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Report on Germany

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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 Germany

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1. EXECUTIVE SUMMARY

Due to its federal structure, Germany is confronted with lots of challenges in the implementation of the Decisions. The evaluation team considers that these have in general been adequately addressed, both in terms of legislation and in practice, thanks to a creative approach and a clear determination not only to comply with the legal requirements but also to ensure their effectiveness at all levels.

The decisions made during the implementation process and in practice ensure an optimal cooperation between the EJM and Eurojust at national level.

The unifying role of the EJM contact points and Eurojust contact points¹ as members of the ENCS has proved very positive since it allows the most experienced practitioners, representing the 16 *Länder*, to be involved in cooperation with Eurojust in relation to mutual assistance in criminal matters.

The German system in which the same person is appointed as the EJM contact point and Eurojust national correspondent ensures a smooth decision making process and cooperation at the national level and towards Eurojust.

The overall assessment of the evaluation team is generally very positive.

Eurojust

- Legislative implementation, for which the federal government is responsible, appears to be complete for all provisions of the Eurojust Decision, including those related to access to the CMS by external users.

¹ According to Section 3 of the Ordinance on the Coordination of Cooperation with Eurojust, Germany has established, in compliance with Article 12(2)(d) of the Eurojust Decision, the Federal Office of Justice and the judicial authority designated by the Federal government for the network within the meaning of the Council Decision 2008/852/JHA on contact - point network against corruption as the Eurojust contact points.

- Practical guidelines² have been issued and are known by practitioners.
- The practical implementation, because of the federal structure, is entrusted to the 16 *Länder*, which vary considerably in size and geographical situation which themselves handle most cases of cross-border cooperation.
- The ENCS has been created and has already met several times.
- The potential offered by Eurojust could still be further exploited by the German authorities whereas the EJM has a strong position in Germany.
- Awareness of the new reporting obligation introduced by Article 13 of the Eurojust Decision, as well as of the benefits it could bring to judicial cooperation at EU level, should be further promoted.

EJM

- The legislative implementation of the EJM Decision appears to be complete.
- The practical implementation can be considered as remarkable. Germany's EJM branch is in general very well developed and organised and enjoys a good reputation amongst practitioners. However, it was noticed that the availability and capacity needed for the work of the EJM substantially differ per *Land*. The focus of the German EJM is on pragmatism and direct communication.
- There is in practice a good appreciation by practitioners of the respective roles of Eurojust and the EJM and their complementarity, and information on ongoing cases is shared.

² Practical Guidance Notes for Cooperation (*Eurojust. Hinweise zur praktischen Zusammenarbeit*) and Guidelines on Relations with Foreign Countries in Criminal Law Matters (RiVAST).

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997³, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime has been established.

In accordance with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to the practical implementation and operation of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime⁴, as amended by Decisions 2003/659/JHA⁵ and 2009/426/JHA⁶, and of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁷ repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters⁸.

³ Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997, pp. 7-9.

⁴ 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.

⁵ Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 245, 29.9.2003, p. 44-46.

⁶ 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.

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

⁸ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130-134.

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

Experience from all evaluations tells us that Member States will be in different positions regarding the implementation of relevant legal instruments, and the current process of evaluation could also provide useful input for 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 for 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. Germany was the sixteenth Member State to be evaluated during this round of evaluations.

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

The evaluation teams 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 the evaluation of Germany were Ms Alessandra Giraldi (Denmark), Ms Katarzyna Naszczyńska (Poland) and Mr Arend Vast (Netherlands). Three observers were also present: Ms Catherine Deboyser (Eurojust), Mr Lukas Sary (Eurojust) and Ms Alexandra Jour-Schroeder (European Commission), together with Mr Hans G. Nilsson and Mr Sławomir Buczman 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 the findings of the evaluation visit that took place in Germany between 22 and 26 July 2013, and on Germany's detailed replies to the evaluation questionnaire together with their detailed answers to follow-up questions.

Because of the federal structure of Germany, this report will sometimes contain information relating to one particular *Land*, such as Lower Saxony. This does not mean that the particular information given is valid for the entire Federal Republic of Germany.

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 Eurojust Decision 2002/187/JHA was transposed into German national law by the Act implementing Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, referred to hereinafter as the "Eurojust Act (EJG)" of 12 May 2004 (*Gesetz zur Umsetzung des Beschlusses (2002/187/JHA) des Rates vom 28. Februar 2002 über die Errichtung von Eurojust zur Verstärkung der Bekämpfung der schweren Kriminalität*).

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

The Eurojust Decision 2009/426/JHA was transposed into German national law by the Law amending the Eurojust Act transposing Council Decision 2002/187/JHA into national German law, referred to hereinafter as the "Law amending the Eurojust Act (EJGÄndG)" (*Änderungsgesetz zur Umsetzung des Eurojust-Beschlusses*). The Law entered into force on 15 June 2012.

The Law amending the Eurojust Act (EJGÄndG) was accompanied by the Ordinance on the Coordination of Cooperation with Eurojust of 26 September 2012. Article 1 of this Ordinance (*Verordnung über die Koordinierung der Zusammenarbeit mit Eurojust (EJKoV)*), referred to hereinafter as the "Eurojust Coordination Ordinance (EJKoV)" established the Eurojust National Coordination System pursuant to Article 12 of the Eurojust Decision of 2008.

3.2. Implementation of the Eurojust National Coordination System

3.2.1. Eurojust National Coordination System (ENCS)

The ENCS was established on the basis of the Eurojust Coordination Ordinance (EJKoV) which entered into force on 9 October 2012. The role of the ENCS is to ensure coordination of the work carried out by:

- the National correspondents for Eurojust;
- the Eurojust contact points⁹;
- the Public Prosecutor General of the Federal Court of Justice.

The ENCS is empowered to perform the following tasks:

- 1) ensure that the National Member receives information in accordance with sections 4 and 6 of the Eurojust Act in an efficient and reliable manner;
- 2) determine whether a case should be pursued with the assistance of Eurojust or the EJN;
- 3) assist the National Member in identifying relevant authorities for the execution of requests for judicial cooperation in criminal matters with the Members States of the European Union;
- 4) maintain contact with the national unit in accordance with Article 8 of the Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
- 5) assist the National Member in the performance of his/her tasks in other ways in accordance with section 3 of the Eurojust Act.

In addition, the exchange of information and sharing of experience are also important tasks of the ENCS, along with the discussion of fundamental questions relating to enhancing cross-border collaboration in criminal matters.

⁹ As defined in point 3.4.1

3.2.2. National correspondents

Pursuant to section 2 of the Eurojust Coordination Ordinance (EJKoV) the following representatives and bodies have been appointed as the National correspondents for Eurojust:

- the Federal Office of Justice;
- the Public Prosecutor General of the Federal Court of Justice;
- the contact points designated by each *Land* government in accordance with section 14(2) of the Eurojust Act.

In accordance with Article 12(4) of the Eurojust Decision, the Eurojust correspondents are responsible for organising the ENCS, as set out in section 4(2) of the Eurojust Coordination Ordinance (EJKoV). They are not subordinate to the other ENCS participants, in particular the Eurojust contact points within the meaning of section 3 of the Eurojust Coordination Ordinance (EJKoV). Since Article 12(3) of the Eurojust Decision provides that all parties involved in the ENCS shall maintain their position and status under national law, the tasks of the Eurojust correspondents in the context of the ENCS are administrative and organisational in nature.

However, the Federal Office of Justice (BfJ), situated in Bonn, plays a leading role in organising meetings and performing ENCS tasks in consultation with the other National correspondents for Eurojust.

The Federal Office of Justice organises the ENCS by mutual agreement with the other Eurojust correspondents (section 4(2) of the Eurojust Coordination Ordinance (EJKoV)). This does not mean that the Federal Office of Justice (BfJ) is obliged to consult the other Eurojust correspondents prior to every individual organisational step it may take. However, all Eurojust correspondents should reach a consensus on fundamental decisions regarding the ENCS (such as the frequency and timing of meetings, or costs).

All EJM contact points in Germany have been established as Eurojust correspondents (although it became evident during the evaluation that not all EJM contact points were clear of this “double - hat”). Thus, it is ensured that all 16 German federal *Länder* participate in the ENCS. Although pursuant to Article 12(2)(c) of the Eurojust Decision only a maximum of four EJM contact points may be included in the system, all EJM contact points are part of the ENCS in Germany. A special solution was found in order to allow at least one EJM contact point to be established in every federal *Land* in order to ensure a geographically even distribution and networking of the ENCS throughout German territory.

Since the EJM contact points designated by the *Länder* are assigned to the Offices of the Public Prosecutor General (GenStA), in terms of organisation there is already a close network under the auspices of the public prosecution offices. As a result, experience the ENCS has gained in its cooperation with Eurojust, or even "best practices" identified by the ENCS, can be shared directly with the parties involved in prosecutorial practice.

3.2.3. Operation of the ENCS and connection to the CMS

The ENCS will meet regularly, according to the German authorities, at least once a year (for reasons of efficiency, this meeting will be scheduled so that it ties in with the annual meeting of the German EJM contact points), and more frequently if needed.

So far, ENCS meetings have taken place on 7 December 2012 in Berlin and on 7 March 2013 in Bonn. A third meeting, consisting of a joint visit with Eurojust to the ENCS offices in the Hague was held on 17-18 September 2013.

In between the ENCS meetings, information of interest is exchanged by the parties by email, for example as regards topical developments in criminal law in the European Union.

According to the German authorities involved in the ENCS, the main task of the ENCS is to ensure sufficient feedback between the National desk at Eurojust on the one hand and the German law enforcement authorities on the other, while also serving as a multiplier. The topic of "feedback" was on the agenda for the ENCS sessions of 7 December 2012 and 7 March 2013. It was agreed that, as a matter of principle and in all cases, the German desk at Eurojust and the national law enforcement authorities are to provide each other with as substantial feedback as possible, and that they are to do so in the short term.

Sections 4b and 4c of the Eurojust Act (EJG) have created the legal prerequisites for the Eurojust correspondents to be connected to Eurojust. At the time of the evaluation visit, the experts were informed that secure ICT connections between Eurojust and the relevant German authorities have not yet been established¹⁰.

The German law enforcement authorities have also been given access to data added to the Case Management System by the German National Member. However, certain conditions have been established regulating such access in order to protect citizens' rights to informational self-determination, which are protected by German constitutional law.

For this purpose, a "Federation-*Länder* Working Group on IT Matters" has also been set up to ensure optimum data protection and secure data transmission between the German authorities and the German desk at Eurojust. The IT Working Group has met twice so far, on 15 March 2012 and on 6 March 2013. The meetings were attended by legal experts and IT specialists delegated by the Federation and the *Länder*, as well as by the German desk at Eurojust and the IT specialists of the Eurojust administration.

¹⁰ According to information provided by Eurojust in November 2013, "The establishment of a secure connection between Eurojust and Germany proves difficult because of the federal structure and the relative level of independence of each *Land*. A different strategy was needed than that used with other Member States."

The Group is currently focused on ensuring that the German authorities are able to comply with their obligation to exchange information stipulated by Article 13 of the Eurojust Decision (section 6 of the Eurojust Act (EJG)) by transferring personal data to the German desk in a secure manner. As a second step, the same level of security will have to be ensured for the "return trip" as well, so that the German desk at Eurojust can also communicate securely with the law enforcement authorities in Germany.

The IT Working Group is also expected to identify the approach to be taken to determining how Eurojust can connect the national German authorities to its CMS¹¹.

3.2.4. Cooperation of the ENCS with the Europol national unit

Following the choice made by Germany, authorities that are not national judicial ones are not part of the ENCS in Germany. Therefore, a representative of Europol is not a member of the ENCS.

However, this does not rule out the attendance of representatives of the Europol national unit or the SIRENE Bureau as guests at the ENCS meetings or other forms of cooperation on certain occasions. As an example, the topic of the cooperation between the ENCS and the Europol national unit was on the agenda of the ENCS sessions of the third meeting held in September 2013. The head of the German Liaison office at Europol as well as one of his staff members reported about their tasks. They also introduced SIENA, the case processing program and the analysis system of Europol by pointing out that this system shall develop further just in cooperation with Germany. The discussion covered also broader aspects of this topic, for instance in relation to data protection. The head of the German Liaison Office clarified that in his point of view there is no need for a regular participation of the German Liaison Office at Europol in the ENCS meetings. It has been agreed that such meetings could be held or organised if they are needed from one or both sides.

¹¹ The following information was provided by Eurojust in November 2013, "As a result of the good cooperation between the German authorities and Eurojust, the German desk can now exchange encrypted emails with the authorities in all *Länder*. For some *Länder*, work is still on going in ensuring that all correspondents' certificates will be recognised by the Eurojust's system."

As regards the national law enforcement authorities, cooperation is close. This is due to the fact in particular that the authorities involved in the ENCS are themselves part of the German prosecution system, or function, in terms of the laws governing mutual legal assistance, as a central point of contact or network.

Thus, the Federal Office of Justice (BfJ) will communicate directly with the responsible judicial authorities of the Federation and the *Länder* wherever necessary in the context of requests that concern cooperation in prosecution matters, and in doing so will act as the central contact for mutual legal assistance for matters of criminal law, and as the judicial contact point in the fields of joint investigation groups, genocide and asset recovery.

Although law enforcement authorities are not part of the ENCS, they collaborate closely within the networks with the judiciary, and can also work together on specific individual cases where needed and subject to the legal requirements being met. The personal and institutional ties between the Federal Office of Justice (BfJ) and the German Federal Police Office (BKA) also extend into the ENCS: communication channels are short and allow prompt liaison wherever the need arises.

Regarding the experience of Lower Saxony in relation to cooperation with Europol, the Central Office for Organised Crime and Corruption (*Zentrale Stelle Organisierte Kriminalität und Korruption*, ZOK) within the Office of the Public Prosecutor General (GenStA) of Celle cooperates closely with the public prosecution offices of Lower Saxony and the Police Office at the *Land* level (*Landeskriminalamt*, LKA). Europol, the national contact point of Europol, and the national SIRENE Bureau are contacted only in very exceptional cases requiring the support of the EJN or the ENCS, since contact at the central level is reserved, as a matter of principle, for the police office at *Land* level (LKA). In all other cases, contact with these authorities is to be established directly by the public prosecution offices.

3.3. National desk at Eurojust

3.3.1. Organisation

Six people are currently appointed to the German desk at Eurojust, all of whom have their regular place of employment at Eurojust in the Hague:

1. the National Member, the deputy National Member and the assistant, who are prosecutors;
2. one seconded National expert, who is a judge;
3. two secretaries.

Practitioners in Germany have been informed of the composition of the German desk at Eurojust. All necessary information about their status and personal as well as contact details have been inserted in the Eurojust brochure and disseminated by the Federal Ministry of Justice (*Eurojust. Hinweise zur praktischen Zusammenarbeit*).

3.3.2. Selection and appointment

1. National Member

The National Member is appointed and removed from office by the Federal Ministry of Justice (BMJ). The appointments are made with the *Land* departments of justice by mutual consent. The National Member must be qualified to hold judicial office and should be a federal employee (section 1(1) of the Eurojust Act (EJG)). In selecting a person suitable for the position of National Member, other specific qualities also play a role, above and beyond the prerequisites stipulated by the law. These include qualities such as international experience, knowledge about the practice of cross-border cooperation in matters of criminal law, knowledge and/or experience in applying the relevant legal instruments of the EU, and command of foreign languages.

In fulfilling the tasks arising from the Eurojust Decision, the National Member is supposed to comply with the “technical instructions” issued by the Ministry of Justice (BMJ) (section 1(3) of the Eurojust Act (EJG)). The measures required in order to make appointments, remove individuals from office, or to enforce instructions from the Ministry of Justice (BMJ) are to be taken by the highest administrative authority of the National Member (section 1(4) of the Eurojust Act (EJG)).

According to the German authorities, these instructions aim at ensuring the involvement of the National Member in the domestic structures of Germany and at ensuring that the National Member conducts him/herself in a proper, lawful manner. The instructions could be of organisational nature but can also relate to a specific case of special interest for the State (e.g. from a national security point of view). It can however also relate to the position of the National Member in the sphere of strategic reflections on legal policy (e.g. the EPPO).

However, in practice these “technical instructions” have not been used in respect of how cases are processed by the German desk at Eurojust. Therefore, how the German desk will act in any given case is decided in coordination with the judicial authorities concerned and is not subject in practice to any technical instructions issued by the Ministry of Justice (BMJ). The evaluation team has been informed that the Ministry of Justice has not given any instructions to the National Member.

The term of the National Member is a minimum of four years. Prior to the expiry of this period, the National Member may only be removed from office against his/her will for grave misconduct.

