



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 11 July 2013 (12.07)
(OR. fr)**

**10249/2/13
REV 2**

GENVAL 30

DECLASSIFICATION

of document:	10249/1/13 REV 1 RESTREINT UE/EU RESTRICTED
dated:	3 July 2013
new status:	Public

Subject:	EVALUATION REPORT ON THE SIXTH ROUND OF MUTUAL EVALUATIONS REPORT ON FRANCE
----------	---

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 3 July 2013 (08.07)
(OR. fr)**

**10249/1/13
REV 1**

RESTREINT UE/EU RESTRICTED

GENVAL 30

**EVALUATION REPORT ON
THE SIXTH ROUND OF MUTUAL EVALUATIONS**

**"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 crime and of
Council Decision 2008/976/JHA on the European Judicial Network"**

REPORT ON FRANCE

Table of contents

1. EXECUTIVE SUMMARY	5
2. INTRODUCTION.....	7
3. GENERAL MATTERS AND STRUCTURES.....	9
3.1. GENERAL INFORMATION.....	9
3.1.1. Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust	9
3.1.2. Council Decision 2009/426/JHA on the strengthening of Eurojust.....	12
3.1.3. Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network and Council Decision 2008/976/JHA, adopted on 16 December 2008 and repealing the Joint Action.....	15
3.2. IMPLEMENTATION OF THE EUROJUST NATIONAL COORDINATION SYSTEM.....	15
3.2.1. Current situation.....	15
3.2.2. National correspondents.....	16
3.2.3. Functioning of the ENCS and connection to the Case Management System	16
3.3. NATIONAL DESK AT EUROJUST.....	17
3.3.1. Organisation.....	17
3.3.2. Selection and appointment.....	17
3.3.3. Powers granted to the national member	19
3.3.4. Access by the national desk to the restricted part of the Case Management System	22
3.4. EJM CONTACT POINTS	22
3.4.1. Selection and appointment.....	22
3.4.2. Practical operation of the EJM contact points in France	24
3.4.3. Updating of the EJM website.....	26
3.5. CONCLUSIONS	27
General conclusions.....	27
Implementation of the Eurojust National Coordination System (ENCS)	28
National desk.....	29
EJM.....	30
4. EXCHANGE OF INFORMATION.....	32
4.1. INFORMATION FORWARDED BY THE JUDICIAL AND LAW ENFORCEMENT AUTHORITIES TO EUROJUST	32
4.1.1. Databases relevant for the information exchange with Eurojust.....	32
4.1.2. Obligation to exchange information under Article 13(5) to (7).....	32
4.1.3. Application of the obligation to exchange information under Article 2 of Council Decision 2005/671/JHA	35
4.1.4. Channels for information transfer to Eurojust.....	37

