>8</i>
<i>2012</i>	<i>2</i>	<i>12</i>	<i>14</i>

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

The OCC is currently assigned to the national member, and, since no incoming calls have been received, the mandatory availability has not caused any problems. The OCC is planned to be extended to the deputy and assistant in the near future. Rotating shifts will then be applied.

Relevant information about the OCC is available at the intranet of the Danish prosecution service, which can also be accessed by the police. Furthermore, the use of the OCC is promoted through the ENCS and bi-annually in the Standing Committee on International Cases.

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

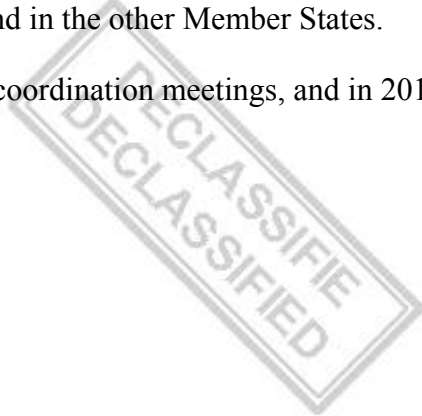
According to the Danish authorities, there have been no specific experiences to this extent. The close link between the Danish National Police and the relevant unit covering inter alia the task of the Europol National Unit, however, makes future informal and formal cooperation possible.

## 5.7. Conclusions

- So far, no general rules or guidelines on the allocation of cases to Eurojust or the EJM have been issued by the Danish authorities. Decisions are taken on a case-to-case basis. A document outlining the basic considerations in this regard is under preparation. The EJM is considered to be the less expensive solution that should be used for smaller cases in order not to overburden Eurojust. However, in urgent cases preference is given to Eurojust over the EJM because results can be achieved faster. In practice once the relevant authorities have received effective assistance from either the EJM or Eurojust, they will use them again, irrespective whether the case is for example affecting more than two countries or is involving serious organised crime.
- Coordination meetings are used frequently and with apparent concrete success. The Eurojust national member is effectively promoting the use of such meetings among practitioners.
- Statistics regarding the activities of the Danish national desk at Eurojust seem to be only partial, due to the fact that for example *ad hoc* phone calls to the national member are not listed as official communication. Only concrete cases are registered in the statistics. This is a good practice if the statistics should strictly indicate only these cases. On the other hand, number of communications is currently often used also for performance indication purposes, and thus it might be useful to consider also registering some types of phone calls and other informal *ad hoc* contacts with the national member in the statistics, among others in order to provide a more realistic picture of the workload of the desk.
- The prosecutors and police officers have a direct contact with the national member at Eurojust. In many cases they know each other and work together very well. National authorities consult in advance and discuss any particular cases with the national member at Eurojust. The national member being part of the prosecution services is an advantage in the daily work. It helps in establishing contact with him and working very easily in practice.
- During the evaluation mission the prosecutors and the police presented several cases indicating the excellent cooperation with the national member at Eurojust. For example, they have had many opportunities to participate in coordination meetings at Eurojust.

- During the evaluation mission the team received information on practical cooperation with Eurojust from the State Prosecutor for Serious Economic Crime. They have completed a cross-border case as a result of which some property and money were confiscated in Denmark.
- The national member always participates in the coordination meeting at Eurojust and facilitates cooperation between national authorities in Denmark and in the other Member States.

In 2011, the Danish authorities took part in a total of eight coordination meetings, and in 2012 this number increased to 14.



## **6. COOPERATION**

### **6.1. Relation with law enforcement authorities (Europol national unit, Sirene, etc)**

The Danish representative for the JIT network is a member of the ENCS and participates in the ENCS meetings. The representative is working within the unit that has the national responsibility for the Danish desk at Europol. As such he is informed of all cases at the national desk at Europol and is therefore able to identify cases that should be coordinated with Eurojust.

According to the Danish authorities, the contact between the Danish desks at Europol and Eurojust is informal, but very close. Moreover, the national member and the Danish representative for the JIT network work together in order to identify relevant cases and facilitate JITs with local police and prosecution districts. Where needed, coordination meetings in Denmark or at Eurojust are arranged. The contacts take place at least once a week and when necessary more often.

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

Since 2008 Danish authorities have been involved in eight JITs. Six of these have involved EU funding.

The Danish authorities in general consider JITs to be an important tool in increasing cooperation in and operational aspects of fighting cross-border organised crime. It has become a priority area for the Danish authorities, and joint efforts between the prosecution and police services have been undertaken to increase knowledge and awareness of deploying JITs in suitable cases.