2. Persons supporting the national member (deputies, assistants and national experts)

Section 1(1) of the Eurojust Act (EJG) applies to the appointment of the persons supporting the National Member, with the modification that those appointed may also be employees of a *Land* and will be nominated by the *Länder* (section 2(1) of the Eurojust Act (EJG)). The Ministry of Justice (BMJ) will appoint the deputy of the National Member from amongst the group of the people supporting the National Member in his/her work. The term of office of the persons supporting the National Member should not be shorter than two years (section 2(3) of the Eurojust Act (EJG)).

In the fulfilment of the tasks assigned to them, the persons supporting the National Member will be subject to the instructions issued by the Ministry of Justice (BMJ) and by the National Member, as set out in the first sentence of section 2(4) of the Eurojust Act (EJG).

The evaluation team has been informed that the Ministry of Justice's right to issue instructions does not have any practical significance for the actual work done. It is the National Member who is responsible for the case work done by the German desk, and for coordination with the competent judicial authorities.

The national experts – who are Eurojust employees – will work according to the technical instructions of the National Member (section 2(7) of the Eurojust Act (EJG)), subject to the Eurojust implementing arrangements.

3.3.3. Powers granted to the national member

3.3.3.1. General powers

1. National member

The ordinary powers set out in Article 9b of the Eurojust Decision have been conferred upon the National Member of Germany. German national law provides for the corresponding competencies in section 3(1) of the Eurojust Act (EJG). Therefore, the National Member is entitled to receive, transmit, facilitate the execution of and provide supplementary information in relation to requests for judicial cooperation in criminal matters, and to suggest to the competent German authorities that additional measures be taken where deemed appropriate to fully execute the request.

In light of the provisions of constitutional law and the federal structure of the Federal Republic of Germany, it was not possible to confer upon the National Member the powers set out in Article 9c and 9d of the Eurojust Decision.

Thus, Germany has availed itself of the option under Article 9e(1)(a) and (b)(iii) of the Eurojust Decision. However, the provisions of Article 9e(1) were taken into account by granting the National Member the right to make proposals regarding requests and measures within the meaning of Articles 9c and 9d of the Eurojust Decision.

2. Persons supporting the national member (deputies, assistants and national experts)

Subject to the actual allocation of tasks at the German desk, the persons supporting the National Member are authorised to perform all tasks that have been assigned to the National Member (section 2(5) of the Eurojust Act (EJG)).

3.3.3.2. Access to national databases

1. National member

The National Member, pursuant to section 4(4) of the Eurojust Act (EJG), is granted access to public registers (i.e. all registers maintained by the German courts or authorities) in order to fulfil the tasks allocated to the National Member, to the same extent to which a court or a public prosecution office would be entitled to access them when pursuing criminal proceedings.

The following registers may be accessed by the National Member:

- the Federal Central Criminal Register (*Bundeszentralregister*), which compiles sentences given under criminal law,
- the Central Public Prosecution Proceedings Register (*Zentrales Staatsanwaltschaftliches Verfahrensregister*), where investigation procedures currently being pursued by the public prosecution offices are recorded,
- the Central Register of Traffic Offenders (*Verkehrszentralregister*), recording all proceedings governed by the Road Traffic Ordinance (*Strassenverkehrsordnung*), and
- the electronic Commercial Register.

The National Member also has comprehensive access to registers based on Article 9(3) of the Eurojust Decision, which is applicable without restriction as a result of section 13 of the Eurojust Act (EJG).

2. Persons supporting the national member (deputies, assistants and national experts)

The powers of the persons supporting the National Member essentially correspond to those of the National Member.

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

Access to data added to the Eurojust CMS by the German National Member has been granted by law to the German law enforcement authorities (sections 4a to 4d of the Eurojust Act (EJG)).

According to the provisions of German constitutional law, any processing of personal data (such as the storage or transmission of data, as well as granting the right to (generally) access data (*Zugang*) and to (specifically) access / retrieve (*Zugriff*) such data) by governmental authorities will require a clear, statutory basis.

In this context, there is a distinction between the (general) access to data and the (specific) access to/ retrieval of data. Data will be (generally) accessible to those parties who have the technical means to access them, and who fundamentally are authorised to do so. The parties able to access / retrieve data (in specific instances) are those who are allowed to make use of their general authorisation in an individual case.

In light of data protection requirements, the provisions made as regards the right to access / retrieve data differ according to the party accessing the data (for example, this may be a German Eurojust correspondent, or representative of another German authority, or authorities outside of Germany).

One of the fundamental principles in German law also ensures, that data at the judicial level and at the police level are being kept separate. The German law distinguishes the judicial exchange of data and exchange of data performed by the police which – in general – does not have access to personal data that is available to judiciary. Exchange of data between the judicial authority and the police is possible only on the request and the principle of necessity is applied.

The following procedure will be applied in the event of transmission of relevant information to the German desk:

- 1) the National Member will create a work file for each case transmitted to the National Member and is responsible for managing said work file (section 4a(1) of the Eurojust Act (EJG));
- 2) the National Member will decide which information from the work file is to be included in the CMS index. Where such information has been sent to the German National Member by the German authorities in order to comply with their obligation to exchange information under Article 13 of the Eurojust Decision (section 6 Eurojust Act (EJG)), without Eurojust having been asked for assistance in the specific case, the German National Member may include such information in the index only if, and to the extent that, the transmitting authority has given its consent for this to be done;
- 3) the index and the work files for the CMS must be made (generally) accessible to the Eurojust correspondents who have been connected to the Case Management System by Eurojust (the prerequisite for this is their physical connection to the Eurojust Case Management System in future;

4) the Eurojust correspondents may (specifically) access / retrieve data from the index where this is required for the purposes of administering criminal law. Such access / retrieval (in specific cases) is achieved by way of an automated retrieval process. It is not necessary for the National Member to take the corresponding decisions on a case-by-case basis;

5) the National Member may grant (specific) access / retrieval rights to the Eurojust correspondents as regards the work files created where this is required for the purposes of administering criminal law. Accordingly, the National Member takes a decision as regards such access / retrieval rights. Where the National Member allows such access / retrieval, this is achieved by way of an automated retrieval process;

6) the National Member may also grant (specific) access / retrieval rights to the Eurojust correspondents as regards the work files of other national members, provided that the data in question are available to him/her and the national member of the other Member State has not refused to grant access / retrieval rights to such data to national authorities providing that this access/ retrieval is required for the purposes of administering criminal law. Where these conditions are met, the access / retrieval is achieved by way of an automated retrieval process;

7) the National Member grants (specific) access / retrieval rights to its datasets in the index to the national authorities of other Member States connected to the Eurojust Case Management System where this is required for the purposes of administering criminal law. Where such access / retrieval rights are granted, this is achieved by way of an automated retrieval process;

8) the National Member may grant (specific) access / retrieval rights to all or part of its work files to the other national members of other Member States, or to authorised Eurojust employees, where this is required for Eurojust to perform its tasks or for the purposes of administering criminal law. Where such access / retrieval rights are granted, this is achieved by way of an automated retrieval process;

9) the National Member may grant (specific) access / retrieval rights to its work files to those national authorities of other Member States who are members of their Member State's Eurojust National Coordination System and who are connected to the Eurojust Case Management System, where this is required for the purposes of administering criminal law. However, if such access / retrieval rights are granted, this is not achieved by way of an automated process. Instead, they will be granted on a case-by-case basis as per individual requests.

Thus far, the other German authorities within the meaning of Article 12(2)(d) of the Eurojust Decision do not have (general) access to data from the index or work files, nor do they have the possibility to (specifically) access / retrieve said data.

Those rights apply in a similar way to the persons supporting the National Member, to whom the National Member grants the corresponding powers when allocating duties to them.

The rules set out in the Eurojust Act (EJG) have already created the basis for data to be made (generally) accessible, or for access / retrieval rights to be granted to such data. However, these rights have not yet been implemented at Eurojust or in connecting the Eurojust correspondents.

According to the German authorities, it is incumbent upon Eurojust to create connections allowing the access specified above.

3.4. EJN contact points

3.4.1. Selection and appointment

The Federal Office of Justice (BfJ), the Public Prosecutor General of the Federal Court of Justice (GBA) and the authorities designated by the *Land* governments perform the tasks of the EJN contact points (section 14(2) of the Eurojust Act).

The Federal Office of Justice (BfJ) as a subordinate authority of the Ministry of Justice (BMJ) represents a link connecting the Ministry of Justice (BMJ) with the practical prosecution work done in the *Länder*. Moreover, the Federal Office of Justice (BfJ) liaises between authorities in other EU Member States and the responsible EJM contact point in Germany, in cases where the other Member State approaches the Federal Office of Justice (BfJ) in its capacity as an EJM contact point. Finally, the BfJ is responsible for replying to incoming queries from other Member States, and for forwarding such queries from German authorities to EJM contact points in other Member States. Its involvement in the EJM is perceived by the German authorities as sensible and meaningful.

The Public Prosecutor General of the Federal Court of Justice (GPA) is the sole law enforcement authority in Germany that is active at federal level and responsible for fighting crimes against the security of the state and for appeal proceedings on points of law lodged against criminal sentences given by the regional courts (*Landgerichte*) and higher regional courts (*Oberlandesgerichte*). Within the scope of these responsibilities, the GPA also deals with questions of cooperation in matters of criminal law, in the context of criminal investigations and as regards points of law governing the right to appeal on points of law.

According to the German authorities, the Public Prosecutor General's Office has special experience in the field of European cooperation in matters of criminal law, and its involvement in the EJM allows it to contribute this experience. Furthermore, the Public Prosecutor General of the Federal Court of Justice (GPA) is the National correspondent for Eurojust for terrorism matters within the meaning of Article 12(2)(b) of the Eurojust Decision.

The authorities involved in the EJM on the part of the *Länder* are designated by the *Land* governments who, due to the federal structure, act under their own responsibility. Pursuant to section 14(3) of the Eurojust Act (EJA), the *Land* governments are authorised to allocate the contact point tasks to a *Land* authority and in particular to designate as a contact point a supreme *Land* authority (such as a ministry of justice). However, the Eurojust Act (EJA) does not provide for any rules specifying how the tasks are to be carried out at the level of the *Länder*. The various federal *Länder* handle subdelegation and the demarcation of responsibilities in different ways. However, in general the EJM contact points at the level of the *Länder* are tied in with the Offices of the Public Prosecutor General (GenStA). This is the case for example in Bremen, Baden-Württemberg, Brandenburg, Hesse, Hamburg, Mecklenburg-Vorpommern, North Rhine-Westphalia and Lower Saxony.

3.4.2. Practical operation of the EJM contact points in Germany

As a consequence of the division of powers between the Federation and the *Länder*, the role of the EJM contact points is exercised by practitioners appointed by *Länder*. Examples are given below of the competences allocated to the EJM contact points and their main tasks in different *Länder*:

Baden-Württemberg:

The EJM contact point can deal with all kinds of issues in the field of mutual legal assistance, and will lend support. The tasks of EJM contact point are the following:

- coordination of investigative measures,
- facilitation of the implementation of urgent measures of mutual legal assistance,
- transmission of urgent requests for judicial assistance and acceleration of the processing of these procedures,

- establishment of contact between investigative agencies,
- inquiries regarding the completion status of requests for judicial assistance,
- obtaining progress reports as to requests for a prosecution procedure to be taken over and requests for the execution of a sentence to be taken over,
- procuring information and documents from abroad as regards proceedings ongoing in foreign countries,
- identification of competent authorities abroad,
- obtaining information on points of law from abroad.

The requests for mutual assistance are mostly filed by public prosecution offices and to some extent also by the courts. Where requests are sent out, contact is generally initiated by telephone or email, with inquiries often being made first as to whether or not the EJN is able to lend support in the specific case concerned, and the information required for the inquiry subsequently being sent by email, or by fax and, in a very few instances, by post. Once all the information and documents required for processing the inquiry have been submitted, the foreign contact point is contacted by telephone, fax, or email. As soon as a response has been received this is forwarded to the German authority filing the request. Where no response is received within an appropriate period of time, inquiries will be made with the foreign contact point to obtain a progress report.

It is now often possible to obtain information from abroad within a matter of days, information which it was previously very difficult to obtain using the customary channels, sometimes taking years. Also, the EJN's activities save costs, since they avoid the interpreting / translation costs which would otherwise accrue. For the most part, inquiries submitted to the EJN will be made in English, or in some instances in German; in a few isolated cases, they may also be made in French. Inquiries received from abroad will mostly be submitted by email, but may also come in by telephone or fax. A number of inquiries can be dealt with by performing searches in available databases (such as the detention file (*Haftdatei*), the Federal Central Criminal Register (*Bundeszentralregister* compiling criminal law sentences) and suchlike).

Insofar as inquiries are made regarding current requests for judicial assistance, or pending investigations / criminal proceedings, contact will be established with the responsible national authority. Urgent requests for judicial assistance will be forwarded to the competent authority. The contacts in place are not only those with other EU Member States, they also include numerous non-EU Member States, within Europe and outside Europe (e.g. via IberRed).

Bavaria:

The EJM contact point in Bavaria has an excellent reputation based on the fact that when issues arise in the field of mutual legal assistance, the matter is promptly and reliably brought to a successful conclusion, meaning that investigations and criminal proceedings can be pushed ahead at low cost and within a short period of time. A significant factor in this regard is that when contact is established with an EJM contact point there are no formal requirements to be complied with, and the contact point picks up its activities informally and quickly. The Bavarian EJM contact point is on call on a 24/7 basis. Insofar as authorities from Germany request assistance, these requests will mostly be filed by the public prosecution offices, courts or the employees of the Bavarian *Land* ministry of justice and consumer protection (*Bayerisches Staatsministerium der Justiz und für Verbraucherschutz*) who are responsible for mutual legal assistance and mutual execution assistance, who will forward inquiries to the EJM contact point.

The EJM contact point may be involved in resolving all kinds of difficulties encountered in the field of mutual legal assistance and its tasks are similar to those exercised by the EJM contact point in Baden-Württemberg. The procedure to be followed when dealing with incoming and outgoing inquiries and requests is also similar to that applied in Baden-Württemberg. For the most part, inquiries submitted to the EJM will be made in English, or in some instances in German. In a few isolated cases, they may also be made in Italian or French.

The EJM contact point organises information events for local authorities on the EJM, the EJM website and Eurojust in order to increase awareness of EJM and Eurojust and to thus improve international cooperation. The EJM is also regularly referred to in presentations given at various events and in the police training programmes, and the opportunities it offers to the law enforcement sector are highlighted. The current EJM contact point in Bavaria has also been appointed as the national correspondent for the EJM. Therefore, he also carries out the additional tasks specified in Article 4(4) of the EJM Decision, such as taking responsibility for the internal functioning of the network, including the coordination of requests for information and replies issued by the competent national authorities.

As a consequence, he provides general information on a point of law or completes questionnaires. Requests for information on a point of law are either dealt with directly by the national correspondent or, following prior coordination of the particular case, by the Federal Office of Justice (BfJ). Questionnaires are completed, where appropriate, either directly by the national correspondent, or following the collection of contributions made by the other German contact points. Where no uniform reply for all German contact points is required, it is left up to the German contact points to complete the questionnaire themselves and to return it to the authority making the inquiries (it is usually the EJM Secretariat which issues questionnaires). Once a year, statistics are to be prepared regarding the activities of the German EJM contact points and forwarded to the EJM Secretariat. These statistics will then be included in the activity report that the EJM is to prepare every two years. Communication among the German EJM contact points generally takes place by email or by telephone.

Brandenburg:

The EJM contact point for the federal *Land* of Brandenburg is part of the organisation of the Office of the Public Prosecutor General (GenStA). Two heads of department within the division for mutual legal assistance perform the contact point's tasks. Each year, the contact point is contacted (on average) five to ten times in relation to incoming and outgoing requests for assistance. The relatively low volume of cases is due also to the principle of subsidiarity applying to the EJM, as well as to the fact that, in particular in its relations with Poland regarding mutual legal assistance, the judicial authorities have, and maintain, a wide variety of bilateral contacts.

Hamburg:

Within the Hamburg public prosecution office, two heads of department are responsible for the tasks of the EJM contact point. They also process incoming and outgoing requests concerning judicial assistance procedures in criminal law matters in relations with foreign countries, unless these fall under the purview of the Office of the Public Prosecutor General (GenStA). Since all incoming requests for judicial assistance are processed in their entirety in the departments led by those heads who have also been assigned responsibilities as an EJM contact point, said EJM contact point has no special role to play where practical aspects of processing incoming requests are concerned.

Where outgoing requests for judicial assistance are concerned, foreign EJM contact points may be contacted as and when they are needed, as can the German desk at Eurojust. This will generally be done by email and will be followed up as needed both by further emails and contact and arrangements by telephone. The practice of contacting an EJM contact point or Eurojust obtains positive results and accelerates criminal investigations abroad while making them more effective and more transparent.