4.2.	FEEDBACK BY EUROJUST	40
4.2.1.	<i>France's experience with regard to the obligation to provide information pursuant to Article 13a of the 2009 Eurojust Decision.....</i>	40
4.2.2.	<i>Qualitative evaluation of the information flows between Eurojust and France.....</i>	40
4.2.3.	<i>Practical or legal difficulties encountered when exchanging information with Eurojust.....</i>	41
4.2.4.	<i>Suggestions for improving the exchange of information between France and Eurojust.....</i>	41
4.2.5.	<i>The EPOC project.....</i>	42
4.3.	CONCLUSIONS	44
5.	OPÉRATIONNEL ASPECTS	46
5.1.	STATISTICS	46
5.1.1.	<i>French desk at Eurojust.....</i>	46
5.1.2.	<i>Practical experience in relation to Eurojust.....</i>	47
5.2.	ALLOCATION OF CASES TO EUROJUST, THE EJM OR OTHER BODIES	48
5.3.	EXPERIENCE OF CASES IN RELATION TO THE COMPETENCES ATTRIBUTED TO EUROJUST	49
5.3.1.	<i>Tasks of the national member, deputy or assistant in relation to operational cases</i>	49
5.3.2.	<i>Specific procedures in respect of cooperation between the French authorities and Eurojust.....</i>	50
5.3.3.	<i>Cases related to the tasks of Eurojust acting through its national members (Article 6).....</i>	51
5.3.4.	<i>Cases related to the tasks of Eurojust acting as a College (Article 7).....</i>	51
5.4.	PRACTICAL EXPERIENCE RELATED TO COORDINATION MEETINGS	53
5.4.1.	<i>Qualitative perception</i>	53
5.4.2.	<i>Role of the ENCS</i>	55
5.5.	USE OF ON-CALL COORDINATION (OCC)	55
5.6.	CONCLUSIONS	56
6.	COOPERATION.....	58
6.1.	COOPERATION WITH EU AGENCIES AND OTHER BODIES	58
6.2.	COOPERATION WITH THIRD STATES.....	59
6.2.1.	<i>Policy on Eurojust involvement</i>	59
6.2.2.	<i>Added value of Eurojust involvement.....</i>	59
6.3.	PRACTICAL EXPERIENCE OF THE EJM	60
6.3.1.	<i>Cooperation between the French member and the EJM</i>	60
6.3.2.	<i>Resources allocated to the French EJM contact points.....</i>	61
6.3.3.	<i>Operational performance of the EJM contact points</i>	61
6.3.4.	<i>Exchange of information.....</i>	62
6.3.5.	<i>Perception of the EJM website and its tools.....</i>	62
6.4.	CONCLUSIONS	64

7.	SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES.....	65
7.1.	CONTROLLED DELIVERIES (ARTICLE 9d(a))	65
7.2.	PARTICIPATION OF NATIONAL MEMBERS IN JOINT INVESTIGATION TEAMS (ARTICLE 9f)	66
7.2.1.	<i>Practical experience</i>	66
7.2.2.	<i>Added value</i>	67
7.3.	OTHER SPECIAL INVESTIGATIVE TECHNIQUES	67
7.4.	CONCLUSIONS	68
8.	TRAINING AND AWARENESS RAISING.....	68
8.1.	PROMOTING THE USE OF EUROJUST AND THE EJN.....	68
8.1.1.	<i>Training</i>	68
8.1.2.	<i>Other measures</i>	70
8.2.	SPECIFIC TRAINING FOR NATIONAL MEMBERS AND EJN CONTACT POINTS	70
8.3.	CONCLUSIONS	71
9.	GENERAL OBSERVATIONS	72
9.1.	OVERALL ASSESSMENT	72
9.2.	FURTHER SUGGESTIONS FROM FRANCE	73
9.3.	PERCEPTION OF THE EVALUATION PROCESS WITH REGARD TO THE POINTS UNDER REVIEW	73
10.	RECOMMENDATIONS	74
10.1.	RECOMMENDATIONS TO FRANCE	74
10.2.	RECOMMENDATIONS TO THE EUROPEAN UNION, ITS INSTITUTIONS AND AGENCIES, AND TO OTHER MEMBER STATES	76
10.3.	RECOMMENDATIONS TO EUROJUST/THE EJN	77
 ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET 79		
 ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS 87		

1. EXECUTIVE SUMMARY

The French evaluation mission took place from 21 to 25 January 2013 in a very positive atmosphere. It benefited from the excellent groundwork carried out by the French authorities, and particularly from the impressive support of the Directorate for Criminal Matters and Pardons of the Ministry of Justice. The choice of interviewees proved to be wise. The permanent presence of the French national member of Eurojust during the interviews gave the exercise a distinct added value.

At the time of the on-site visit, Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime was formally implemented by the adoption of provisions amending the French Code of Criminal Procedure; however, France had not yet adopted the amendments to its national law necessary for the implementation of Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust.