The national member does not directly participate in the investigation teams of the established JITs. However, the national member has an important role to play when the initial setting up is being considered and negotiated between the Danish authorities and authorities from other Member States.

Also, the national member together with the deputy and the contact point for the JIT network holds workshops with local police and prosecution in order to promote and facilitate the use of JITs.

### **6.3. Cooperation with other EU agencies**

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

As regards Denmark, the general policy in this regard is that the involvement of all relevant authorities is sought on a case-by-case basis.

To date there has not been any involvement with Frontex regarding specific cases or in general matters. Equally, the cooperation with OLAF is very limited as currently there are no cases in practice which directly relate to OLAF.

Close relations with Europol, through the Danish desk at Europol, is maintained on a daily basis in specific cases. The desk at Europol is also invited to all coordination meetings set up by Danish authorities, where relevant.

#### **6.4. Cooperation with third states**

Statistics regarding the number of cases on cross-border judicial cooperation with third countries are not kept. However, based upon a looking up in the case management system of the Ministry of Justice, the team was informed during the period from 1 January 2012 to 6 December 2012 240 cases relating to cross-border judicial cooperation with third countries had been created. It should be noted that this number do not include requests to and from the other Nordic countries as the cross-border judicial cooperation in cases among these countries is carried out directly between the competent authorities just as cross-border judicial cooperation between the EU Member States.

Furthermore, the team was informed that according to an unofficial list made by the Danish desk at Eurojust of the cases that have been opened and closed during 2012 until mid-November regarding cross-border judicial cooperation with third countries, the Danish desk at Eurojust had been involved in 6 cases regarding requests for cross-border judicial cooperation from Denmark to third countries (including 2 to Norway). 2 of the 6 cases involved Switzerland. The list also shows that the Danish desk at Eurojust has not been involved in any cases regarding requests for cross-border judicial cooperation from third countries to Denmark. Thus, the Danish desk at Eurojust only seems to be involved in a very small part of the total amount of cases on cross-border judicial cooperation with third countries. According to the Danish National Member of Eurojust, there does not seem to be a common denominator for the cases where the Danish desk at Eurojust is involved.

The use of the national desk at Eurojust as regards Danish authorities' cooperation with Bosnia, Liechtenstein and Turkey in relation to specific cases has also provided added value.

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

The structure of the Danish EJM contact points, national correspondent, the Eurojust national member, deputy and assistant at Eurojust, where all are directly linked to the Director of Public Prosecutions, provides a flexible basis for smooth cooperation.

Therefore, the national member is on a daily basis in contact with the EJM representatives in Denmark. This involves *inter alia* consultation on specific cases and issues of a more general nature.

The tasks to be performed by the EJM contact points are in general considered when assessing their functions and daily workload.

It should, however, be noted that tasks of an *ad hoc* nature arising from the EJM would be referred to the contact point and national correspondent at the office of the Director of Public Prosecutions, where specific resources are allocated to the International Section dealing with EJM matters.

##### *6.5.1. The EJM Website*

The EJM tools and website are in general considered helpful by the Danish authorities. The structured update of information is, however, of the utmost importance, and the decentralised updating procedure through national tool correspondents has some drawbacks as regards ensuring consistency.

According to the Danish authorities, a greater role for the EJM secretariat keeping basic information up-to-date on for instance contact points, national correspondents etc. should be envisaged.

Furthermore, the Atlas is regarded as a very useful and helpful tool. However, the ongoing update of the registry should be improved.

The need for translation into Danish of the website or parts thereof is not of great importance for the Danish authorities.



## 6.6. Conclusions

- JITs are viewed as an important tool, increasingly used by the Danish authorities. Eurojust national member plays an important role in co-ordinating the organisation of JITs and also as regards promoting the use of JITs as well as the relevant success stories. This is extremely important since the police and the prosecutors that the evaluation team met during the mission clearly expressed that only those tools that have proven their practical added value will be used again.
- The constant development of unofficial everyday cooperation between the Danish desks at Europol and Eurojust implies that a formal arrangement of meetings is not necessary in order to ensure a regular contact. JIT training in local police and prosecution districts is also carried out this way.
- All relevant authorities recognise the importance of the EJM tools. The Atlas is the tool used most frequently.
- It is regarded as crucial that the Atlas is always updated. The Danish tool correspondent spends a substantial amount of time effecting this.
- More consistency regarding the EJM contact points in the other Member States would be desirable from the point of view of the Danish authorities. They change often, especially in the bigger Member States where not all contact points can travel to every plenary meeting, which makes the formation of stable personal contacts difficult.
- The Danish authorities stressed the importance of choosing the contact points according to their language skills and availability.