Hesse:

The EJM contact point is part of the Office of the Public Prosecutor General (GenStA) of Frankfurt am Main. It is contacted primarily via email, but also by fax or telephone. Inquiries generally come from other contact points, the courts, public prosecution offices, as well as other German and international authorities. About two thirds of inquiries are made by foreign authorities. In this context, the support lent by the EJM focuses mainly on assisting with the implementation of requests for judicial assistance, or in executing EAWs. The task of the EJM contact point will consist of identifying contact persons within the local competent authority and establishing direct contact with those persons. In accordance with the arrangements in place, the numerous general inquiries concerning the situation in terms of law in Germany are forwarded to the Federal Office of Justice (BfJ).

Lower Saxony:

The tasks of the EJM contact point are performed by the employees of the Central Office for Organised Crime and Corruption (*Zentrale Stelle Organisierte Kriminalität und Korruption*, ZOK) within the Office of the Public Prosecutor General (GenStA) of Celle. This ensures optimum networking with the public prosecution offices, particularly in the fields of organised crime, corruption, computer fraud and serious organised crime, as well as international mutual legal assistance in criminal matters. Moreover, the specialised services such as the police office at *Land* level (LKA), the customs authority, or tax investigation services may be closely involved. The staffing of the EJM contact point is determined specifically by the Public Prosecutor General as the head of the office, when allocating duties.

The deciding factors in selecting candidates, besides their working in the Central Office for Organised Crime and Corruption (ZOK), are far-reaching practical experience in the role of public prosecutor with a focus on organised crime, corruption, economic crime and asset recovery, as well as in the field of international cooperation in matters of criminal law. An additional requirement is a command of foreign languages, with English being an absolute minimum requirement. Other criteria are commitment, ability to communicate, interpersonal skills and reliability as well as an openness to new developments, in particular at European level.

Rhineland-Palatinate:

The EJM contact point in the Rhineland-Palatinate is responsible for processing the inquiries made by all judicial authorities and is thus contacted by the public prosecution offices, the courts and the *Land* department of justice within the jurisdiction it serves. The inquiries are usually submitted to the EJM contact point by a simple letter, via email or by telephone. The EJM contact point is available all the time. A large number of the inquiries concern requests for judicial assistance whose completion has been delayed. In these cases, the EJM contact point will generally direct an inquiry to the responsible EJM contact point of the corresponding Member State, requesting a status report on the matter, and under certain circumstances will work together with the colleague in the foreign

country to accelerate the processing of that particular matter. The inquiries submitted to foreign colleagues will be answered within a few hours or, where the matter is more complex, in the course of a few days. The EJM contact point will then forward the response obtained from the foreign EJM contact point without undue delay – and, if necessary, accompanied by a translation of the essential content of the reply – to the responsible official at the judicial authority filing the request. This is also done via email, without any formal requirements needing to be met. In cases in which the EJM contact point determines that in light of the matter's complexity, it had better be processed by Eurojust, the contact point will contact the authority filing the request in order to clear up whether or not Eurojust should be involved and the request forwarded to it.

As regards inquiries made by judicial authorities/EJM contact points of other Member States, these are transmitted to the EJM contact point via email, and in urgent cases will be preceded by a phone call. The EJM contact point will immediately proceed to process the inquiry. Where general information is sought, for example concerning the situation in terms of law, the EJM contact point will provide information directly. Where inquiries concern certain procedures or requests for judicial assistance, the EJM contact point will address the matter to the public prosecutor or judge responsible for that matter in order to clear up the question concerned, or to obtain the information requested. This is done, as a general rule, via email and in urgent cases may also be done over the telephone. As soon as the EJM contact point has compiled the information sought, it will forward it to the authority making the inquiry, in English or French, via email.

Where the inquiry concerns a procedure pending with the judicial authority of another federal *Land*, the EJM contact point will forward the inquiry to the responsible EJM contact point of the *Land* concerned, for the latter to process, and will inform the requesting authority of this.

All prosecution offices in Germany, both at federal level and at state level, have established divisions specialised in working with MLA requests and extradition cases. These divisions deal with incoming MLA requests and assist prosecutors in issuing outgoing requests and EAWs. This structure enables the German Prosecution Service to build up expertise and experience in the field of international judicial cooperation. Also, it facilitates the spread of EJM and Eurojust knowledge amongst relevant practitioners.

3.5. Conclusions

3.5.1. Formal (legislative) implementation process

- The legislative package related to the implementation of the Eurojust Decision appears comprehensive, coherent and detailed.
- The Eurojust Decision has been implemented in great detail by way of the special law of 12 May 2004 amended by the law of 7 June 2012.
- The law has been complemented by several ordinances (e.g. on the coordination of cooperation with Eurojust, on the Eurojust national correspondent for terrorism matters).
- These specific acts complement the provisions of the Code of Criminal Procedure, as well as the Guidelines on Relations with Foreign Countries in Criminal Law Matters (the so-called RiVAST).
- The legal framework applicable to practical cooperation with Eurojust has been made available to all practitioners by way of a user-friendly brochure entitled Practical Guidance Notes for Cooperation (*Eurojust. Hinweise zur praktischen Zusammenarbeit*), which also includes the contact details of the German desk.

3.5.2. Division of prosecution tasks between police and prosecutor's office

- There is a strict division of powers in relation to investigative and prosecutorial tasks between the police and the prosecutor's office. In criminal matters, prosecutors have exclusive jurisdiction to bring an accusation before the court. The police are obliged to follow the instructions on how the investigation should be carried out, and if mutual legal assistance is needed the relevant action has to be undertaken by prosecutors. Therefore, the police are more orientated towards cooperation with Europol whereas cooperation with Eurojust and within the EJM is left to the prosecutors' offices.

- Since in the federal state the 16 *Länder* are to a large extent independently competent for criminal law enforcement, including international legal assistance and cooperation in this field, special attention is needed to ensure effective, timely and coordinated action in cross-border crime cases involving more than one *Länder*, as well as with regard to incoming and outgoing cases from abroad e.g. relating to illegal trafficking of drugs, firearms or human beings, etc.
- The evaluators' support the view that continued effective national overall coordination / contact between the police and prosecution service on one hand, and law enforcement authorities in the various *Länder* on the other, is needed to achieve prompt, effective and well-coordinated actions.

3.5.3. The National desk at Eurojust

- The composition of the German desk is in compliance with, and even exceeds, the minimum requirements of Article 2 of the Eurojust Decision.
- It seems that the German desk has sufficient staff to fulfil its tasks provided the caseload remains constant. A proper balance has been found between experienced staff and national prosecutors being seconded to the National desk to support the National Member. One judge has also been seconded as a National expert since in Germany judges are also involved in cooperation in criminal matters.
- Over the years the members of the desk have developed useful and regular contacts with colleagues throughout Germany. They maintain close contacts with the Europol National Unit and the Europol Liaison Bureau in the Hague. They take part in the annual meeting of German EJM contact points and discuss concrete developments in criminal matters.

- Representatives of the National desk regularly participate in meetings of German prosecutors on the regional or national level in order to establish close contacts with the national practitioners and to promote the work of Eurojust.
- All the prosecutors the evaluators met during the visit reported that they were always able to reach the National desk (24/7) and that contact was informal and could take place directly either by phone or email. The members of the German desk are well known to the practitioners. In addition, they regularly welcome trainees, prosecutors and judges to raise the awareness of the role of Eurojust. Examples were given of the helpful support they have offered in specific cases and there was praise for the quality of the preparation and organisation of the coordination meetings they conducted.
- The National Member enjoys the powers set out in Article 9b and 9e of the Eurojust Decision. The powers provided for in Article 9c and 9d of the Eurojust Decision are not granted due to the provisions of constitutional law and the federal structure of Germany.
- Finally, it must be pointed out that due to the federal structure the German National Member cannot exercise his/her powers as a prosecutor across the whole territory of Germany. However, the same applies to all prosecutors who cannot act in a *Land* other than that to which they have been assigned. Since this matter is regulated by the Federal constitution ("*Grundgesetz*"), it is not possible to amend this constitutional principle by a simple law. Some further reflection on this issue may be needed, in particular in the light of the new Eurojust draft Regulation, tabled by the European Commission.

3.5.4. Implementation of the ENCS

- The ENCS has been established successfully and came into operation in 2012. Several meetings of the ENCS have been held.
- The composition of the German ENCS complies with the requirements of Article 12 of the Eurojust Decision. A creative solution has been found to combine EU requirements with the objective of effectiveness.
- Article 12 of the Eurojust Decision allows for the participation in the ENCS of (all) the national correspondents for Eurojust (i.e. their number is not limited) and of the National correspondent for the EJM plus up to three EJM contact points (i.e. their number is limited). However, due to the federal structure, Germany has chosen to appoint all 16 EJM contact points designated by *Länder* as Eurojust National correspondents in order to enable them to participate in the ENCS.
- It seems that the chosen solution has enabled Germany to comply with the spirit of Article 12 of the Eurojust Decision – ensuring that the ENCS will in the future function as an intermediary and facilitator between Eurojust, EJM and the national authorities.
- Bringing EJM contact points, who at the same time are Eurojust national correspondents in the *Länder*, into the structure of the ENCS could be considered as the best practice for the Member States. This system ensures that those who are involved in the ENCS are the most experienced practitioners working in international cooperation in criminal matters.

- The implementation of Article 12(4) of the Eurojust Decision deserves particular attention since this provision entrusts the responsibility for the functioning of the ENCS to the National correspondents and, when several correspondents are appointed, requires that one of them be specifically responsible.
- According to section 4(2) of the Ordinance on the Coordination of Cooperation with Eurojust, the Federal Office of Justice has been assigned to be responsible for functioning of the ENCS and there is a person in charge of this task. However, the other participants are not subordinate to the Federal Office of Justice and consensus is needed on fundamental decisions regarding the ENCS.
- The evaluators believe it would be useful to have a specific person responsible for the functioning of the ENCS and that this information is communicated to the General Secretariat of the Council. For this purpose the notification of 26 November 2012 sent by Germany to the General Secretariat of the Council should be updated.
- Although it is rather too early to assess whether this will create difficulties in practice and in particular whether this will have a negative impact on the operation of the ENCS and the fulfilment by the German authorities of their obligations subject to control by the ENCS, it would be of crucial importance for the close monitoring of the proper functioning of the ENCS and the fulfilment of its tasks.
- The contact points for OLAF and the Europol National Unit (situated within the BKA) are not members of the ENCS. However, the German authorities expressed the intention to invite them to attend meetings whenever necessary since in particular the Europol National Unit maintains close contact with the Federal Office for Justice. In this context, one should not forget the ever closer cooperation between Europol and Eurojust in the Hague.

3.5.5. Connection to the CMS

- Germany was the first EU country to grant access to the CMS to its competent authorities. These are the Eurojust correspondents (Federal Office of Justice (BfJ), Public Prosecutor General of the Federal Court of Justice (GBA) and the EJM contact points of the *Länder* who are authorised to access the datasets of the index and work files and to access / retrieve them.
- Sections 4a to 4d of the Eurojust Act (EJA) regulate in a detailed manner who may be granted access to the CMS, on which conditions and to which parts of the system. They provide for very clear and precise rules on the access to/retrieval of data by the German law authorities to data inserted into the CMS.
- It should be underlined that such detailed provisions are necessary in Germany in light of citizens' right to informational self-determination that is protected by the constitutional law. Any handling of personal data by governmental authorities requires a clear, statutory basis.
- According to section 4a(2) of the Eurojust Act, information transmitted to the National Member on the basis of Article 13 of the Eurojust Decision without a request being made to Eurojust may be entered into the index of the CMS only if the transmitting authority has agreed thereto.
- Although the Eurojust correspondents have been connected to the CMS, it is also incumbent upon Eurojust to provide the technical solution therefore.

3.5.6. EJM

- The operation of the EJM in Germany seems to be very successful and should be considered an example of best practice.
- The EJM contact points are highly committed to and capable of performing their EJM tasks. All the prosecutors the evaluators met had knowledge of the EJM, including the EJM website, and knew their local EJM contact point personally. The German EJM contact points often function as intermediaries and facilitators between the national authorities and the national desk at Eurojust.
- It should be pointed out that appropriate factors have been taken into account throughout the *Länder* when EJM contact points are appointed, such as good knowledge of mutual legal assistance and language skills. In some *Länder* working time has been specifically allocated to the EJM tasks whereas as it was stated in other *Länder* the situation might be different.
- It seemed that local knowledge of the EJM was to some extent more widespread than knowledge of Eurojust. However, the evaluation team was not informed of any case that should have been sent to Eurojust rather than to the EJM. The practitioners did not describe any difficulties in deciding whether a case should be referred to the EJM or Eurojust.
- There is a high level of availability of EJM contacts for other practitioners (24/7), and contact data are circulated and known within the public prosecution services involved.
- All practitioners can contact Eurojust directly. According to the Guidelines (RiVAST), they need to inform the EJM contact point when they make any contact with Eurojust.

- It seems that the EJM often functions as a "first port of call". If the EJM cannot deal with the case, it is sent on to Eurojust. The functioning of the German EJM seems to have ensured that bilateral and simple cases are not as a rule forwarded to Eurojust but are dealt with at EJM level. This is an example of best practice.
- However, it must also be considered whether the relatively low number of German cases at Eurojust indicates that not all German practitioners are aware of the full potential and added value of involving Eurojust, in particular in multilateral, complex cases.

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4. EXCHANGE OF INFORMATION

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

4.1.1. Databases relevant for the information exchange with Eurojust

As previously mentioned, the German desk at Eurojust has access to the Federal Central Criminal Register (*Bundeszentralregister*), to the Central Public Prosecution Proceedings Register (*Zentrales Staatsanwaltschaftliches Verfahrensregister*), the Central Register of Traffic Offenders (*Verkehrszentralregister*) and to the electronic Commercial Register.

The Central Public Prosecution Proceedings Register, which is commonly used during investigations, is operated by the Federal Office of Justice for the public prosecution offices of all *Länder*. The content to be entered into the register (e.g. information on the person charged, on the charges, on the responsible office and on the status of the proceedings) is defined in section 492(2) of the StPO. The public prosecution offices inform the Federal Office of Justice of the data to be entered into the register and are responsible for the accuracy and current relevance of the registered data. However, the evaluation team noted that several practitioners stated in various meetings that in some cases they do not enter the data into that register.

The data may be stored and changed only for the purposes of criminal proceedings. Information from the register is primarily provided to the criminal prosecution authorities for the purposes of criminal proceedings. Only in exceptional cases and under special conditions can other authorities receive information from the register (section 492(3) StPO).

At *Länder* level, there are also other registers available. In Hamburg it is possible (in suitable cases) to use the electronic case processing and case management system "MESTA", the electronic central residents' register of Hamburg, and the Commercial Register kept by the *Amtsgericht* (local court) of Hamburg, all of which will provide information relevant to criminal proceedings on a short-term basis. Furthermore, it may be expedient in certain individual cases to obtain excerpts from the Commercial Register or Trade Register, as well as from the Land Register (Hesse).

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

In Germany, the obligation to exchange information pursuant to Article 13 of the Eurojust Decision has been comprehensively transposed into national law by the legislative actions taken (section 6 Eurojust Act (EJG)). In addition, the comprehensive brochure on cooperation with Eurojust (*Hinweise zur praktischen Zusammenarbeit*) also indicates the mandatory information to be forwarded to Eurojust. Moreover, in February 2013 the Federal Ministry of Justice issued and disseminated to all practitioners specific information explaining very concretely what happens to the information sent to the National desk either with a request to Eurojust or in accordance with Article 13 Eurojust Decision.

The need to implement these provisions in national law was the result in particular of the requirements of constitutional law regarding citizens' rights to informational self-determination. According to these requirements, any transmission of personal data by government agencies must have a clear and unequivocal statutory basis.

All law enforcement authorities and courts must fulfil the obligation to exchange information stipulated by law. However, due to the division of powers it is in practice the public prosecution service, as the owner of the criminal proceedings, which fulfils the obligation to exchange information.

Since Germany is structured as a federal state, the obligation to exchange information is adhered to in a decentralised fashion. Therefore, the ENCS has not been involved in the exchange of information. It is solely incumbent upon the *Länder* to determine the means of communication.

Accordingly, the *Länder* can decide that each public prosecution office may contact the German desk at Eurojust directly in order to comply with its obligation to exchange information. However, the *Länder* may also decide that the transmission is to take place via the Offices of the Public Prosecutor General (GenStA) or the EJM contact points integrated into the Offices of the Public Prosecutor General (GenStA). Such a decision may be taken on the grounds of internal organisation or because the data transmitted by the Offices of the Public Prosecutor General (GenStA) will be communicated using a secure data transmission system.