The evaluation was therefore carried out on the basis of the existing legal regime, which is due to be changed very soon: a draft transposing law is currently being examined by Parliament and should, according to the Ministry of Justice, be adopted during the summer of 2013. Certain regulatory or administrative measures, such as a circular instructing prosecutors to implement the obligation to inform referred to in Article 13(6), have already been taken.

The Eurojust national coordination system (ENCS) is not operational. However the centralisation of most cases likely to benefit from the support of Eurojust at the eight specialised inter-regional courts (JIRS) on the one hand, and at the Paris Regional Court on the other hand, and the active cooperation between these services and Eurojust partially compensate for the absence of ENCS.

In fact the cooperation between the national authorities and Eurojust was described as excellent by all those interviewed, and particularly by the national member. In comparison with several other Member States, the activity of the French desk at Eurojust seems particularly intensive and the practitioners interviewed, both in Paris and in the provinces (Lille), expressed a high rate of satisfaction.

Moreover, contact between the French national desk at Eurojust and Europol is frequent and generally fruitful.

The French prosecution service, under the auspices of the principal public prosecutors at the appeal courts who coordinate public policy and drive criminal law policy in their respective jurisdictions, also plays an important role in the relationship between the competent French authorities and Eurojust, even if this relationship is essentially based on direct contacts. In particular, it is responsible for relaying information to Eurojust or instructing others to do so.

The fact remains that this transmission of information currently varies significantly from one court to another, and could seemingly be improved in some jurisdictions, particularly by increasing the effort to raise their awareness of the full potential offered by Eurojust.

The tasks provided for in Article 6 of the Decision setting up Eurojust are carried out on an informal basis, since no request has been received by the French desk. Action by the College within the framework of Article 7 has only been requested once (the sinking of the Prestige oil tanker).

The presence of French liaison magistrates responsible for bilateral judicial cooperation with seven countries of the European Union (DE, ES, IT, MT, NL, RO and UK), who are all EJM contact points, means that use of the other European Judicial Network contact points in these countries has a complementary nature.

The French National School for the Judiciary, where all judges and prosecutors in France are trained, provides training in international cooperation in criminal matters, including new developments relating to Eurojust.

Eurojust and the EJM are perceived in France to provide substantial added value to international judicial cooperation in criminal matters, due to their flexibility and fast response.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997¹, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

In accordance with Article 2 of the Joint Action, the Working Party on General Matters including Evaluation (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should focus on 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 crime², as amended by Decisions 2003/659/JHA³ and 2009/426/JHA⁴ and by Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁵, repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters⁶.

The evaluation aims to be broad and interdisciplinary and focuses not only on Eurojust and the European Judicial Network (EJN) but also on the operational aspects in the Member States. This approach is intended to encompass, for example, in addition to cooperation with prosecution services, the way in which police authorities cooperate with Eurojust national members, how the national units of Europol cooperate with the Eurojust National Coordination System and how feedback from Eurojust is sent to the relevant police and customs authorities. The evaluation focuses on the operational implementation of all the rules on Eurojust and the EJN. Thus the evaluation also covers operational practices in the Member States in relation to the first Eurojust

¹ Joint Action 97/827/JHA of 5 December 1997, OJ L 344, 15.12.1997, pp. 7-9.

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

³ 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, pp. 44-46.

⁴ 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.

⁵ 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, pp. 4-7.

⁶ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, pp. 130-134.

Decision, which entered into force in 2002. Experiences from all evaluations show that the implementation of the relevant legal instruments is at different stages in the Member States. The current process of evaluation could also provide useful input to Member States that may not have implemented all aspects of the new Decision.

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

The order of visits to the Member States was adopted by GENVAL on 31 October 2011. France is the 10th Member State to be evaluated during this round of evaluations.

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

The evaluation teams are made up of three national experts, assisted by two officials from the General Secretariat of the Council and observers. For the sixth round of mutual evaluations, GENVAL agreed with the Presidency proposal that the European Commission, Eurojust and Europol should be invited as observers.