## 7. SPECIAL INVESTIGATIVE TECHNIQUES

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

Controlled deliveries to or passing through Denmark are authorised by the prosecutor in the relevant local police and prosecution districts and with a general coordinating role by the National Centre of Investigation (NEC).

The Danish Ministry of Justice has issued guidelines on the authorisation and coordination of controlled deliveries.

The Danish national member has so far not been directly involved in authorising a controlled delivery. NEC as well as the local police districts and prosecution authorities operate on a 24/7 basis, thus, it is always possible to reach the competent national authorities. However, help to contact the relevant authorities in Denmark has been provided by the Eurojust national member in similar cases.

In accordance with the Danish criminal procedure, the overall and final responsibility for a particular investigation must always lie within a police district or with one of the specialised state prosecutors. That includes the coordination of all activities in the case and cooperation between different police districts in Denmark, as well as contact between police and judicial authorities abroad in cross border cases. The link to the national member at Eurojust will thus always be the local prosecutor in charge of the case.

According to the Danish authorities, the national member cannot generally assume responsibilities for the investigation. That would require a profound knowledge of the case file, which is impossible for the national member to gain, bearing in mind the other duties of the national member towards Eurojust as an organisation and towards the many other operational cases the national member deals with. Against this background, operational activities in cross-border cases should not generally be steered from Eurojust, but Eurojust should act as a facilitator and advisor in close cooperation with the local prosecutor in charge.

Furthermore, in line with the Danish authorities, the national member should consequently only assist and follow the overall development of a case due to his close contacts with the local prosecutor. Additionally, according to the Danish authorities, it is not the purpose that the national member is informed about all activities that take place with regard to JITs, controlled deliveries etc. To be informed about all activities would be impossible for the reasons just explained. Also, it is not deemed necessary that the national member should receive this information. The national member should only be informed to the extent necessary. The appropriate level of information is

ensured through the close cooperation with the local prosecutor. It is thus the overall assessment of the Danish authorities, that questions related to controlled deliveries mainly relate to practical and police matters, which would not normally imply the need for prosecutorial expertise. The involvement of Eurojust in this area should therefore be limited.

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

Not relevant for Denmark in this context.

## **7.3. Conclusions**

- As a general rule, the national Member at Eurojust does not participate in the implementation of controlled deliveries. According to the information provided by the Danish authorities, the division of tasks is clear: the national member facilitates and initiates contacts, where necessary, and practical cooperation is done by the local police and prosecution districts.
- It is, however, not quite clear for the evaluation team how NEC or the districts themselves can coordinate all cross-border activities, for example controlled deliveries requiring an MLA, that, at least in theory, could even take place simultaneously. On the other hand, provided that this information is collected and coordinated somewhere, and that all actors are aware of the relevant arrangement, the national member at Eurojust does not need to be informed of all operational cases. However, it would be beneficial that the national member is at least made aware and informed about relevant cross-border activities relating to controlled deliveries once they have taken place.

Training and awareness raising

#### **7.4. Promotion of the use of Eurojust and the EJM**

As regards Denmark, the Director of Public Prosecution offers a one-day course twice a year to prosecutors in Denmark on issues related to international judicial cooperation, mutual legal assistance and extradition. Eurojust, EJM and other relevant authorities and the available tools are thoroughly introduced and presented during the course. The International Section of the Director of Public Prosecution conducts this training course.

Furthermore, on-going information on new developments and cases of general interest in the field of international judicial cooperation etc. is provided to the local police and prosecution districts. The information is mainly provided through the standing Committee on International Cases.

The Committee has representatives from all local prosecution districts and the prosecution authorities at the regional level. The Committee meets several times a year at the initiative of the Office of the Director of Public Prosecutions in order to discuss general matters regarding international cases and international criminal law. During these meetings information on the latest developments in Eurojust and the EJM is provided to the local districts.

The International Section at the Office of the Director of Public Prosecutions also regularly visits local districts to provide information and training on international matters.

Information regarding international judicial cooperation, Eurojust, EJM and general topics of interest such as international meetings and training opportunities is furthermore available at the intranet of the prosecution service that can also be accessed by the police. Information is made available on the national intranet of the prosecution services and through the Standing Committee on International Cases.