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

The Public Prosecutor General of the Federal Court of Justice (GBA) performs the tasks of the National correspondent for Eurojust for terrorism matters and is responsible for prosecuting terrorist offences. As a result, the Public Prosecutor General has access to information regarding terrorist offences within the meaning of Article 2 of Council Decision 2005/671/JHA.

Where the public prosecution offices of the *Länder* are aware that information on terrorist offences within the meaning of Article 2 of Council Decision 2005/671/JHA has not been yet submitted to the Public Prosecutor General of the Federal Court of Justice (GBA), the *Länder* will forward this information to the Public Prosecutor General of the Federal Court of Justice (GBA) following their own review of the matter, as stipulated by section 3(1) of the Eurojust Correspondent Ordinance. The Public Prosecutor General of the Federal Court of Justice (GBA) will review without undue delay whether or not the information forwarded by the *Länder* meets the requirements set out in Articles 2(3) and 5 of Council Decision 2005/671/JHA, and in section 3(2) first sentence of the Ordinance on the designation and establishment of the Eurojust national correspondent for terrorism matters (hereinafter referred to as the Eurojust Correspondent Ordinance).

The Public Prosecutor General of the Federal Court of Justice (GBA) will combine in a single file his/her own information regarding terrorist offences within the meaning of Article 2 of Council Decision 2005/671/JHA with the corresponding information submitted by the *Länder* to form uniformly structured datasets, as stipulated by section 4(1) of the Eurojust Correspondent Ordinance. This information will be transmitted to Eurojust on the basis of section 4 of the Eurojust Act (EJG) and of section 4(3) of the Eurojust Correspondent Ordinance.

In 2013 the Public Prosecutor General Office transmitted two cases relating to terrorist offences to Eurojust (however, the total number of cases will be just known by the end of 2013)¹². In 2012 17 cases were transmitted relating to terrorist offences.

¹² According to information provided by Germany in January 2014, the conclusion of 14 terrorism related cases was reported to Eurojust at the end of 2013.

4.1.4. Channels for information transfer to Eurojust

The obligation to exchange information, pursuant to Article 13 of the Eurojust Decision (section 6 Eurojust Act (EJG)), concerns the entirety of all law enforcement authorities and is not only related to the Public Prosecutor General of the Federal Court of Justice (GBA). Therefore, it is incumbent upon the *Länder* to decide which communications channel to use.

Where information is sent pursuant to Article 13(5)-(7) of the Eurojust Decision, it is recommended to the national authorities making such transmissions that they use the transmission form developed by Eurojust. The Ministry of Justice (BMJ) forwarded this transmission form to the *Land* departments of justice on 3 July 2012, asking that they correspondingly inform the divisions responsible for the various portfolios. In this context, it is ensured that the information is transmitted in a structured manner.

The Federation, the *Länder* and the German desk at Eurojust have “customised” the Eurojust form so as to adjust it to the particularities of the German system. This form was likewise forwarded to the *Land* departments of justice by the Ministry of Justice (BMJ) on 3 July 2012 with the request that they correspondingly inform the divisions responsible for the various portfolios.

The amending form will allow the German law enforcement authorities to inform the German desk, at the same time as Eurojust is informed pursuant to Article 13 of the Eurojust Decision, in a format which makes it easy to monitor whether or not the data provided may be "shared" with other national desks or national authorities, or whether they cannot be forwarded. The amending form is available for retrieval in a number of *Länder* via the *Land* intranet, and can also be obtained from the EJN contact points of the *Länder*.

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

The content of the information to be exchanged with Eurojust has also been specified in German law. The obligation stipulated therein has been reflected in section 6(1), fourth sentence of the Eurojust Act (EJG) obliging competent authorities to forward information consisting of the data specified in the annex to the Eurojust Decision. The content of the information made available corresponds to what has been set out in Article 13(10) of the Eurojust Decision as the minimum requirement.

However, German law does not demand that the competent authorities must first collect additional data in order to forward them to Eurojust. Accordingly, a competent authority will only exchange information which is already available.

The exception provided for in Article 13(8) of the Eurojust Decision was likewise transposed into national German law. It is thus possible and intended for legal practices to make use of this exemption clause. In the view taken by the German authorities, this provision is important and also appropriate, since it represents a necessary corrective factor vis-à-vis the far-reaching obligations to exchange information under the Eurojust Decision. Thus far, the exception provided for in Article 13(8) of the Eurojust Decision (section 6 (2) of the Eurojust Act (EJG)) has not been applied in actual practice.

The overall use of Article 13(5) -(7) of the Eurojust Decision is rather limited (1 case reported in 2012 and 12 cases in 2013). The evaluation team was informed that practitioners are aware of the obligation as well as of the content of the information to be forwarded to the German desk. However, the practical application of this obligation, in the opinion of the evaluators, has left room for improvement.

4.2. Feedback by Eurojust

The German authorities hardly have any experience regarding feedback from Eurojust pursuant to Article 13a of the Eurojust Decision. However, it should be pointed out that the German authorities have transmitted information to Eurojust pursuant to Article 13 of the Eurojust Decision only in very few cases. Nevertheless, feedback from Eurojust is expected by the German authorities in the future.

4.2.1. Qualitative perception of the information flows between Eurojust and Germany

The flow of information between the German desk at Eurojust and the national law enforcement authorities seems to be operational. The representatives of the national authorities and the German desk at Eurojust try to be involved in the exchange of information, which takes place as a general rule by telephone or via email. According to the German authorities, all of the parties involved inform each other promptly of new developments. Therefore, it is helpful for direct communication that the National Member of Eurojust and the supporting persons are mostly very well known to their counterparts in the *Länder*. In particular, there are close ties between the German desk at Eurojust and the German EJM contact points, who in turn serve as communicators and multipliers to the broader judicial audience.

The evaluation team has been informed of lack of understanding pertaining to the obligation to exchange information pursuant to Article 13 of the Eurojust Decision (section 6 Eurojust Act (EJG)), which is regarded as cumbersome without, some law enforcement authorities would claim, offering any direct and clearly perceptible benefit. For practitioners, the introduction of the obligation to exchange information seems to be tantamount to an about-face from the original idea that Eurojust is a European service unit that will lend support to the national law enforcement authorities in their cross-border criminal investigations.

The argument has been made that Eurojust might in the end exercise control over the competent national law enforcement authorities in charge of the matter, since Eurojust collected all the information, and this is sometimes regarded as an obstacle to building the necessary level of trust between Eurojust and the law enforcement authorities of the Member States.

The feedback received from Lower Saxony shows that the comprehensive obligation to exchange information with Eurojust might generate a significant burden for the public prosecution offices in their work, but they cannot see any added value arising from it. In particular, it is not apparent that the data from Member States being aggregated at Eurojust are subject to structured analysis and that the German public prosecution offices receive any information from other EU Member States that is relevant to ongoing proceedings. In this context, legal practitioners find it hard to comprehend that Eurojust is making considerable efforts to establish databases of its own, of which at least some contain information that is already available to Europol. It would be a welcome move if Eurojust were to be granted unlimited access to the Europol databases. This would significantly increase acceptance for further information to be forwarded to Eurojust.

Therefore, practitioners believe that it is incumbent upon Eurojust to convince the law enforcement authorities of the Member States through suitable means, for example by giving sufficient feedback on how the collected information is used, that the obligation to exchange information may facilitate the work done by the national law enforcement authorities.

It has also been stressed that, for the most part, there is a positive view of the mutual transmission of information between public prosecutors and the German desk at Eurojust in specific individual proceedings in which Eurojust is lending support.

4.2.2. Practical or legal difficulties encountered when exchanging information with Eurojust

The national authorities encounter no fundamental difficulties in exchanging information with the German desk at Eurojust.

However, the evaluation team has been informed that in terms of the obligation to exchange information, practitioners have difficulties in accepting this obligation since they are not convinced of the potential benefits at EU level of compliance with that obligation as far as judicial cooperation in the EU is concerned. It should be proven that only compliance with that obligation by all authorities of all Member States can lead to a significant probability of "hits" as well as to a real added value.

The other issue to be pointed out is that the technical challenges of establishing secure data transmission processes for communications by the national authorities with the German desk at Eurojust still prevent the exchange of information using electronic means of communication.

4.2.3. Suggestions for improving the information exchange between Germany and Eurojust

The German authorities do not see any particular need to improve the exchange of information with Eurojust. If it becomes apparent in the future that there is need for improvement within Germany as far as the exchange of information is concerned, the ENCS will seek to identify ways to achieve this.

The representatives from Lower Saxony stated that it is an absolute priority to establish, in the near future, an electronic transmission channel from the public prosecution offices responsible for investigations/prosecutions to Eurojust, in order to comply with the obligation to exchange information with Eurojust.

It has also been pointed out by the practitioners that they should be better informed about follow-up and actions undertaken as a result of information sent to Eurojust. This feedback from Eurojust is necessary in order to convince practitioners of the added value of exchange of information based on Article 13.

Linguistic support from Eurojust services regarding preparation of a form as set out in Article 13(10) of the Eurojust Decision and in the Annex thereto in all languages of the Member States would also add value.

Although formal implementation is in place and guidelines have been issued and duly disseminated, including via the intranet, not all practitioners the evaluators met were aware of their obligation under Article 13 of the Eurojust Decision or of the extent of the obligation (with regard to JITs or recurrent difficulties to be reported, for instance). Accordingly the statistics indicate a very low rate of reporting, although this might be due to the fact that the German desk is actually informed of the cases falling into the scope of Article 13 of the Eurojust Decision anyway, so that no formal additional notification is needed. Further awareness raising would however be advisable.

4.2.4. The E-POC project

Germany does not participate in EPOC IV.

4.3. Conclusions

- The exchange of information based on Article 13 of Eurojust Decision has been formally implemented in German legislation.

- Notwithstanding the fact that this legislation entered into force in December 2012 the number of cases actually reported to Eurojust in accordance with Article 13 of Eurojust Decision seems to be very low for a Member State the size of Germany. This may be explained to a certain extent by the view expressed by some practitioners who do not see any added value in complying with the reporting obligation and find it as an administrative burden. Some examples were mentioned by local prosecutors who had not received any feedback from Eurojust as a follow-up to the information transmitted. In addition, in the opinion of the evaluators not all practitioners are fully aware of this legal obligation to exchange information as referred to in Article 13 of the Eurojust Decision.
- Therefore, practitioners should be reminded of the possibility, under Article 13a of the Eurojust Decision, to request and receive information following notifications given in accordance with Article 13 of the Eurojust Decision if a need or a wish arises to receive a specific type of information following the notification.
- More knowledge about the exchange of information is gained from annual reports than from any more general feedback from Eurojust.
- Eurojust and the national authorities should actively promote the added value of Articles 13 and 13a of the Eurojust Decision among practitioners and encourage to provide common guidelines concerning the application of Article 13 to all Member States.
- The evaluation team noted that several practitioners stated in various meetings that in some sensitive cases they do not enter the data of the case into the Central Public Prosecution Proceedings Register.

5. OPERATIONAL ASPECTS

5.1. Statistics

The statistics provided by Eurojust show that in 2012 Germany was involved in 75 cases, of which 18 cases had a multilateral dimension and 57 a bilateral dimension. Up to 28 February 2013 10 cases had been registered, of which 2 cases had a multilateral dimension and 8 a bilateral dimension.

The same statistics show that in 2012 Germany was registered as a requesting country in 75 cases and as a requested country in 218 cases. Up to 28 February 2013 31 cases had been registered in which Germany was requested and 10 in which it was requesting.

As regards coordination meetings, Germany requested them to be convened in 12 cases in 2012 and in 9 cases in 2013 (up to the end of June). Germany was requested to participate in coordination meetings in 48 cases in 2012 and 34 cases in 2013.

5.2. Practical experience in relation to Eurojust

Pursuant to the Guidelines on Relations with Foreign Countries in Criminal Law Matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten* (RiVAST)), the cases which are easy to monitor, usually bilateral cases, will be forwarded to the EJM. On the other hand, Eurojust usually will be asked to deal with more complex cases, these being cases in which more than two states are involved, or in which there will be a need for intensive coordination, which may also require a meeting to be organised in order to make arrangements for further procedures.

The brochure on Practical Guidance Notes for Cooperation (*Eurojust – Hinweise zur praktischen Zusammenarbeit*) published by the Ministry of Justice (BMJ) also gives practitioners advice how to deal with cases in which one or more Member States may be involved. The brochure is available in paper form and can be downloaded from the website of the Ministry of Justice and provides guidance in this regard. Following the implementation of the Eurojust and EJM Decisions, the brochure was revised completely, updated and re-issued in November 2012.

The evaluation team has noted that the practitioners are aware of the brochure and follow the rules it describes. However, the practical circumstances of an individual case will play a decisive role in the decision by a public prosecution office to involve the EJN or Eurojust, as will, in many cases, personal experience. For example, where a public prosecution office has had positive experiences with the involvement of Eurojust, it will be more likely to consult Eurojust on a new case, sometimes even if the matter at hand is relatively easy to monitor. The situation is similar for the EJN, which enjoys high level of acceptance among legal practitioners in Germany.

According to the assessment made by the German desk at Eurojust, the transmission of cases generally happens less frequently in the initial phase of any given criminal investigation, and more often during the actual investigative phase, where the task will consist of coordinating various investigation measures in Germany and abroad. Basically, it is up to the practitioners to decide whether or not they wish to ask for support from Eurojust or the EJN in any given individual case. However, involving both Eurojust and the EJN at the same time in terms of substance should be avoided, since this would lead to a duplication of efforts. In order to avoid such duplication, point 151(4) of the Guidelines on Relations with Foreign Countries in Criminal Law Matters (RiVAST) recommends that law enforcement authorities seeking contact with Eurojust inform the EJN contact point at the same time.

In cases of doubt as to how best to proceed in any given case, Eurojust or the competent German EJN contact point should be contacted. This is also indicated in the Eurojust brochure published by the Ministry of Justice (BMJ).

The experience gathered by the *Länder* also proves that Eurojust is involved in particular where coordination meetings in the Hague might be considered. The particular advantage of Eurojust is seen in its ability to bring together the public prosecutors and other investigators involved, and to allow them to discuss the various aspects of the proceedings with the assistance of knowledgeable interpreters (as noted by Lower Saxony). In terms of practice gathered in Rhineland-Palatinate, Eurojust has been involved primarily in complex, cross-border procedures in the fields of organised crime and narcotics offences, which required significant coordination efforts and were highly urgent.

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

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

The German authorities will first make inquiries with the German desk as to whether or not Eurojust might provide assistance in a specific case. Where the case would be rather more suited to being processed by the EJM, the German desk suggests asking the competent EJM contact point for support.

Where the case is accepted as a case for Eurojust, the German desk will consult with the competent German authorities as regards the measures to be taken. If the need for assistance has been already expressed by the German authority in the form of a letter or email, the German desk will take the measures required. Depending on the complexity of the matter, or of the request lodged with Eurojust, the German desk will then meet with the Eurojust colleagues of the other Member States concerned in order to consult with them. Where the matters involved are easier to monitor, the German desk will simply forward a corresponding inquiry to the colleague(s) of the other Member States concerned.

The German desk will issue invitations to coordination meetings involving the authorities of the Member States concerned ("Level III") as and when these are necessary; it will do so in coordination with the competent German authority. In the German desk's view, the essential prerequisites for this are the careful preparation of the coordination meeting as well as reasonable scheduling that allows for specific results to be obtained at the meeting.

In cases instituted by other national desks at Eurojust, the German desk will contact the competent German authorities where the (local) competence is apparent from the request submitted and / or the description of the circumstances of the case. Where it is not immediately obvious which German authority is competent, or where the inquiry lodged by the other national desk is directed at establishing whether or not criminal investigations are already ongoing in Germany as regards a certain situation, the German desk will make efforts to provide the corresponding information, and may involve the EJM contact points or the German Federal Police Office (BKA) in doing so.

5.3.2. Requirements for cooperation between German national authorities and Eurojust

There are no formal requirements as to form that must be met regarding the collaboration between German federal authorities and Eurojust.

The cooperation with Eurojust or the EJV exercised by the *Länder* is neither based on any formal requirements nor specific procedures. This has been mentioned by practitioners as an added value allowing for fast, direct and uncomplicated contacts with a particular person. This has also been indicated as a decisive factor in achieving considerable success, in particular in relation to the EJV contact points. The contact sought with Eurojust is recorded either in the documentation of the judicial assistance provided or – where this is of significance particularly in taking evidence or in asset recovery procedures – in the investigation file of the case in question.

The *Länder* determine procedures to be followed under their own responsibility in order to establish the contact needed. Additionally, point 151(4) of the Guidelines on Relations with Foreign Countries in Criminal Law Matters (RiVAST) recommends that a law enforcement authority contacting Eurojust should inform the EJV contact point of this at the same time.