The experts responsible for carrying out this evaluation were Mr Thomas Lamiroy (Belgium), Mr Jakub Pastuszek (Czech Republic) and Mr Ilias Kanellopoulos (Greece). Four observers were also present: Ms Vera Alexandrova (DG Justice, European Commission), Ms Catherine Deboyser and Mr Joao Miguel (Eurojust), together with Mr Hans G. Nilsson and Ms Maria Mavridaki from the General Secretariat of the Council. No observers from Europol took part in the visit to France.

This report was drawn up by the team of experts with support from the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in France between 21 and 25 January 2013, and on France's detailed replies to the evaluation questionnaire together with its detailed replies to the follow-up questions.

3. GENERAL MATTERS AND STRUCTURES

3.1. General information

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

The measures necessary for the adaptation of French law to Decision 2002/187/JHA were introduced by Article 17 of Law 2004-204 of 9 March 2004 adapting the judicial system to developments in crime, which completely rewrote Title X of the Code of Criminal Procedure (CCP). This Article, which focuses on international mutual legal assistance, introduces a new Chapter II on "Provisions relating to judicial assistance between France and the other Member States of the European Union" and in particular Section III, dealing with the "Eurojust Unit" (Articles 695-4 to 695-7 of the CCP) and Section IV, on the "National Eurojust Representatives" (Articles 695-8 and 695-9 of the CCP). These provisions are presented below:

Section III: The Eurojust Unit

Article 695-4

In accordance with the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, the Eurojust Unit, as the instrument of the European Union endowed with legal personality acting either collectively as a College or through the intermediary of a national representative, is responsible for promoting and improving coordination and cooperation between the competent authorities of the Member States of the European Union in all investigations and prosecutions which come under its jurisdiction.

Article 695-5

The Eurojust Unit, acting through the intermediary of its national representatives or collectively as a College, may:

- 1° inform the prosecutor-general of any offences of which it has knowledge and request him to carry out an investigation or initiate a prosecution;
- 2° ask the prosecutor-general to report offences, or to have them reported, to the competent authorities of another Member State of the European Union;
- 3° ask the prosecutor-general to oversee the creation of a joint investigation team;

4° ask the prosecutor-general or the investigating judge to send it any information resulting from judicial proceedings which is necessary for the fulfilment of its tasks.

Article 695-6

Where the prosecutor-general or the investigating judge seised does not execute a request from the Eurojust Unit, he informs them as quickly as possible of the decision taken and his reasons.

However, the giving of reasons is not required for the requests mentioned in 1, 2 and 4 of Article 695-5 where this might threaten national security or compromise the smooth progress of an investigation underway or the safety of a person.

Article 695-7

Where a request for judicial assistance requires the intervention of the Eurojust organisation in order to secure a coordinated approach, Eurojust may transmit its assistance to the requested authorities through the intermediary of the national representative concerned.

Section IV: National Eurojust Representatives

Article 695-8

The national representative is a judge or prosecutor detached from the hierarchical structure who is put at the disposal of the Eurojust organisation for a period of three years by a decree from the Minister of Justice.

The Minister of Justice may give him instructions under the conditions set out in Article 30.

Article 695-9

In the context of his duties, a national representative has access to information in the national criminal records and the judicial police files.

He may also ask the competent judicial authorities to send him any information resulting from judicial proceedings which is necessary for him to carry out his task. The judicial authority approached may, however, refuse to disclose this information if this is liable to threaten the public order or the fundamental interests of the nation. It may also postpone communicating this information for reasons relating to the smooth progress of an ongoing investigation or the safety of persons.

He is also competent to receive and send to the prosecutor-general any information relating to inquiries by the European Antifraud Office.

These new provisions were explained to all the judges and prosecutors in circular CRIM-05-14/G5-31-05-2005, drawn up by the Directorate for Criminal Matters and Pardons and signed by the Keeper of the Seals, Ministry of Justice.