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

The need has not been identified at this stage, but is assessed on an on-going basis.

#### **7.6. Conclusions**

- Training and awareness regarding international judicial cooperation, Eurojust and the EJM seems to be effective and well-organised in Denmark, especially as regards the Director of Public Prosecution. Police personnel can attend the courses held by the Director of Public Prosecutions. Additionally, even though the judges in the Danish system do not deal with international judicial cooperation directly but via the prosecutor, training at least on the specific tools might also be beneficial for judges. It is not clear if this kind of training is currently being

provided.

- During the evaluation mission the team was presented with a manual for practitioners which contains information on how to handle practical situations, including situations of international judicial cooperation. This seems like a very practical way to address circumstances that can arise in everyday work.
- The intranet site of the prosecution services providing information on international judicial cooperation, Eurojust, EJM and general topics of interest such as international meetings and training opportunities seems very useful. At the site there are for example model MLA requests and other tools for international judicial cooperation.
- According to the evaluation team, the local prosecutors might not always be fully aware of all the benefits and possibilities of international judicial cooperation and especially of all the forms of support provided by Eurojust.

## 8. GENERAL OBSERVATIONS AND FINAL REMARKS

Eurojust was set up by the Council Decision 2002/187/JHA of the European Union in February 2002 to stimulate and improve coordination of criminal investigations and prosecutions in the Member States and to enhance cooperation between the competent national authorities by facilitating mutual legal assistance with a view to reinforcing the fight against serious crime.

Subsequently, the Eurojust Decision was amended by the Council Decision 2009/426/JHA on the strengthening of Eurojust aiming to further enhance its operational effectiveness and to create a common minimum basis of powers of the national members. This Decision is currently being implemented in the national legislation of the Member States.

The European Judicial Network in criminal matters was created in 1998 to improve judicial cooperation by facilitating the implementation of the principle of direct contact between judicial authorities. Its legal status has been reinforced in December 2008 by the adoption of a new legal basis.

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

According to the Danish authorities, Eurojust and EJN provide a concrete added value to international cooperation and today it would be impossible to imagine such a cooperation without Eurojust and EJN.

As to Eurojust, the main advantage is the possibility to arrange coordination meetings and to have JITs facilitated and funded. In addition, the good and close contacts, which the Danish national member at Eurojust has established with the other national members, are very valuable. They can facilitate information exchange and specific solutions to encountered problems in a swift and efficient way.

The EJN functions as a good facilitation mechanism in bilateral cases, although the efficiency is affected by the fact that the persons are not dedicated 24/7 to international cooperation and that there are notable differences as to the functioning of the network in different Member States. The use of direct contacts between judicial authorities, which follows from the 2000 Convention on mutual legal assistance in criminal matters<sup>5</sup>, could still be promoted far more.

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<sup>5</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; OJ C 197, 12.7.2000, p. 1.

Both Eurojust and the EJP are involved in (bilateral) cases that could and should have been solved directly between the parties. It must be stressed that both the EJP and Eurojust are basically performing the role of facilitators and “go-betweens” in relation to national judicial authorities.

According to the Danish authorities, Eurojust should concentrate much more on operational work in specific cases and less on the administration of its own organisation and on policy and other general issues. According to the Danish authorities, there is still a disproportion between on the one hand the limited number of operational cases, coordination meetings and JITs established via Eurojust, and on the other hand the size of the organisation and its administrative undertakings, although some slight improvements have been seen in the recent years.

Furthermore, the time that national desks are supposed to dedicate to other tasks than purely operational casework lies still beyond what is reasonable (e.g. the number of College meetings rarely dedicated to operational matters, teams, seminars, questionnaires, workshops and other forms of administration). These non-case related activities take time and resources away from what is essentially the core business of Eurojust and hamper, inter alia, the possibilities to do more operational work, including promoting Eurojust and international cooperation among practitioners in the Member States, where the cases for Eurojust should be generated. JIT funding should be secured and driven by Eurojust also in the future.

## **8.1. Conclusions**

- The general assessment of the quality and efficiency of the support received from Eurojust by central and local authorities is positive. The added value of Eurojust is appreciated throughout the country. Coordination meetings and JIT funding are regarded as the most useful tools provided by Eurojust. Coordination meetings also help with solving bilateral problems and conflicts between Member States.
- The Danish desk at Eurojust is regarded and described as a partner with which the contacts are frequent and fruitful. Eurojust as an institution also seems to enjoy a good reputation.
- The Eurojust national member is well-known among prosecutors and relevant authorities in Denmark and is easy to contact directly by the local police and prosecution districts. However, the powers and function of Eurojust as an institution do not seem fully clear, and there is no general awareness of where the use of Eurojust would be most efficient and practical.