In the event of any differences of opinion between the competent law enforcement authorities and Eurojust, point 151(5) of the Guidelines on Relations with Foreign Countries in Criminal Law Matters (RiVAST) stipulates that these are to be reported to the supreme judicial authority.

The only exception is the Eurojust form to be filled in to comply with the obligation to exchange information pursuant to section 6 of the Eurojust Act (EJA) and ensure that the data transmitted are structured.

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

– POWERS GRANTED AT NATIONAL LEVEL (ARTICLE 9A);

In light of the federal structure of Germany, and furthermore due to the fact that the *Länder* are competent for all judicial matters, the powers granted to the National Member are limited. According to the German authorities, no weaknesses have become apparent so far that could provide grounds for the extension of the powers granted to the National Member for Germany.

– ORDINARY POWERS (ARTICLE 9b);

The ordinary powers set out in Article 9b of the Eurojust Decision have been conferred upon the National Member of Germany.

– POWERS EXERCISED IN AGREEMENT WITH A COMPETENT NATIONAL AUTHORITY (ARTICLE 9C) AND IN URGENT CASES (ARTICLE 9D (B));

The German National Member does not have the powers to file requests for judicial assistance, nor the power to take decisions on the completion of such requests.

–DEROGATORY ARRANGEMENTS, IF APPLICABLE (ARTICLE 9E);

The National Member's right to submit such proposals has been enshrined in German law (in section 3(1) number 3 of the Eurojust Act (EJG)). However, this power has not been used as regards requests and measures within the meaning of Articles 9c and 9d of the Eurojust Decision.

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

In recent years there have been no cases to be dealt with by Eurojust that were governed by Article 7 of the Eurojust Decision and related to Germany.

5.4. Practical experience related to coordination meetings

5.4.1. Qualitative perception

According to the German authorities, the experience gained thus far as concerns the organisation of coordination meetings under the auspices of Eurojust is positive. An important factor in the success of these meetings is the involvement of those authorities that are involved in pursuing the criminal investigations on the ground (such as the police authorities).

It is deemed to be useful that Eurojust initiates the communication between the authorities involved and facilitates its continuation. Often, the coordination meetings result in Eurojust continuing to be involved for coordination purposes and general support. This facilitates and accelerates the cooperation between the parties involved, for example because it is no longer necessary to obtain translations. The involvement of the judicial representatives as well as law enforcement authorities from different Member States in coordination meetings is also highly appreciated.

The organisational support provided and funded by Eurojust, specifically the provision of a meeting venue and of interpreting services, promotes and simplifies the work done by the German law enforcement authorities.

The feedback received from the *Länder* regarding the quality of the organisation of coordination meetings and the involvement of Eurojust is positive. The public prosecutors from Lower Saxony who have participated in the coordination meetings thus far have provided consistently positive feedback as regards the implementation and results of these meetings. Also in Saarland the coordination meetings are deemed to be characterised by excellent preparation and leadership. It is appreciated that Eurojust promotes and maintains communication between the national authorities involved, including beyond the coordination meetings.

Although practitioners expressed positive perception of the outcome of coordination meetings, Germany does not often convene them (9 coordination meetings in 2011 and 12 in 2012).

5.4.2. Role of the ENCS

In principle, the German ENCS has no role to play at the coordination meetings as an organisation, since it is not the task of the ENCS to assist with the processing of every individual case.

However, the *Länder* and/or the competent law enforcement authorities have the option of deciding, independently, whether they wish to involve their Offices of the Public Prosecutor General (GenStA) in a specific individual case, or the EJM contact point incorporated into these public prosecution offices (in which context it is noted that point 151(4) of the Guidelines on Relations with Foreign Countries in Criminal Law Matters (RiVAST) recommends that the EJM contact point is to be informed whenever a German authority contacts Eurojust).

However, if the ENCS representatives see opportunities for general improvements, such as suggestions for incorporating certain best practices in the implementation of coordination meetings or similar matters, these may be included on the ENCS agenda for discussion.

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

The Ministry of Justice (BMJ) has moderated a process by which the German desk at Eurojust and the *Land* departments of justice jointly worked out a solution as to how information reaching the German desk via the OCC can be promptly forwarded to the competent law enforcement authorities. One of the primary tasks was to ensure 24/7 availability so that the flow of information is ensured in urgent cases and outside usual office hours.

It was agreed that the National Member would turn to the competent German EJM contact point in urgent cases and outside usual office hours. As a general rule, the EJM contact points are integrated into the Offices of the Public Prosecutor General (GenStA) of the *Länder*. These have all instituted an on-call service (in Bavaria, this is available 24/7). The EJM contact point addressed by the German desk will then forward the matter to the competent public prosecution office.

On 27 February 2012, the *Länder* submitted a list with the relevant telephone numbers of the on-call services to the national member in order to safeguard the established procedures. In some instances, the contact number for the on-call service of the public prosecution service is submitted directly to the German desk by the *Land*.

By establishing the OCC at Eurojust, a revolving on-call service was set up at the German desk by way of allocating duties. However, the German desk was already available outside usual office hours before the OCC was instituted. Efforts were made, in particular at weekends, to establish contact or to arrange contact with the competent German authorities whenever needed and requested by foreign authorities, in order to promote investigative measures in urgent cases.

The OCC has only been used a few times. However, all prosecutors are able to contact the National desk at Eurojust 24/7. For this purpose, the Ministry of Justice (BMJ) notified the *Land* departments of justice by letter on 27 June 2011 of the fact that the OCC had commenced its operations, and suggested that these *Land* departments of justice accordingly inform their respective divisions (the law enforcement authorities). The practitioners informed the evaluation team that they are aware of such possibilities although the preferred first port of call for such contact was the local EJM contact point.

According to the German authorities, the setting up of the OCC as such has not provided any specific added value.

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

The Europol National Unit was established at the Federal Criminal Police Office (*Bundeskriminalamt* - BKA). The Europol National Unit is not a regular member of the ENCS. However, the representative of the Europol National Unit may be invited to meetings of the ENCS or consulted on specific questions.

According to the German authorities, the ongoing and close-knit networking between the ENCS and the BKA is particularly supported by the inclusion of the Eurojust contact points within the ENCS. The Eurojust contact points work directly with the BKA in all networks which are referred to in Article 12(2)(d) of the Eurojust Decision. In these networks, Germany is represented by the police and justice authorities. For the police side, the BKA is most active; for the justice side, the Federal Office of Justice has primary responsibility, and the Public Prosecutor General's Offices in Munich and Celle represent Germany in the anti-corruption network.

In the opinion of the German authorities, this close institutional networking and the resulting good personal contacts between the justice authorities and the BKA also guarantees that there is a "direct line" between the ENCS and the Europol national unit. This also ensures that the relevant strategic information on fighting crime which affects both Eurojust and the Europol National Unit is exchanged (mostly on case-by-case basis).

5.7. Conclusions

- Since there are no formal requirements that must be met in order to contact Eurojust, the practitioners appreciate the current functional solutions. These have received a positive assessment since they enable fast and uncomplicated contact in order to obtain the required information.

- Germany has made a significant effort to regulate the channel of communication through legislative (Eurojust Act) and non-legislative instruments (Practical Guidance Notes for Cooperation).
- Practitioners positively assess coordination meetings organised by Eurojust. This assessment is based on the views expressed by all participants who said the meetings were useful and showed great satisfaction as regards their outcome.
- In particular the "Level III" coordinated meetings were considered to be of great value for an effective, coherent and well-coordinated approach to cross-border crime and due to the fact that practitioners from courts, prosecution services, police and other investigating bodies from all the countries involved are present to discuss and plan further actions to be undertaken.
- The preferred approach is to contact the local EJM contact point if there is any doubt about whether and to what extent the EJM or Eurojust should be chosen.
- The evaluators recognised the important role played by the EJM contact points in that respect. However taking into account the size of the country and the relatively low number of requests to other national desks, in the view of the evaluators, Germany might not exploit the full potential of Eurojust, including initiation of coordination meetings.
- As regards the powers afforded to the National Member, the National Member enjoys the powers specified in Articles 9a and 9b.
- Germany has - due to its federal structure - availed itself of the possibility of making a reservation relating to Article 9e of Eurojust Decision. However, this limitation is not perceived by the German authorities as causing any difficulties in daily operational work.

- The use of the OCC has been very limited, although practitioners are informed of the possibilities it offers. This is because the system already works well: practitioners have not experienced difficulties in reaching the members of the National desk even in urgent cases. The OCC is nevertheless not considered useless, as it offers an additional contact point.
- As regards cooperation between the ENCS and the Europol National Unit, it should be noted that there is a lack of structural contact. The evaluators identified a need to develop close relations between the ENCS and Europol National Unit in the spirit of Article 12(5)(d) of the Eurojust Decision.

DECLASSIFIED

6. COOPERATION

6.1. Cooperation with EU agencies and others

According to section 151b of the Directive on the International Cooperation in Criminal Matters (RiVAST), judicial authorities may cooperate with OLAF within the framework of administrative assistance. However, OLAF is not entitled to transmit information from criminal investigations.

According to the division of powers between the federal structure and the *Länder*, cooperation with OLAF is ensured by the local prosecution services. Therefore, it is up to the *Land* department of justice to stipulate any requirements. The practitioners reported that it is incumbent on the public prosecution offices to perform preliminary investigations in criminal proceedings. In exercising the discretion to which they are entitled in selecting the investigative measures, they decide which other authorities – and this includes EU agencies – they wish to cooperate with in pursuing their criminal investigations.

Other than that there is no general policy in the sense of a defined requirement or service instructions for cases in which Eurojust is to be involved as well as OLAF.

6.2. Cooperation with third states

6.2.1. Policy with respect to the involvement of Eurojust

According to German authorities, the competent public prosecution offices may decide whether or not Eurojust should be involved in cases which concern third states. In this regard, questions of investigative tactics are to be taken into account in each individual case, just as questions of

cooperation in matters of criminal law are, such as the issue of whether or not the mutual legal assistance is already functioning well with the third state(s) in question. Moreover, the legal provisions governing mutual legal assistance are to be observed as they apply to relations with the third state in question, such as provisions regarding restrictions of use.

The German desk at Eurojust may be asked by the German authorities to deal with cases that affect one or several third states in addition to the other Member States. However, the German desk is not usually brought into cases in which the request filed by the German authority concerns a third state exclusively. Exceptions are conceivable for third states with which Eurojust maintains a special relationship (such as Norway).

It should also be pointed out that in light of the fact that the EJM has signed a Memorandum of Understanding with IberRED, the preferred means of contacting public prosecution offices and judicial authorities in Latin America is the EJM, since it ensures a very quick and uncomplicated flow of information.

6.2.2. Added value of Eurojust involvement

The evaluation team was informed by legal practitioners that the involvement of Eurojust has accelerated mutual legal assistance with third states. It was underlined that Eurojust was able to identify and establish contact with the competent contact points within the judicial authorities in third states.

The coordination meetings at Eurojust are also perceived as a positive tool in particular because contact persons in third countries were identified and direct contact could be established with them.

6.3. Practical experience of the EJM

6.3.1. Cooperation between the German member and the EJM

From the German perspective, the EJM plays a very practical and significant role in facilitating mutual legal assistance.

In the view of legal practitioners, one of the advantages offered by the EJM is its decentralised structure, which allows the insights gained to be disseminated to a wider audience in all of the federal *Länder* since it operates in a non-bureaucratic way. The practitioners appreciate the fact that there is no formalised obligation to exchange information with the EJM. As a consequence, the involvement of the EJM does not entail any additional workload or effort for the public prosecution offices in charge of the matter concerned.

The German National Member of Eurojust and the German EJM contact points collaborate closely with each other, and know each other well. The aim of this collaboration is to ensure that, in specific individual cases, no efforts are duplicated, or to ask that the EJM contact point identify the competent German authority (for cases that other Member States have brought before Eurojust).

The National Member attends the annual conferences of the German EJM contact points, so that there is a continual exchange of views and information regarding the specialist professional concerns of both parties. The issue of how cooperation between Eurojust and the EJM could be further improved is a part of these technical discussions.

The establishment of the ENCS further reinforced the collaboration between the National Member and the German EJM contact points, in particular because all EJM contact points of the *Länder* are also Eurojust correspondents and are integrated as such into the ENCS.

The practitioners also experience smooth cooperation between the German desk and the EJM.

As an example, in Lower Saxony contact was established in several instances by the German desk at Eurojust via the EJM contact point. In individual cases, requests made by other national desks were even forwarded to this EJM contact point. By proceeding in this way, it was possible to ensure that efforts were not unnecessarily duplicated. Inquiries submitted by the German desk at Eurojust to the EJM contact point were also made in particular in those cases in which knowledge of the specific circumstances in the *Land* of Lower Saxony were required. The cooperation is characterised by flexibility and a spirit of trust.

6.3.2. Resources allocated domestically to the EJM

The general policy is that the *Land* departments of justice designate the EJM contact points and allocate resources to them. Since the EJM contact points of the *Länder* are integrated into the Offices of the Public Prosecutor General (GenStA), the public prosecutors are released from some of their work obligations in order to allow them to fulfil this role, but in some instances they will perform the tasks of an EJM contact point in the context of their general responsibilities within the public prosecution office.

The result of combining these two tasks is that the EJM contact points are very much attuned to the practical aspects of prosecutorial work. Due to their professionalism the EJM contact points are widely accepted among legal practitioners in Germany, as is proven by a large volume of cases, and are very successful in their work in Germany.

As an example, the function of the EJM contact point in Lower Saxony is performed by a senior public prosecutor, who dedicates quite a substantial portion of his working time to this field. He is supported by four other senior public prosecutors, who take action in individual cases. Likewise, the head of department of the Central Office for Organised Crime and Corruption (*Zentrale Stelle Organisierte Kriminalität und Korruption, ZOK*) within the Office of the Public Prosecutor General (GenStA) of Celle is also active in the EJM sphere of activities. Furthermore, four members of staff of the service unit provide support services for the EJM, one of them focusing solely on these tasks and the others devoting a portion of their working hours to them.

In some *Länder* working time has been specifically allocated to the EJM tasks whereas as it was stated in other *Länder* the situation might be different.

6.3.3. Operational performance of EJM contact points

The number of cases handled by the German EJM contact points has consistently increased. The overall tendency is still on the rise. The annual statistics from the EJM Secretariat indicate the following numbers of cases / requests for the years 2009-2012:

2012 – 1084 cases

2011 – 1078 cases

2010 – 1012 cases

2009 – 930 cases

The focus is on pragmatism and informal contacts. Practitioners are encouraged to contact their EJM contact point – located at the level of the Court of Appeal, i.e. at *Land* level. Some information is provided on the intranet, but not too much, so as to stimulate contact via phone or email (e.g. using a functional mailbox such as has been created in some *Länder*, in order to avoid problems resulting from absences or turnover of staff). The evaluation team could confirm that practitioners do not hesitate to make contact with the contact points and are not "afraid" of asking them even simple questions.

The Bavarian EJM contact point keeps a register (for all of Germany) recording the EJM cases processed. Over the years the EJM contact point in Munich has recorded a steadily increasing number of cases (2002 - 89 cases, 2012 - 364 cases). The vast majority of cases are processed in Munich and Celle. Several contact points process between 30 to 100 cases per year, while others record single-digit case numbers. According to the opinion shared by other EJM contact points (Lower Saxony and Rhineland-Palatinate), the EJM contact points addressed in the other *Länder* react promptly, whilst the time needed to complete the request may differ from one type of request to the next. Accelerating requests for judicial assistance that have not been processed for a long time may take several months to achieve. EJM requests that are marked as being high-priority (such as the urgent implementation of judicial assistance measures) will generally also be processed immediately. Processing times will be shorter if the contact point to which a request has been addressed is able to directly process the inquiry him/herself. In this context, the speed at which EJM inquiries are processed is less dependent on the state from which the inquiry was made, and more on the respective motivation and commitment of the EJM contact point to which it has been submitted. There has been a recognised improvement over the years.

In Hesse in 2012 the number of inquiries addressed to the EJM contact point at the Office of the Public Prosecutor General (GenStA) of Frankfurt was similar to that of previous years (24 cases were registered, while in 2011, the number of cases was 27). In 2012 as well as in the previous year, foreign authorities addressed inquiries to the EJM contact point of Hesse more frequently than German national authorities. In this context, the EJM was contacted both for particularly urgent cases and for inquiries made with regard to witness evidence recorded on video.

Of the 24 EJM cases recorded, eight were inquiries made by authorities in the *Land* of Hesse (public prosecution offices or courts), while 16 entailed requests from foreign authorities. For the most part, the support provided by the EJM contact point concerned assistance with the completion of requests for judicial assistance that had already been filed, or, respectively, requests for further documents that were required in order to complete the requests for judicial assistance.