Following a general presentation of the Eurojust Unit and its competences, the circular considers the practicalities of its use by the courts. The annexes attached to the circular include the contact details for the French desk, the standard forms, and developments relating to Eurojust's place within the construction of the European judicial area and its internal operation.

In France, a prominent role has been accorded to the prosecutor-general, who has been designated as the competent authority for the exchange of information with Eurojust. Moreover, legislation also accords not just the prosecutor, but also the investigating judge the right to directly request assistance from Eurojust.

In fact, in the French judicial system, any criminal investigations with a certain level of complexity or those dealing with the most serious offences in the category of "crimes", are conducted by a judge rather than by a public prosecutor. This system, familiar to some other Member States with a continental legal system, means that the examining magistrate is a real player in the investigation rather than merely an arbitrator, subject to certain guarantees of impartiality (in particular, the examining magistrate is not permitted to intervene in the judgement of cases).

In view of the nature of the cases submitted to Eurojust, France is thus distinct in that it more often calls upon Eurojust through the intermediary of judges than through public prosecutors.

The forms for contact between the courts and Eurojust, which were distributed with the circular sent out with the transposition, are little known and used in practice, since informal and direct contact methods have rapidly developed in the everyday work of the judges and prosecutors and the French desk.

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

France has not yet adopted the law transposing the new Eurojust Decision. However, it is clear from the replies to the questionnaire and the explanation given during the evaluation visit that transposition into French national legislation is at a very advanced stage. The appropriate adjustments to the Code of Criminal Procedure, together with other adjustments of French legislation to various international and European undertakings entered into, were the subject of a draft law adopted on 11 January 2012 by the Council of Ministers and subsequently tabled in the Senate, shortly before the end of the 2011-2012 parliamentary session. The text was brought before the Council of State at the end of 2011 but the process could not be brought to a conclusion due to the end of the parliamentary session.

A new draft law including these provisions was presented to the Council of Ministers on 20 February 2013 and is currently being examined by the National Assembly. It is expected that the transposition process will be completed during the summer of 2013.

The French authorities stated that conferral on the national member of the rights provided for in Article 9d of the new Decision conflicted with fundamental aspects of the French criminal justice system, which did not allow the national member of Eurojust to be integrated into the national courts and judicial hierarchy. The draft law thus makes use of the possibilities of derogation provided for in Article 9e(1)(b)(i) and (ii) of the new Decision in order to avoid implementing Article 9d. Therefore Article 695-8-5, II of the Code of Criminal Procedure in its amended form in the draft law provides that the French national member should submit to the prosecutor-general or public prosecutor any requests relating to the acts referred to in Article 9d of the new Decision.

New Article 695-8-5, I, paragraph 2, of the draft Code of Criminal Procedure, implementing Article 9c of the Decision, provides that a request from or authorisation by the competent judicial authority must be in written form and may only relate to one or more specific acts. The requirement for written authorisation, although not provided for in the Decision, does not appear to be contrary to the spirit of the Decision since it is in accordance with French judicial tradition whereby criminal procedure is in written form, and it provides a fundamental piece of evidence to prevent any possibility of contesting the validity of the action taken by the national member.

On the other hand, there is no explicit legislative provision for the implementation of Article 12 of the Decision establishing the Eurojust National Coordination System (ENCS), which has not been set up. The evaluation team was informed that the shape to be taken by the ENCS would be defined and explained by means of a circular.

The most substantive adjustments made by the draft law, subject to possible amendments in the course of the ongoing legislative procedure, are as follows:

- the extension of the term of office of the national representative (now referred to as "national member") at Eurojust from three to four years;
- more freedom of action for Eurojust, to enable it to coordinate the execution of requests for mutual legal assistance submitted by or destined for a third country (Article 695-4, paragraph 2 of the Code of Criminal Procedure);
- the possibility of reporting to the Eurojust College any recurrent difficulties or refusals concerning the execution of requests for mutual assistance (Article 695-5-1, second paragraph);
- the establishment of a written procedure of recommendation from Eurojust to the national judicial authorities, requiring a reasoned reply in the event of a refusal, concerning the initiation of prosecution proceedings, investigative measures or the settling of conflicts of jurisdiction (Articles 695-5-1 and 695-6) ;
- the necessary measures to ensure that Eurojust can access, under the same conditions as those that apply to the judicial authorities, the information contained in the judicial registers (national criminal records, register of prisoners, automated national sex offender register), judicial police files or any other record containing information which is necessary for it to carry out its duties (Article 695-8-1);
- a more precise description of the situations in which the judicial authorities are obliged to inform Eurojust (Article 695-8-2);

- the extension of Eurojust's role in the exchange of European arrest warrants or any other decisions issued under an instrument implementing the principle of mutual recognition (new Article 695-7);

- new powers enabling the national member to request the execution of additional measures, requests for mutual assistance, the transmission of European arrest warrants, or any other decision of mutual recognition, (Article 695-8-5).

It should also be noted that the regulatory framework of Decision 2009/426/JHA has been implemented by Decree 2012-680 of 7 May 2012 relating to the automated national registry of judicial procedures, called "Cassiopée". This Decree amended Article R-15-33-66-8 of the Code of Criminal Procedure in order to allow the Eurojust national member access to this data.

On 2 August 2011, the Directorate for Criminal Matters and Pardons distributed a circular introducing a systematic obligation to inform Eurojust, and instructing prosecutors to implement, under existing law, the obligation to inform Eurojust as provided for in Article 13(6) of the consolidated Eurojust Decision. In fact, existing French legislation provides a sufficient legal basis for the prosecution to apply Article 13(6), pending the transposition of the Eurojust Decision.

The evaluation visit showed that the French judicial authorities are in fact aware of the existence and content of this circular. On the other hand, none of the interviewed practitioners were aware of the existence of the standard form drawn up by Eurojust in order to ensure the uniform, structured and secure application of Article 13 of the Eurojust Decision, and the circular does not provide any information concerning the standard form.

This is because the Directorate for Criminal Matters and Pardons decided not to distribute this form before the completion of the transposition process, since it deals with some categories of data that are irrelevant until transposition is completed.

This form is expected to be distributed together with the transposition circular, in order to ensure a structured transmission of the relevant information in accordance with Article 13.

3.1.3. Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network and Council Decision 2008/976/JHA, adopted on 16 December 2008 and repealing the Joint Action.

No new legislation was necessary to implement Joint Action 98/428/JHA of 29 June 1998 and Council Decision 2008/976/JHA. However, a circular was distributed on 20 July 1999¹ to explain the implementation of the Joint Action.

3.2. Implementation of the Eurojust national coordination system

3.2.1. Current situation

The ENCS is not currently operational in France. The Ministry of Justice is still considering what shape it should take and what responsibilities it should have, bearing in mind that since 2002 the relationship between Eurojust and the French national authorities has been built on the basis of direct interaction, in particular with examining magistrates as independent judicial authorities. The Eurojust national correspondents, who are in charge of setting up and organising the ENCS, are the Director of Criminal Matters and Pardons, as the supervisory authority, and the head of the Office for International Mutual Assistance in Criminal Matters (BEPI), which is part of that directorate.

France's *fiche suédoise* is therefore based on a projection drawn up in 2010, which does not predict the exact shape of the French ENCS, as this will only be known when the discussions have been concluded.

¹ <http://www.justice.gouv.fr/bulletin-officiel/cab75.htm> (document « 10_Circulaire_RJE.pdf) [FR only]

3.2.2. National correspondents

The decision of 28 February 2002 allows each Member State to appoint national correspondents. However, such appointments in no way obstruct the use of direct contact between the national representation and the competent judicial authorities.

In France, the Director of Criminal Matters and Pardons, as the supervisory authority, is a Eurojust national correspondent. Accordingly he receives most of the requests from the national desk. The head of this Directorate's Office for International Mutual Assistance in Criminal Matters (BEPI), who is also a national correspondent, is the main institutional contact for Eurojust, together with the head of the Office for Combating Organised Crime, Terrorism and Money Laundering (BULCO).