- There are almost no contacts from courts to Eurojust because Danish judges are hardly ever involved in mutual legal assistance requests. Such requests are usually handled only by prosecutors.
- The Danish authorities generally encourage direct contacts to the authorities in other Member States before involving Eurojust. Eurojust is only involved when there are problems with or delays in the cooperation.
- The Danish authorities clearly expressed that Eurojust should become more of an operational body than an administrative one. There are concerns that Eurojust is more concentrated on administrative issues than supporting cross-border judicial cooperation in practice.
- The EJM is generally appreciated in Denmark. It is considered to be useful for practical work. For example, EJM website is regarded as useful by practitioners and the EJM Atlas is consulted in concrete cases.
- The EJM is used frequently in simple bilateral cases, e.g. for reminders regarding the execution of MLA requests.



## **9. RECOMMENDATIONS**

As regards the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters, the expert team involved in the evaluation of Denmark has been able to satisfactorily review the system in Denmark, expertly supported by the helpfulness of their national hosts. Overall, the working principles and legal framework of the system is robust and functional and the various actors know their roles and responsibilities.

In general, the Danish system is relatively small, due to the size of the country, and the relevant actors know each other. This makes cooperation effective, informal and very practical. With some exceptions, the Danish approach is not to specifically implement all relevant international obligations into national legislation but rather to apply similar powers and processes as would be done for a purely national case. The analogy of the AJA seems to work well and there do not seem to be any issues with extending its application to international cases.

The Danish authorities have a very positive approach towards Eurojust and the EJN, but this is conditioned in practice by the practical support and added value that they can provide. Only solutions that effectively support and facilitate everyday work are appreciated and used. The Danish national member to Eurojust has a facilitatory role, and he is actively supporting the national authorities in finding the right counterparts in the Member States, solving practical issues involving for example requests that have not been executed, and initiating coordination meetings leading up to JITs. The national member does not get involved in operational activities such as controlled deliveries or the running of the JITs, but this is according to the Danish approach left to the competent national authorities, the local police and prosecution districts. There have been no major issues identified during the evaluation process regarding the implementation of the Eurojust Decision. The lack of specific legislation, however, makes it quite difficult for the evaluation team to assess the extent and accuracy of the implementation.

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

Denmark should conduct a follow-up on the recommendations given in this report 18 months after the evaluation and report on the progress to the Working Party on General Affairs, including Evaluations (GENVAL).

### **9.1. Recommendations to Denmark**

Denmark should:

1. Provide guidelines defining the different roles of Eurojust and the EJN and supporting in allocating the right cases to each.
2. Raise awareness regarding the exchange of information under Article 13 and encourage the competent authorities to provide information to this extent.
3. Review subsequent national processes as regards the provision and further submission to Eurojust of Article 13 data in order to ensure that data flows effectively to the Danish desk at Eurojust.
4. Consider increasing the collection of statistics as regards the Danish desk at Eurojust.
5. Extend specific training on international judicial cooperation to include the local police and prosecutors and judges where appropriate.

### **9.2. Recommendations to the European Union, its institutions and agencies and the Member States**

1. The Commission should ensure that JIT funding is secured and driven by Eurojust also in the future.
2. Member States should ensure that they provide all necessary information defined under Article 13 of the Eurojust Decision to Eurojust. National structures and awareness to support this should be established.

3. Eurojust should consider using the possibility of issuing a written non-binding opinion, as laid down in Article 7(3) of the Eurojust Decision, in cases of recurrent difficulties or refusals regarding the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

### **9.3. Recommendations to Eurojust**

1. Eurojust should send feedback to the national authorities according to Article 13a of the Eurojust Decision. A follow-up system should be established in order to provide feedback to the Member States as regards the data provided by them.
2. Eurojust should take measures to strengthen its support to operational activities and to further enhance its role in facilitating international judicial cooperation.
3. Eurojust should take a more active role in setting up and coordinating JITs and controlled deliveries involving several Member States.
4. Eurojust should consider reviewing the time and resources allocated between seminars and workshops, etc., administrative tasks and tasks related to or supporting operational activities.