In 2012, the EJM contact point of Lower Saxony dealt with approximately 270 cases. In numerous instances, information and simple consultation were provided to public prosecutors and judges. The cases involved cover almost the entire spectrum of international legal assistance in criminal matters. While the focus is on serious crime, support is also requested for more easily monitored offences in special individual cases. As a matter of principle, all requests are processed in full. In only a very few exceptional cases no contact is established with authorities abroad, in order not to burden them with minor cases.

One of the most spectacular achievements of the EJM contact point is the creation of the website for Lower Saxony, which was demonstrated to the evaluation team. Access to the website is granted to prosecutors, judges, relevant police officers and other other investigating bodies from Lower Saxony. The website contains inter alia information on the instruments providing mutual legal assistance, on how to contact Eurojust and the local EJM contact point and also on the obligation to exchange information with Eurojust. Running this website alongside the general EJM website seems to be an excellent practice for other *Länder* or EU Member States to follow.

The EJM contact point of North Rhine-Westphalia is mainly asked about requests for judicial assistance addressed to foreign authorities that have not received a response. Courts are generally assisted by the contact point in issuing summonses to witnesses abroad while the main hearings of the trial are already ongoing. Generally, the EJM contact point would then request a status report from the EJM contact point of the Member State concerned, and take action to ensure the accelerated processing of such requests. In a number of cases, the EJM contact point was involved with the implementation of European arrest warrants, in particular where urgent matters had to be resolved.

A further focus of the case-related activities of the EJM contact point was support given in preparing requests for judicial assistance, particularly by providing information on the legal situation in other Member States, obtaining extracts from criminal records of another Member State, identifying the addresses of major witnesses to which summonses may be served when such witnesses are domiciled in another Member State, as well as the exchange of information. In 2011 and 2012, the EJM contact point of Rhineland-Palatinate processed approximately 50 inquiries each year (47 in 2011; 54 in 2012). It has been indicated that the contact points in Eastern European countries reply within the deadlines requested and with appropriate information or assistance, whereas a number of other contact points do not reply within the deadlines set, or do so only after having been reminded several times.

One local initiative, the Bureau for International Cooperation (Euro Regional), should also be mentioned in relation to facilitating cooperation between the Netherlands, Belgium and Germany (North Rhine-Westphalia). It was set up on the basis of local agreements in the aim of directly involving practitioners from the three neighbouring countries in international cooperation. Euro Regional is based in Maastricht where local police and prosecutors have been appointed to provide information on how a request should be directed and to whom in order to obtain appropriate assistance.

6.3.4. Perception of the EJM Website and its tools

The information offered at the EJM website, in particular the Atlas and the Library, are regarded by German practitioners in the prosecutorial field as very useful and are a regularly-used resource. Atlas continues to be of great practical significance. It is well-known by practitioners and is used intensively. Moreover, the information made accessible in the Library, in particular the overview of the implementation status of legal instruments in the Member States, is regarded as exceptionally helpful and highly relevant for the reality of legal practice.

The practitioners in Lower Saxony also find the EJM Website very informative and use it intensively. However, in the past, the fact that it had not been translated into German was seen as an obstacle preventing people from using the website. They appreciate that the basic information (Atlas) is now available in English, which should result in the future in increased acceptance of the resource and more frequent use. The information on mutual legal assistance as well as on mutual recognition should be enhanced further. The information already provided on these matters is an excellent basis and could be expanded.

Nonetheless, some practitioners advised that the content of the Library could be enriched by including summaries of important court decisions, providing translations and installing a search function. The Library should be used more in the future. It would be appreciated if the Library could be updated more quickly and enriched with at least a summary in English and possibly other languages of important judicial decisions taken in other Member States (decisions "of principle"). It was also suggested that a search function should be created for the Library.

Legal practitioners in the prosecutorial field would also welcome a translation of the EJM website into German (Rhineland-Palatinate, Lower Saxony, Baden-Württemberg). They also reported that the EJM website could be made more user-friendly and its design could be improved. Finding the forms for the European Arrest Warrant posed a problem. Also terms such as "*fiches belges*" are not generally familiar (Baden-Württemberg).

No specific difficulties in updating the national information contained in the tools were reported. The EAW Wizard is not considered user-friendly, since it is not possible to use it to create the document directly.

6.4. Conclusions

- Within the public prosecution service, there is no general policy but it is left on a case by case decision when and how to cooperate with OLAF. The national authorities the evaluators met did not have much experience in cooperation with OLAF.
- However, in accordance with the discretionary powers of the prosecution service, the prosecutors decide which authorities or EU agencies should be contacted to obtain the support needed.
- The feedback received from practitioners as to cooperation between the EJM and the German desk is very positive. The coordination meetings are considered by practitioners useful and well prepared.
- Eurojust statistics indicate that the number of cases involving Germany and third states is not high. It was noted that hardly any prosecutor or EJM contact point was aware of the fact that Eurojust has an extended network of contact points in third countries that might be useful in facilitating or speeding up the execution of letters rogatory, or acquiring information on how proceedings in a third state could be carried out in an efficient way.
- Several cases were reported in which the support offered by Eurojust in facilitating cooperation with third countries was considered useful. However, there should be more promotion by the national authorities, the National desk and Eurojust as to the possibilities offered by Eurojust when it comes to cooperation with third countries.

- On the basis of the practitioners' positive opinion of the added value which Eurojust can bring in identification of contact persons in third countries and in establishing direct contact with them, the evaluators believe that Eurojust should further develop these possibilities.
- The EJM enjoys an excellent reputation in Germany. It is widely known and extensively used by practitioners although direct contacts with colleagues in other countries are privileged whenever possible, i.e. when colleagues already know each other or are put in contact by colleagues they know, and there are no language barriers.
- Synergies and cohesion between the EJM and Eurojust at national level are ensured by the "double hat" system, whereby EJM contact points are designated national correspondents of Eurojust and in that capacity are part of the ENCS. This system also prevents duplication of efforts.
- The EJM website is well known to all practitioners working with MLA and extradition cases and is considered to be very useful. The updating of the EJM website – the part that should be updated by the Member States – is the responsibility of the national IT tool correspondent who is also an EJM contact point and Eurojust national correspondent.
- The EJM tools are considered helpful. No specific difficulties in updating the national information contained in the tools were reported.
- The Atlas in particular is extensively used. The migration of the Atlas to a new version was considered cumbersome and extremely time-consuming while the added value of the migration process did not seem obvious.

- The Library should be used more in the future. It would be appreciated if the Library could be updated more quickly and enriched with at least a summary in English and possibly other languages of important judicial decisions taken in other Member States (decisions "of principle"). It was also suggested that a search function should be created for the Library.
- The EAW Wizard is not considered user-friendly, since it is not possible to use it to create the document directly.
- Regrets have been expressed about the fact that the EJM website is for the most part only available in English.
- The local initiatives such as Euro Regional and the website for Lower Saxony facilitating international cooperation created by and available to practitioners in Lower Saxony, as well as their informative role, should be mentioned as models of cooperation that should certainly inspire other Member States.

7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

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

Under German law, controlled deliveries are a subset of surveillance measures and may be applied under section 163f of the Code of Criminal Procedure (*Strafprozessordnung*, StPO). The public prosecution office or the police authorities can order short term surveillance measures to be taken. Where a surveillance measure is intended to be taken for a longer period of time, the public prosecution office will have to file a corresponding petition to the local court (*Amtsgericht*) situated in the district of the public prosecution office.

In cases of imminent danger, the public prosecution office or the investigating police authority may itself issue instructions for longer-term surveillance measures. However, such a measure must be confirmed by the court within three business days as stipulated by section 163f(3) of the Code of Criminal Procedure (StPO). Should it become apparent, for a surveillance measure that has been initially ordered for a short term, that the initial period will be exceeded, the corresponding order must likewise be obtained from a judge. The implementation of such measures is incumbent upon the public prosecution office in charge of the matter concerned, which usually will seek support from the police authorities.

The authorities of first instance that are competent for mutual legal assistance grant the required consent to requests, subject to the laws governing mutual legal assistance in relation to cross-border controlled delivery. The federal government has transferred to the *Land* governments the authority to grant consent for what is termed "other legal assistance", including controlled deliveries (point 2(c) of the Agreement on the Allocation of Responsibilities (*Zuständigkeitsvereinbarung*) concluded in 2004). The *Länder* in turn have delegated such approval authority to other parties.

As an example, the public prosecution offices in Lower Saxony decide on incoming requests for judicial assistance that concern controlled deliveries. The public prosecution office which is responsible is that for the jurisdiction into which the delivery is to first cross the border into Germany. This public prosecution office may take the decision for the entire territory of the Federal Republic of Germany. The said public prosecution office will also be responsible for coordinating the matter in legal terms, while the specialist departments of the Police Office at the *Land* level (*Landeskriminalamt*, LKA) will coordinate most of the practical aspects.

Where transit is controlled, and no investigation procedures have yet been started, the public prosecution office responsible will be that of the jurisdiction in which the border-crossing point is located at which the objects giving rise to or otherwise connected to the offence are to be brought into the country. Where this border-crossing point is not yet clear, the Office of the Public Prosecutor General (GenStA) will initially be responsible for such approval.

The National Member is not empowered to authorise or coordinate controlled deliveries. However, he/she may submit proposals to the competent national authorities in this regard.

The competent national law enforcement authorities may also request that the National Member assist them in a specific individual case. For example, the National Member may provide support in coordinating the controlled delivery, such as by making arrangements for coordination meetings.

When the German desk at Eurojust is asked by another Member State to lend support for a controlled delivery, the German desk will arrange the contact that may still be required with the competent German authorities. However, the police authorities will be responsible for coordinating the matter across borders and making the corresponding arrangements.

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

According to Eurojust statistics Germany participated in 14 JITs in 2012 and in 4 JITs in 2011. In 18 cases German joint investigation teams obtained financial support from the JIT Funding Project of Eurojust¹³.

In one of these cases did the National Member at Eurojust participate in the investigation team. However, the German desk is regularly involved in the preparations for instituting JITs. This is done by making arrangements for coordination meetings in the Hague and/or by providing consultations in the course of negotiating an agreement instituting a JIT.

¹³ According to the statistics provided by Germany in January 2014, the total number of JITs supported by the German desk at Eurojust in 2012 was 15 and also 15 in 2013.

The German desk at Eurojust does not pursue any investigative measures of its own. All types of investigative measures provided for in the Code of Criminal Procedure (*Strafprozessordnung*, StPO) may play a role in the cooperation between German and foreign law enforcement authorities supported by the German desk.

The obligation to report on JITs to the National desk at Eurojust pre-dated the 2012 amendments to the Eurojust Act and is respected in practice. Section 6(1) of the Eurojust Act sets out the obligation for the prosecution authorities to provide information to the German member on the formation of a JIT. They should report not only the establishment of a JIT, but also the results of its work. The information should be given when a JIT is set up.

The possibility for the National Member to be part of a JIT also pre-dated the amendments to the Eurojust Act. It has however rarely been used (only once). The National desk does not seem to see an added value in such participation.

The federal authorities present the view that in individual cases, it may be useful for the National Member to participate. However, there is no general need for him/her to do so.

The German authorities generally regard the opportunities for financial support available to the JITs from Eurojust as an advantage. It is also helpful that Eurojust is able to assist the JITs by arranging and organising coordination meetings, for example, and by providing the interpreters for such meetings. Some of the legal practitioners expressly praised the professional framework given at the coordination meetings organised at Eurojust, the technical equipment, and the good infrastructure.

7.2.1. Practical experience

The feedback provided does underline the importance of taking sufficient care in drafting the agreements instituting the JITs, and of ensuring that the provisions of the codes of criminal procedure applicable in the various states involved are taken into account, especially since these may differ from one another. The agreement instituting a JIT is an instrument of judicial legal assistance. The suitability of evidence collected on a cross-border basis for use before the court in proceedings – and thus the judicial success of the work done by a JIT – will depend quite significantly on the whether or not the agreement on which the JIT was based is legally sound and covers all the relevant aspects of the investigation work done jointly.

In this context, Germany has taken the European template for the formation of a joint investigation team (Official Journal C of the EU of 19 March 2010, p. 1) as its basis, making some individual adjustments as may be required in an individual case. In some instances, special model agreements for the institution of a JIT exist, such as with France.

The experience gained thus far with JITs is positive. The practitioners view their collaboration with other foreign colleagues as successful and resulting in excellent investigation results. Moreover, it is considered sensitive in terms of the protection afforded to victims (Hamburg and Bremen). However, it was also mentioned that in individual cases, it was felt to be a problem that other national desks and/or the national authorities of other Member States were not willing to participate in a coordination meeting at Eurojust (Lower Saxony).

Sometimes language barriers have been highlighted as an obstacle. Some comments reflect a leading role of the EJM contact point, the German desk at Eurojust as well as the department responsible for the network of joint investigation teams at the Federal Office of Justice (BfJ) in the preparation of a JIT agreement and while drafting it (Lower Saxony).

7.3. Conclusions

- The National Member is not empowered to authorise or coordinate controlled deliveries. However, he/she may submit proposals to the competent national authorities in this regard. According to the German authorities, no cases have been identified in which this competence would have provided an added value.
- The public prosecution office responsible for authorising controlled deliveries is that of the jurisdiction into which the controlled delivery is to first cross the border into Germany, and this office will also be responsible for coordinating the matter in legal terms. However, in the view of the evaluation team the German authorities could consider the possibility of appointing a contact point responsible for receiving urgent incoming requests for controlled deliveries and subsequent actions.
- The National Member is not entitled to set up a JIT, although his/her participation in JITs is possible under German law and has taken place twice. However, the German authorities do not consider that the participation of the National Member in a JIT provides any specific added value since the task of the National Member lies more in the process of advising and coordinating the national authorities and other Member State(s).
- The evaluators present the opinion that the National authorities should be aware of an added value of involving the National Member in the process of setting up and running a JIT.
- Feedback from practitioners as to experience with JITs is positive. The evaluation team received many reports of successful JITs. Some difficulties were reported in convincing authorities from other Member States, and with significant delays in reaching the written agreement and having it signed. Problems of translation seem to be particularly acute in that field.

- The legal and logistical support provided by Eurojust in the setting up and operation of JITs is particularly appreciated by practitioners. It has been said that without the financial support offered by Eurojust, the setting up of JITs would not have been possible. However, the paperwork involved and the reporting obligation linked to the funding are considered cumbersome. In particular, some practitioners regret that the forms are not available in German and cannot be completed in German.

DECLASSIFIED

8. TRAINING AND AWARENESS RAISING

8.1. Promoting the use of Eurojust and the EJM

8.1.1. Training

Conferences and seminars relating to mutual legal assistance are in general organised at *Länder* level.

In addition, the German Judicial Academy (*Deutsche Richterakademie*) offers two conferences per year, on average, for judges and public prosecutors involved in cooperation in matters of criminal law, which also address international collaboration on matters governed by criminal law. Some of these conferences will include special modules on the subject of Eurojust, for example an In-Depth Conference on Legal Assistance in Criminal Matters (*Rechtshilfe in Strafsachen – Aufbautagung*) in Trier in November of 2012. The tasks of the EJM and Eurojust and the support they can offer are also addressed in the context of specialist conferences offered to the prosecutorial field by the German Judicial Academy (such as on the topic of "combating corruption").

The German EJM contact points participate in giving professional training courses offered by the public prosecution offices, and present the EJM website in that context. They provide explanations of the Atlas and also introduce the other functions, particularly the Library, as a comprehensive resource providing information on a wide variety of relevant aspects. They also present the information available on the EJM website to legal practitioners and explain how these resources may be used. Moreover, explanations of the EJM website and individual functions (such as the EJM Atlas) are a regular part of professional training courses and presentations on cooperation in criminal matters.

In Bavaria, representatives of the EJM and Eurojust regularly attend both the official meetings of the specialists for mutual legal assistance of the public prosecution offices, and the introductory conference for these specialists. The activities of the EJM and Eurojust are part of the professional training events offered by the individual public prosecution offices and by the police.

The evaluation team was presented by the Office of the Public Prosecutor General (GenStA) of Celle practical operation of the intranet where practitioners can become familiar with the EJM and its website, Eurojust and all relevant MLA issues. The Office contributes to the further professional training and exchange of experience, particularly for the heads of department of the public prosecution offices dealing with organised crime, financial crimes and corruption. Both police and tax authorities have access to this information. The evaluation team was informed that all *Länder* have similar information on their intranets.

In addition to the seminars and courses offered by the German Judicial Academy (*Deutsche Richterakademie*), judges and public prosecutors from Rhineland-Palatinate also have the opportunity to attend the professional training sessions addressing European law, such as the annual conference on criminal justice in the European Union on 11 and 12 October 2013.