At Eurojust's request, the head of the BEPI can therefore provide any statistics or general data on mutual assistance involving certain countries or in certain specific areas.

He/she also keeps Eurojust informed about the specific files for which he/she is competent, particularly in the context of his/her work to improve coordination and cooperation between competent authorities relating to mutual assistance.

3.2.3. Functioning of the ENCS and connection to the Case Management System

The ENCS is currently being set up within the French system. For the moment connection to the Case Management System is not possible, due to technical reasons.

3.3. National desk at Eurojust

3.3.1. Organisation

During the evaluation visit the national desk appeared to be very active, competent and efficient. It seems to maintain good quality direct contacts with the French judicial authorities. This analysis is supported by the fact that the French desk is by far the most active in terms of organising coordination meetings and "coordination centres". All members of the French Eurojust desk have excellent knowledge of international judicial cooperation mechanisms, expertise in the field and working relationships with numerous magistrates in France and elsewhere.

The French national desk is made up of four magistrates, Sylvie Petit-Leclair, national member since 1 August 2011, her deputy Olivier Bray, two assistants, Vincent Jamin and Nicolas Chareyre, and two secretaries, Nathalie Lerch and Carine Torre. Given the French national desk's volume of activity, its composition exceeds the minimum required by Article 2 of the decision since it includes two assistant posts in addition to the national member and deputy.

3.3.2. Selection and appointment

The French authorities told us that vacancy notices for posts at the national desk were circulated to all judges through the Ministry of Justice's intranet and by email through the hierarchy. Job descriptions are written and approved by the incumbent French national member.

The vacancy notices are circulated by the Judicial Services Directorate (DSJ), which also receives the applications and makes formal comments on them in a note sent to the minister's cabinet. The cabinet then responds with the name of the appointed judge, when the vacancy is for the French national member, or the name(s) to be submitted to the latter when a deputy or assistant is being recruited.

Article 695-8 of the Code of Criminal Procedure (CCP) establishes that the French national member at Eurojust is to be a judge or prosecutor "detached from the hierarchical structure"¹, put at the disposal of Eurojust for 3 years. The selection criteria for the national member are not specified by law. The vacancy notice published in 2011 by the Ministry of Justice states only that the post would be suitable for a "*very experienced*" judge or prosecutor "*specialising in criminal law*" who is detached from the hierarchical structure. As for the vacancy notices published for the posts of deputy (in 2010 and 2012) and assistant (in 2010), these required a minimum of 12 and 7 years respectively of professional experience, practical experience of carrying out criminal law policy, investigations and prosecutions, good knowledge of the specific aspects of international legal assistance, and language skills, particularly in English.

The French national member determines the responsibilities given to the magistrates recruited as his/her deputies and assistants. Like those of the national member, the deputy's and assistants' work is split between operational tasks and more horizontal duties.

It should be noted that the French national desk operates like a public prosecutor's office, meaning that the deputy and the assistants can be called upon to stand in for the national member in the performance of his/her duties.

Moreover, as far as operational duties are concerned, the four members of the French desk divide cases between them according to objective geographical criteria based on the French courts concerned (see below).

In terms of their status, the French judges at Eurojust are put at the disposal of the latter, i.e. they remain part of the judiciary and are still paid by the Ministry of Justice.

¹ The French judiciary has two grades, as well as posts detached from the hierarchical structure. These grades determine which positions an individual can occupy in the courts. To be promoted from the second to the first grade an individual must be included on a promotion register drawn up by an independent committee. This requires seven years of professional practice, of which at least five years as a judge or prosecutor at a court or in the central administration of the Ministry of Justice. Individuals can be moved to posts detached from the hierarchical structure at the discretion of the appointing authority, the President of the Republic, with the assent of the Higher Judicial Council for judges. Twenty years of professional experience are required before such a move.