ANNEX A: PROGRAMME FOR VISIT

**Programme of evaluation visit**  
**24 September 2012 to 27 September 2012**

**Monday 24 September 2012**

Arrival to Copenhagen

**Tuesday 25 September 2012**

**9.30-10.00** Welcome at the Ministry of Justice

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room II*

**10.00-10.30** MoJ experiences and cooperation with Eurojust and EJM

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room II*

**10.30-11.00** Travel (walk)

**11.00-13.00** Institutional and legislative framework

*Director of Public Prosecutions, Frederiksholms Kanal 16, 1220 Copenhagen K*

**13.00-14.00** Lunch

*Kanal Caf en, Frederiksholms Kanal 18, 1220 Copenhagen*

**14.00-15.00** Institutional and legislative framework - continued

*Director of Public Prosecutions, Frederiksholms Kanal 16, 1220 K benhavn K*

**15.00-15.30** Travel (car)



**15.30-16.30** Experiences and cooperation - visit to the State Prosecutor for Serious Economic Crime

*Bryggervangen 55, 3., 2100 Copenhagen Ø.*

**Wednesday 26 September 2012**

**9.15** Departure from the hotel

**9.30-11.30** Copenhagen Police Department

*Politigården, 1567 Copenhagen V.*

**11.30-12.00** Travel (walk)

**12.00-13.15** Working lunch

*Restaurant Søren K, Kierkegaards Plads 1122 Copenhagen*

**13.15-14.00** Travel (car)

**14.00-16.00** Visit to Mid and West Zealand Police. Meeting with Commissioner of Police

*Skovbogade 3, 4000 Roskilde*

**19.00** Dinner

*Restaurant Kap Horn, Nyhavn 21, 1051 Copenhagen K*

**Thursday 27 September 2012**

**10.00** Debriefing with representatives of the institutions involved

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room I*

**12.00** Lunch

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room I*

**13.00** End of visit

**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

**Evaluation team**

**Council Secretariat**

Mari Hämäläinen

AnneCecilie Adserballe

**Experts**

Tünde Forman (Hungary)

Solveig Wollstad (Sweden)

Ivanka Kotorova (Bulgaria)

**Observer**

Mr Hans-Holger Herrnfeld (Eurojust)

Ms Stephanie Bovensiepen (Eurojust)

**Denmark**

**Ministry of Justice**

Deputy Permanent Secretary, Jens-Christian Bülow

Deputy Head of Division, Anders Herping

Head of Section, Mads Kruse

Head of Section, Morten Daniel Dahm-Hansen

**The Director of Public Prosecutions**

Deputy Director of Public Prosecution, Lennart Lindblom

National Member for Denmark at Eurojust, Jesper Hjortenbergt

Assistant Deputy Director and Deputy National Member for Denmark at Eurojust, Alessandra Giraldi

Prosecutor and Assistant to the National Member of Denmark at Eurojust, Eddie Omar Rosenberg Khawaja

**The State Prosecutor for Serious Economic Crime**

Deputy State Prosecutor, Per Justesen



Senior Prosecutor, Michael Ejlerskov  
Chief Inspector, Jesper Knud Friedrichsen

**Copenhagen Police Department**

Senior Chief Prosecutor, Carsten Egebjerg  
Chief Prosecutor, Jens Rasmussen  
Chief Inspector, Michael Klausen  
Senior Prosecutor, Jacob Buch-Jepsen  
Senior Prosecutor, Kathrine Krejlberg

**Mid and West Zealand Police**

Commissioner of Police, Anders Linnet  
Senior Chief Prosecutor, Karin Thostrup



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

<b>ACRONYM ABBREVIATION TERM</b>	<b>ACRONYM IN THE ORIGINAL LANGUAGE</b>	<b>ENGLISH TRANSLATION/EXPLANATION</b>
AJA	-/-	Danish Administration of justice Act
CMS	-/-	Eurojust Case Management System
COPEN	-/-	Working Party on Cooperation in Criminal Matters
EAW	-/-	European Arrest Warrant
EJN	-/-	European Judicial Network
ENCS	-/-	Eurojust National Coordination System
EPOC	-/-	European Pool against Organised Crime
EU	-/-	European Union
GENVAL	-/-	Working Party on General Affairs, including Evaluations
JIT	-/-	Joint Investigation Teams
MLA	-/-	Mutual Legal Assistance
NEC	-/-	National Centre of Investigation
OCC	-/-	On call coordination system
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
SITs	-/-	Special Investigative techniques