The current notice issued by the Ministry of Justice (BMJ) as regards practical collaboration with Eurojust, as well as the most recent information brochure published by the EJM Secretariat, have been forwarded to the public prosecution offices and the courts.

8.1.2. Other measures

The Federal Republic of Germany has taken various steps to make legal practitioners aware of the new Eurojust Decision, the EJM Decision and how they are implemented into national law.

In a letter of 15 June 2012, the Ministry of Justice (BMJ) informed the *Land* departments of justice of the fact that the Law amending the Eurojust Act (EJGÄndG) had entered into force and suggested that they inform their departments and agencies (such as courts and public prosecution offices) accordingly.

In a letter of 14 October 2012, the Ministry of Justice (BMJ) informed the *Land* departments of justice of the fact that the Ordinance on the Coordination of Cooperation with Eurojust (*Verordnung über die Zusammenarbeit mit Eurojust* (EJKoV)) had entered into force and suggested that they inform the departments and agencies within their purview. The aim was also to indicate that the Ordinance has also instituted the ENCS. Concurrently, an announcement was made that the Ministry of Justice (BMJ) was going to issue invitations in December 2012 to the inaugural ENCS event in Berlin.

Following the conclusion of the statutory implementation measures, the Ministry of Justice (BMJ) has published an updated and entirely revised edition of the brochure Practical Guidance Notes for Cooperation (*Eurojust – Hinweise zur praktischen Zusammenarbeit*). Representatives of the Ministry of Justice (BMJ) regularly distribute the brochure at Federation-*Länder*-meetings in the context of Eurojust or at ENCS meetings, and attendees are asked to point out the brochure to interested parties.

Additionally, a Federation-*Länder* IT Working Group has been instituted. It deals with the issue of ensuring secure data transmission from the national public prosecution offices to Eurojust. The group has met twice to date (March 2012 and March 2013). The IT experts of Eurojust, the German desk at Eurojust as well as legal experts and IT specialists of the Federation and the *Länder* attended these sessions. In the period between these meetings, the Ministry of Justice (BMJ) contacted the *Land* departments of justice to inform them of the progress made in the interim. In the meantime, the technical questions regarding secure data transmission have been resolved, for the most part satisfactorily.

The Ministry of Justice (BMJ) has also informed the *Länder* as regards the status of preparations for the Eurojust form for complying with the obligation to exchange information, and also as regards the status of the form developed in Germany to amend Eurojust form. In a letter of 3 July 2012, the final versions of both forms were submitted to the *Land* departments of justice, with the suggestion that the departments and agencies within their purview be informed accordingly.

The Ministry of Justice (BMJ) has published an information paper addressing the handling of personal data by the German desk. This paper was issued by way of response to the concerns of legal practitioners who reported that the obligation to exchange information pursuant to Article 13 of the Eurojust Decision may risk jeopardising ongoing criminal investigations. The purpose of the letter was to alleviate those concerns (in particular by the German desk at Eurojust being contacted directly), and it was sent to the *Land* departments of justice with the suggestion that the departments and agencies within their purview be informed accordingly.

Following the conclusion of the statutory implementation measures, a Eurojust marketing seminar took place on 8 and 9 November 2012 at the Ministry of Justice (BMJ) in Berlin. The event was targeted at the national law enforcement authorities and was well received by legal practitioners.

The German desk at Eurojust enables interested public prosecutors to shadow their counterparts in the Hague. For this purpose, the services of the EJTN that have also served in the past are used.

The members of the German desk at Eurojust and representatives of the EJN regularly attend training seminars and expert conferences for public prosecutors, judges, police officers, officers of the tax investigation and customs investigation services, at the invitation of the corresponding German authorities.

The German EJM contact points (concurrently Eurojust correspondents) regularly present the work done by Eurojust and the EJM at professional training seminars and also communicate information about them in their usual, day-to-day work on matters of mutual legal assistance (e.g. the EJM contact point in Baden-Württemberg regularly offers information events and training seminars on the EJM and Eurojust to public prosecution offices and the police which are attended by the corresponding target groups).

Also, public prosecutors are regularly informed of the opportunities afforded by the EJM and Eurojust in the context of the regular official meetings at the public prosecution offices.

8.2. Specific training for national members and EJM contact points

In Germany, only people who have gained experience, in their prior professional activities or their current tasks, of cross-border cooperation in matters of criminal law may be appointed as the National Member at Eurojust, or as EJM contact points. Accordingly, from a German perspective, this aspect of training is not a priority.

According to the German authorities, regular exchange with other authorities involved in mutual legal assistance is more important than classical professional training seminars. This includes the continued exchange of knowledge and experience between the National Member and the German EJM contact points. This is guaranteed in Germany, in particular through the annual meetings of the German EJM contact points, which the National Member at Eurojust always attends and which serve as a forum for communication and thus for the exchange of experience.

There are also specific professional training measures that are available to the German EJM contact points in particular.

The EJM contact points the evaluators met in Bonn mentioned that they appreciate special linguistic trainings, which are regularly offered both at European level and at national level.

8.3. Conclusions

- It appears that Germany has established several training programmes in international legal cooperation.
- Training sessions are offered on regular basis on international cooperation at *Länder* level and at national level at the Judicial Academy in Trier and the ERA.
- Thus training in this field is available to all prosecutors. However, participation is still voluntary.
- In addition, it seems less clear to what extent judges participate in training on mutual legal assistance, even though they have the power to issue MLA requests and EAWs when a case has reached the trial stage. The evaluators were told that judges would often rely on the expertise of prosecutors.
- In daily practice both institutions are obviously well known, in particular the EJM, thanks to its very active network and clear structure in all the *Länder*, and alongside to this several regional websites that provide a lot of relevant information.
- The promotion of both the EJM and Eurojust is taken care of by the EJM contact points and local intranets providing all relevant information that can be easily accessed by prosecutors, the police and judges.
- However, more mandatory training could be considered for police officers, prosecutors and judges who are likely to deal with cross-border criminality and mutual assistance, including, where appropriate, on language skills.

9. GENERAL OBSERVATIONS

9.1. Overall assessment

The overall assessment regarding cooperation with Eurojust and the EJM is very positive. Germany has made a tremendous effort to organise this cooperation at federal and at *Länder* level.

Legislation has been adopted to ensure cooperation, together with guidelines and brochures aimed at raising awareness of the methods and obligations and how to fulfill these in the best way. These documents also make clear and practical distinctions between cases to be dealt with by the EJM or those to be dealt with by Eurojust. This information is very well distributed at the level of the Federation and the *Länder*.

Eurojust is in general fairly well known to all prosecutors. Combining the contact points for the EJM and Eurojust in all the *Länder* is a very practical and effective solution from various perspectives. The opportunity to arrange for coordination meetings and to obtain organisational and financial support, as well as specialist expertise, when setting up joint investigation teams, is regarded as helpful.

The EJM is well organised. Legal practitioners particularly consider the networking with a broader audience as being very useful. Short communication channels and good personal contacts enable the public prosecution offices to address individual cases to the EJM contact points and to ask for their help. Moreover, legal practitioners welcome the opportunity to contact the EJM informally, without this entailing an obligation to exchange information, as may be the case when an inquiry is made with Eurojust.

While accepting the problems linked with the federal structure of Germany, the lack of a coordinating body for controlled deliveries and other urgent matters concerning cross-border crime at national level, might be an issue to pay attention to.

9.2. Further suggestions from Germany

The German authorities indicated that it wished to avoid further formalising the work done by Eurojust and the EJM in legal terms. The same applies in particular to any expansion of Eurojust's competences over binding decisions, for example where there are jurisdictional conflicts.

Eurojust and the EJM are institutions serving the national law enforcement authorities. Any changes to the law that would give up this basic premise of their support role, and that might even grant, under certain circumstances, supervisory powers to Eurojust vis-à-vis the national authorities, would not increase acceptance of Eurojust among legal practitioners, and in fact would be likely to place the existing level of acceptance at risk.

The EJM enjoys an excellent level of acceptance among the German authorities, in particular because it meets the legal practitioners "on a level playing field". By contrast, some legal practitioners are highly critical of the obligation to exchange information with Eurojust pursuant to Article 13 of the Eurojust Decision. According to German authorities, in the future it will be decisive for Eurojust to achieve an understanding among the national authorities that the obligation to exchange information serves to facilitate and promote national prosecution efforts.

All in all, it seems to be important that Eurojust and the EJM continue working towards improving acceptance and trust among legal practitioners. This will be best achieved by continuing the collaboration of Eurojust and the EJM with the national authorities, which is characterised by mutual trust and achieves results.

Further encumbering legal practitioners with requirements to complete surveys, evaluations etc. should be avoided or at least reduced to the absolute minimum.

It has also been mentioned that there should be a review of whether or not the staffing of the EJM Secretariat could be improved, in particular as concerns the website administration team. One example of a practical measure serving to further improve the collaboration could be secure and prompt communication among the EJM contact points throughout Europe (Lower Saxony).

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

The evaluation visit in Germany was prepared by the German authorities with great care and was perfectly organised. The selection of the authorities visited and persons invited for interview was appropriate.

The evaluators were given the opportunity to talk to a large number of people from the federal level as well as many practitioners representing *Länder* who could share their experience and express their opinion freely. The evaluation team was thus given a very good overview of the reality of the use of the EJM and Eurojust in Germany, in spite of the size of the country and the diversity resulting from the federal structure. The presence of the National Member of Eurojust for Germany during the visit undeniably added value.

The division of responsibilities between the federal and local authorities as to the implementation of the Eurojust and EJM Decisions introduces an element of complexity that needs to be taken into account in the evaluation exercise. It could create constraints for the federal level and to the competent local authorities. However, based upon the German federal structure it is the practice that, in addition to representatives of the federal government, *Länder* representatives also participate in the competent Council working groups, such as COPEN, and coordination takes place with them during meetings as required. In these ways requests by and ideas of the *Länder* are taken into consideration early on in the process and this continues during the course of the legislative decision-making process.

The evaluation team has however noted that these risks have in general been satisfactorily addressed. This is certainly partly due to a genuine commitment from the people met by the evaluation team – either officials of the *Länder*, or at federal level or practitioners devoted to making the system operational.

10. RECOMMENDATIONS

As regards the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters, the expert team involved in the evaluation of Germany has been able to satisfactorily review the system in Germany. Overall, the working principles and legal framework of the system are very robust and functional and the various actors know their roles and responsibilities.

Germany 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). The results of this evaluation should also, at some point, be examined by the Working Party on Cooperation in Criminal Matters (COPEN).

The evaluation team thought it fit to make a number of suggestions for the attention of the German authorities. Furthermore, based on the various good practices, related recommendations to the EU, its institutions and agencies, Eurojust in particular, are also put forward.

10.1. Recommendations to Germany

1. Germany should inform the General Secretariat of the Council of the specific person from the Federal Office of Justice responsible for the functioning of the ENCS; (cf. 3.2.2 and 3.5.4)
2. Germany should, in accordance with Article 12(5)(d) of the Eurojust Decision, take measures to ensure that the ENCS maintains close relations with the Europol National Unit; (cf. 3.5.2, 3.5.4, 5.6 and 5.7)

3. Germany should take further measures to ensure the practical implementation of Article 13 of the Eurojust Decision, for example by increasing practitioners' awareness or issuance of practical guidance; (cf. 4.2.2, 4.2.3 and 4.3)
4. Germany should consider whether the full potential of Eurojust, including initiation of coordination meetings, is exploited by national practitioners; (cf. 5.4.1 and 5.7)
5. Germany should consider the possibility of appointing a contact point responsible for receiving urgent incoming requests for controlled deliveries and subsequent actions; (cf. 7.1 and 7.3)
6. Germany should continue specific training programmes for practitioners dealing with international judicial cooperation and in particular extend such trainings for judges; (cf. 8.1 and 8.3)

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

1. The Member States should consider the German practise combining the role of EJM contact points and Eurojust national correspondents as an example of best practise; (cf. 3.2.2 and 3.5.4)
2. The Member States are recommended to encourage their national authorities to organise regular meetings with the National desk at Eurojust to ensure smooth cooperation, a general exchange of views and experiences as well as early identification of common challenges; (cf. 5.7, 6.3.3 and 8.1.1)
3. The Member States should ensure that the designated EJM contact points have the necessary qualifications, in particular language skills, and have enough time to carry out their tasks as efficiently as possible; (cf. 3.4.1, 3.4.2, 3.5.6 and 6.3.3)

4. The Member States should consider setting up a "third way" of cooperating involving practitioners of neighbouring countries directly, taking into account the experience gained from a model cooperation exercised in the Euro Regional Office between Germany, Belgium and the Netherlands; (cf. 6.3.3 and 6.4)
5. The Member States should provide their practitioners with practical and simple guidelines and trainings on when to refer a case to Eurojust or the EJM; (cf. 5.2, 5.7 and 8.1.2)
6. The Member States should consider as an example of best practice the operation of the German intranets providing information on MLA issues, the EJM and Eurojust; (cf. 8.1 and 8.3)
7. The Commission should secure and increase the provision of EU funding to JIJs through Eurojust; (cf. 7.2.1 and 7.3)

10.3. Recommendations to Eurojust/the EJM

1. Eurojust in cooperation with Member States should ensure that secure connections to the CMS are established with all Member States and consider how Europol could be effectively involved in this type of access; (cf. 3.2.3, 3.3.4 and 4.2.1)
2. Eurojust should make clear and promote amongst practitioners the added value of Articles 13 and 13a of the Eurojust Decision; (cf. 4.2.1 and 4.3)
3. Eurojust should provide feedback as to the existence – or not – of a "hit" as early as possible following a notification under Article 13 of the Eurojust Decision; (cf. 4.2.3 and 4.3)

4. Eurojust should simplify the template for the reporting obligations based on Article 13 of the Eurojust Decision; (cf. 4.2.3)
5. Eurojust should continue providing support for the exchange of experience and best practices of the ENCS (e.g. by regularly updating the *fiches suédoises* and organising meetings of the people responsible for the operation of the ENCS); (cf. 5.4.2, 5.7, 6.3.4 and 8.1.2)
6. Eurojust and the EJM should collaborate and issue guidelines on referral of cases to Eurojust and the EJM; (cf. 5.2, 5.7 and 8.1.2)
7. Eurojust should further develop possibilities and more active promotion of the established contact points in third countries to facilitate and support contact with them and the execution of letters rogatory; (6.2.2 and 6.4)
8. Eurojust should examine the possibilities for providing translation in all languages of information contained in the EJM tools; (cf. 6.3.4 and 6.4)
9. Eurojust should look into the possibilities for improving and enriching the content of the Library by including summaries of important court decisions, providing translations and installing a search function; (cf. 6.3.4 and 6.4)
10. Eurojust should look into the possibilities for improving the EAW Wizard and making it more user-friendly; (cf. 6.3.4 and 6.4)
11. Eurojust should explore the possibilities for increasing the support offered to practitioners in the drafting of JIAs agreements, in particular by providing or facilitating translation and interpretation from as early as the drafting of the agreement; (cf. 7.2, 7.2.1 and 7.3)

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

6th Round of Mutual Evaluations - Germany 9 - 11 OCTOBER 2012

Monday, 22 July 2013

During the day Arrival of the evaluation team

5:00 pm Opportunity for a preparatory meeting at the Federal Ministry of Justice

A light snack will be served

Rosenburg-Saal (Room 1.096)

Tuesday, 23 July 2013

9:00 am Welcome of the evaluation team by the State Secretary in the Federal Ministry of Justice,
Dr Birgit Grundmann

Further moderation by:

Dr Heike Neuhaus, *Ministerialdirigentin*

Deputy Director General of the Criminal Law Directorate General in the Federal Ministry of Justice
and

Dr Katrin Brahms, *Regierungsdirektorin*

Head of the “International Criminal Law, European and Multilateral Criminal-Law Cooperation”
Division in the Federal Ministry of Justice

9:15 am Photo opportunity with the evaluation team and the State Secretary

9:30 am Presentation of the legal framework for the work of Eurojust at national level and the
implementation of the Eurojust and EJM decisions of 2008

Dr Katrin Brahms, *Regierungsdirektorin*

thereafter Opportunity for discussion with participation of representatives from other federal
ministries and subordinate authorities:

- Ms Kristin Kinder, Public Prosecutor, desk Officer, Foreign Office
- Dr Torsten Grumbach, *Oberregierungsrat*, desk Officer, Federal Ministry of the Interior

- Mr Markus Busch, Public Prosecutor at the Federal Court of Justice, Head of Division, Federal Ministry of Justice
- Dr Michael Greßmann, *Ministerialrat*, Head of Division, Federal Ministry of Justice
- Dr Holger Karitzky, *Regierungsdirektor*, Head of Division, Federal Office of Justice
- Mr Klaus-Peter Jürcke, Regional Court Judge, desk Officer, Federal Office of Justice

10:15 am Presentation of the work of the Federal Prosecutor General at the Federal Court of Justice (Eurojust contact office for terrorism issues with regard to cooperation with Eurojust and the EJM)
Mr Kai Lohse, Senior Federal Prosecutor General at the Federal Court of Justice, Public Prosecutor General of the Federal Court of Justice
thereafter Opportunity for discussion

10:45 am Coffee break in the courtyard of the Federal Ministry of Justice

11:00 am Presentation of the work of the German Table at Eurojust
Ms Annette Böhringer, Senior Public Prosecutor at the Federal Court of Justice, German national member of Eurojust
thereafter Opportunity for discussion

11:45 am Presentation of the work of the German Liaison Office at Europol

- Dr Torsten Grumbach, *Oberregierungsrat*, desk Officer, Federal Ministry of the Interior
- Mr Andreas Wolf, Criminal Commissioner, Head of the German Liaison Office at Europol, The Hague
- Mr Joachim Weiss, Police Chief Inspector, staff member of the German Liaison Office at Europol, The Hague
- Ms Doris Kalscher, Chief Detective Inspector, International Coordination, German Federal Office of Criminal Investigation

thereafter Opportunity for discussion

12:15 pm Presentation of the work of the German EJM
Mr Joachim Ettenhofer, Senior Public Prosecutor, Munich Public Prosecutor General's Office, Bavaria
thereafter Opportunity for discussion

1:00 pm Lunch on invitation of the Federal Ministry of Justice in the cafeteria of the Federal Ministry of Justice

2:00 pm Introduction of the ENCS

Mr Mark Eidam, Judge, desk Officer, Federal Ministry of Justice
and talks with its members:

- Dr Holger Karitzky, *Regierungsdirektor*, Head of Division, Federal Office of Justice
- Mr Jürcke, Regional Court Judge, desk Officer, Federal Office of Justice
- Mr Kai Lohse, Federal Prosecutor General at the Federal Court of Justice, Public Prosecutor General of the Federal Court of Justice
- Mr Guntram Hahne, Senior Public Prosecutor, Public Prosecutor General's Office, Berlin
- Mr Joachim Ettenhofer, Senior Public Prosecutor, Munich Public Prosecutor General's Office, Bavaria

2:45 pm Coffee break in the courtyard of the Federal Ministry of Justice

3:00 pm Expert talks with public prosecutors from various German *Länder*

- Mr Wolfgang Klein, Senior Public Prosecutor, Dresden Public Prosecutor General's Office, Saxony
- Dr Helmut Patett, Senior Public Prosecutor, Schleswig Public Prosecutor General's Office, Schleswig-Holstein
- Mr Axel Schuchard, Public Prosecutor, Lübeck Public Prosecution Office, Schleswig-Holstein
- Ms Charlotte Rieger, Chief Public Prosecutor, Stuttgart Public Prosecution Office, Baden-Württemberg
- Mr Florian Schlosser, Public Prosecutor and Group Leader, Munich I Public Prosecution Office, Bavaria
- Dr Lars Röhrig, Public Prosecutor, Hamburg Public Prosecution Office

5:00 pm Transfer to the Reichstag and visit to the German Bundestag

5:30 pm Reception hosted by
MP Prof. Dr Sensburg,
Chair of the Subcommittee on European Law of the
Legal Committee of the 17th German Bundestag
Deutscher Bundestag
Jacob-Kaiser-Haus
Platz der Republik 1
11011 Berlin
(Room 6.114; Entrance: Dorotheenstraße 100)

6:15 pm Visit to the German *Bundestag* in the *Reichstag* building (tbc)

7:00 pm Dinner on invitation of the Federal Ministry of Justice
at *Tucher am Tor* restaurant
Pariser Platz 6a
10117 Berlin

Wednesday, 24 July 2013

8:00 am Meet at Federal Ministry of Justice; transfer to Berlin *Land* Criminal Police Office
Landeskriminalamt Berlin
Tempelhofer Damm 12
12101 Berlin

8.30 am Visit to the Berlin *Land* Criminal Police Office and talks with police officers and public prosecutors

In the *Blauer Salon* (5th floor) of the Berlin *Land* Criminal Police Office

- Mr Detlev Mehlis, Chief Public Prosecutor, Berlin Public Prosecution Office
- Ms Petra Leister, Senior Public Prosecutor, Berlin Public Prosecution Office
- Mr Joachim Rolke, Chief of the Criminal Division, Head of Unit, Berlin *Land* Criminal Police Office

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- Mr Michael Will, Chief Detective Inspector, Head Commissioner, Berlin *Land* Criminal Police Office
- Mr Herbert Kolipost, Chief Detective Inspector, Head Commissioner, Berlin *Land* Criminal Police Office
- Ms Martina Mocek, Chief Detective Inspector, Deputy Commissioner, Berlin *Land* Criminal Police Office
- Mr Peter Lewerenz, Chief Inspector, Investigation Group Head, Berlin *Land* Criminal Police Office

10:00 am Transfer to Berlin *Hauptbahnhof* (main train station)

10:47 am Train ride to Hannover (ICE, departure approx. 10:47 am, arrival in Hannover at 1:28 pm)

12:00 noon Lunch on the train (box lunch) on invitation of the Federal Ministry of Justice

2:00 pm Visit to the Hannover (Lower Saxony) Public Prosecution Office

Talks with public prosecutors and police officials

Staatsanwaltschaft Hannover

Volgersweg 67

30175 Hannover

- Mr Christian Schierholt, Chef Senior Public Prosecutor, Celle Public Prosecutor General's Office, Lower Saxony
- Mr Kai Lukitsch, Senior Public Prosecutor, Hanover Public Prosecution Office, Lower Saxony
- Dr Marcus Preusse, Public Prosecutor, Hannover Public Prosecution Office, Lower Saxony
- Dr Jens Lehmann, Public Prosecutor, Hannover Public Prosecution Office, Lower Saxony
- Mr Uwe Görlich, Public Prosecutor, Hannover Public Prosecution Office, Lower Saxony
- Ms Gabriele Launhardt, Hannover Public Prosecution Office, Lower Saxony
- Ms Kirsten Kretschmar, Public Prosecutor, Hanover Public Prosecution Office, Lower Saxony
- Mr Frank Rosenow, Presiding Judge, Hanover Regional Court, Lower Saxony (t.b.c.)

- Mr Frenzel, Public Prosecutor, Hannover *Land* Criminal Police Office, Lower Saxony
- Mr Thomas Lieske, Chief Senior Customs Investigation Officer, Head of Office, Hanover Customs Investigation Office, Lower Saxony
- Mr Hartmut Fischer, Senior Customs Investigation Officer, Head of Joint Investigation Group on Illicit Trafficking of Narcotics, Hanover Customs Investigation Office, Lower Saxony
- Mr Burkhard Dietrich, Customs Investigation Officer, Hanover Customs Investigation Office, Lower Saxony
- Mr Wilhelm Zakrzewski, Senior Tax Investigation Officer, Hanover Tax Investigation Office, Lower Saxony

4:31 pm Train ride from Hannover to Bonn (ICE , departure at 4:31 pm, arrival in Bonn at 7:32 pm) and transfer to the hotel

8:00 pm Dinner on invitation of the Federal Ministry of Justice
at *Da Dante* restaurant
Adenauer Allee 148,
53113 Bonn,

Thursday, 25 July 2013

9:00 am Talks with public prosecutors from various German *Länder* at the
Federal Office of Justice
Adenauerallee 81
53113 Bonn

- Ms Ina Humberg, Senior Public Prosecutor, Duisburg Public Prosecution Office, North Rhine-Westphalia (NRW)
- Ms Monika Volkhausen, Senior Public Prosecutor, Cologne Public Prosecution Office, NRW
- Mr Ulrich Stein, Public Prosecutor, Bonn Public Prosecution Office, NRW

- Ms Angelika Möhlig, Senior Public Prosecutor, Zweibrücken Public Prosecutor General's Office, Rhineland-Palatinate
- Ms Dorothea Blunck, Public Prosecutor, Frankfurt a. M. Public Prosecutor General's Office, Hesse
- Mr Daniel Kühne, Public Prosecutor, Frankfurt a. M. Public Prosecutor General's Office, Hesse
- Mr Robert Hartmann, Public Prosecutor, Darmstadt Public Prosecution Office, Hesse
- Mr Oliver Rust, Public Prosecutor, Marburg Public Prosecution Office, Hesse
- Mr Klaus Hoffmann, Public Prosecutor, Freiburg Public Prosecution Office, Baden-Württemberg

10:30 am Coffee break in the foyer of the Federal Office of Justice

10:45 am Continuation of the expert talks

12:30 pm Lunch in the cafeteria of the *Bundesrechnungshof* on invitation of the Federal Ministry of Justice

Bundesrechnungshof

Adenauerallee 81

53113 Bonn

1:30 pm Transfer to Aachen Public Prosecution Office

Staatsanwaltschaft Aachen

– Justizzentrum –

Adalbertsteinweg 92

52070 Aachen

3:00 pm Visit to the Aachen Public Prosecution Office (NRW) and talks with public prosecutors

- Dr Sebastian Trautmann, Public Prosecutor, desk Officer, NRW, Ministry of Justice
- Ms Jutta Breuer, Senior Public Prosecutor, Head of Department, Aachen Public Prosecution Office, NRW
- Mr Jan Balthasar, Public Prosecutor, Aachen Public Prosecution Office, NRW

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- Dr Joel Güntert, Public Prosecutor, Aachen Public Prosecution Office, NRW
- Mr Burchard Witte, Public Prosecutor, Aachen Public Prosecution Office, NRW
- Mr Johannes Mocken, Public Prosecutor and Group Leader, Liaison prosecutor for NRW, Office for Euro-regional Cooperation (*Büro für Euregionale Zusammenarbeit*)

5:00 pm Return to Bonn

7:00 pm Dinner on invitation of the Federal Ministry of Justice

at *Schaumburger Hof* restaurant

Am Schaumburger Hof 10

53175 Bonn

Friday, 26 July 2013

9:30 am Concluding meeting at the Federal Office of Justice

11:00 am End of the evaluation visit to Germany and departure of the participants

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ANNEX B: PERSONS INTERVIEWED/MET

Meetings 23 July 2013

Venue: Federal Ministry of Justice

Person interviewed/met	Organisation represented
Dr Heike Neuhaus	Ministry of Justice
Dr Katrin Brahms	Ministry of Justice
Kai Lohse	Federal Prosecutor General at the Federal Court of Justice
Annette Böringer	German National Member of Eurojust
Kristin Kinder	Public Prosecutor (Foreign Office)
Dr Torsten Grumbach	Federal Ministry of the Interior
Markus Busch	Ministry of Justice
Dr Michael Greßmann	Ministry of Justice
Mark Eidam	Ministry of Justice
Klaus-Peter Jürcke	Federal Office of Justice
Dr Holger Karitzky	Federal Office of Justice
Andreas Wolf	Europol
Joachim Weiss	Europol
Doris Kalscher	Federal Office of Criminal Investigation
Joachim Ettenhofer	Munich Public Prosecutor General's Office, Bavaria
Guntram Hahne	Public Prosecutor General's Office, Berlin
Wolfgang Klein	Dresden Public Prosecutor General's Office, Saxony
Charlotte Rieger	Stuttgart Public Prosecution Office, Baden-Württemberg
Dr Helmut Patett	Schleswig Public Prosecutor General's Office, Schleswig-Holstein
Dr Lars Röhrig	Hamburg Public Prosecution Office
Axel Schuchard,	Lübeck Public Prosecution Office, Schleswig-Holstein
Florian Schlosser	Munich Public Prosecution Office, Bavaria

Meetings 24 July 2013

Venue: Berlin Land Police Criminal Office

Person interviewed/met	Organisation represented
Detlev Mehliis	Berlin Land Criminal Police Office
Herbert Kolipost	Berlin Land Criminal Police Office
Petra Leister	Berlin Public Prosecution Office
Joachim Rolke	Berlin Land Criminal Police Office
Michael Will	Berlin Land Criminal Police Office
Martina Mocek	Berlin Land Criminal Police Office
Peter Lewerenz	Berlin Land Criminal Police Office

Venue: Hannover Public Prosecution Office

Person interviewed/met	Organisation represented
Christian Schierholt	Celle Public Prosecutor General's Office, Lower Saxony
Gabriele Launhardt	Hannover Public Prosecution Office, Lower Saxony
Dr Thomas Hackner	Justice Ministry of Lower Saxony
Kai Lukitsch	Hannover Public Prosecution Office,
Mr Frenzel	Hannover Land Criminal Police Office, Lower Saxony
Thomas Lieske	Hannover Customs Investigation Office, Lower Saxony
Hartmut Fischer	Customs Investigation Office, Lower Saxony
Dietrich Burkhard	Customs Investigation Office, Lower Saxony
Wilhelm Zakrzewski	Tax Investigation Office, Lower Saxony
Marcus Preusse	Hannover Public Prosecution Office, Lower Saxony
Dr Jens Lehmann	Hannover Public Prosecution Office, Lower Saxony
Frank Rosenow	Hannover Regional Court
Kirsten Kretschmar	Hannover Public Prosecution Office, Lower Saxony
Uwe Görlich	Hannover Public Prosecution Office, Lower Saxony

Meetings 25 July 2013*Venue: Federal Office of Justice*

Person interviewed/met	Organisation represented
Ina Humberg	Duisburg Public Prosecution Office, North Rhine-Westphalia (NRW)
Monika Volkhausen	Cologne Public Prosecution Office, NRW
Klaus Hoffmann	Freiburg Public Prosecution Office, Baden-Württemberg
Oliver Rust	Marburg Public Prosecution Office, Hesse
Robert Hartmann	Darmstadt Public Prosecution Office, Hesse
Daniel Kühne	Public Prosecutor, Frankfurt a. M.
Dorothea Blunck	Frankfurt a. M. Public Prosecutor General's Office, Hesse
Angelika Möhlig	Zweibrücken Public Prosecutor General's Office, Rhineland-Palatinate
Ulrich Stein	Bonn Public Prosecution Office, NRW

Venue: Aachen Public Prosecution Office

Person interviewed/met	Organisation represented
Dr Sebastian Trautmann	NRW Ministry of Justice
Johannes Mocken	Office for Euro-regional Cooperation (<i>Büro für Euregionale Zusammenarbeit</i>)
Burchard Witte	NRW Justice Ministry of Lower Saxony
Dr Joel Güntert	Aachen Public Prosecution Office, NRW
Jan Balthasar	Aachen Public Prosecution Office, NRW
Jutta Breuer	Aachen Public Prosecution Office, NRW

Meetings 26 July 2013*Venue: Federal Office of Justice*

Person interviewed/met	Organisation represented
Dr Katrin Brahms	Ministry of Justice
Annette Böringer	German National Member of Eurojust
Mark Eidam	Ministry of Justice
Klaus-Peter Jürcke	Federal Office of Justice
Dr Holger Karitzky	Federal Office of Justice

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ACRONYM IN GERMAN	FULL TITLE IN GERMAN	TITLE IN ENGLISH
BfJ	BfJ	<i>Bundesamt für Justiz</i>	Federal Office of Justice
BKA	BKA	<i>Bundeskriminalamt</i>	German Federal Police Office
BMJ	BMJ	<i>Bundesministerium der Justiz</i>	Federal Ministry of Justice
EJG	EJG	<i>Gesetz zur Umsetzung des Beschlusses (2002/187/JHA) des Rates vom 28. Februar 2002 über die Errichtung von Eurojust zur Verstärkung der Bekämpfung der schweren Kriminalität</i>	Eurojust Act
EJGÄndG	EJGÄndG	<i>Gesetz zur Änderung of the Eurojust Act (EJG)</i>	Law Amending the Eurojust Act
EJKoV	EJKoV	<i>Verordnung über die Koordinierung der Zusammenarbeit mit Eurojust</i>	Ordinance on the Coordination of Cooperation with Eurojust
GBA	GBA	<i>General Bundesanwalt beim Bundesgerichtshof</i>	Public Prosecutor General of the Federal Court of Justice
GenStA	GenStA	<i>General Staatsanwaltschaft</i>	Offices of the Public Prosecutor General
LKA	LKA	<i>Landeskriminalamt</i>	Police Office at <i>Land</i> level
RiVAST	RiVAST	<i>Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten</i>	Guidelines on Relations with Foreign Countries in Criminal Law Matters
StPO	StPO	<i>Strafprozessordnung</i>	Code of Criminal Procedure
ZOK	ZOK	<i>Zentrale Stelle Organisierte Kriminalität und Korruption</i>	Central Office for Organised Crime and Corruption