3.3.3. *Powers granted to the national member*

General powers

The French national member's powers are currently listed in Articles 695-5, 695-7 and 695-9 of the CCP.

The national member may:

- ask the competent judicial authorities to provide him with information arising from judicial proceedings which is necessary in order for him/her to fulfil his/her duties;
- ask the prosecutor-general to carry out an inquiry or initiate a prosecution;
- ask the prosecutor-general to report offences, or to have them reported, to the competent authorities of another Member State of the European Union;
- ask the prosecutor-general to oversee the creation of a joint investigation team.

The current draft of the transposing law does not involve granting the national member any more powers than those required by the new Eurojust decision.

Unlike other national members, the French national member does not continue to carry out his/her duties within the national public prosecutor's office. Therefore he/she can only act through recommendations and not as a French public prosecutor. In fact, most inquiries referred to Eurojust by French judges or prosecutors are referred by examining magistrates, i.e. at a stage at which a member of the public prosecutor's office would not yet be in a position to intervene directly in the case.

The members of the French desk are regularly in direct contact, in a close and informal way, with judges and prosecutors at the specialised inter-regional courts (JIRS) and at the Paris public prosecutor's office. This is particularly true in terrorist cases, even those not referred to Eurojust, where the aim is to make the national member alert to any useful information - relating to the ongoing cases - which may reach him/her through Eurojust.

The French Eurojust desk is very active. In 2012 it opened 110 cases, an all-time record, out of a total of 1533 cases opened by all desks. Of these cases, 67 are multilateral, whilst the average number of multilateral cases for Eurojust as a whole was 11.4 in 2012. The French desk was the requesting desk in 110 cases, and received requests relating to 149 cases. In 2012 the French desk alone organised 53 coordination meetings out of a total of 188 such meetings (the average being 7 meetings per desk).

Logically, most cases handled by the French Eurojust desk relate to JIRS located in border regions. The high level of activity is undoubtedly due in part to the size of France and its geographical location in Europe and on various trafficking routes, but it is also the result of the French desk members' dynamism and close relationship with judges and prosecutors on the ground.

Cases are divided between members of the desk not on the basis of content (types of crime) but rather according to geographical territory, since the human element and personal contacts between members of the French Eurojust desk and judges in charge of cases at the JIRS are considered crucial elements in building mutual trust, which in turn encourages judges to call on Eurojust. This division of labour also allows each member of the desk to make best use of his/her expertise and personal contacts at the various courts, developed earlier in their careers. This approach seems to yield excellent results.

Access to national databases

Like all their colleagues in the judiciary, French judges in Eurojust posts have access to the Ministry of Justice intranet. More specifically, they can access the "Web B1" interface, allowing them to consult "No. 1 Schedules" (*Bulletins n°1*) directly. These schedules are the most comprehensive form of extracts from the judicial record¹, meaning that the judges at Eurojust have direct access to data held by the National Criminal Records Office.

¹ A No. 1 Schedule of the criminal record is only issued to the judicial authorities when required in judicial proceedings.
No. 2 and No. 3 Schedules are addressed to public authorities and individuals respectively. Certain information is removed from these schedules.

They also have direct access to the national violent and sex offender register (*fichier judiciaire national des auteurs d'infractions sexuelles ou violentes*, FIJAIS). This database is intended to prevent repeat offences which are sexual or violent in nature (violations of Article 706-47 of the CCP), and to make it easier to identify those who commit them. The FIJAIS allows the judicial authorities to consult files and to input or update information on:

- criminal convictions
- discharges or deferments of sentences
- decisions relating to youth delinquency
- penal settlements
- decisions to declare absence of criminal responsibility due to a mental disorder
- probation

The judges on the French desk also have direct access to the following databases:

- The national register of prisoners (*Fichier National des Détenus*, FND), an application allowing them to determine whether or not a given person is or has been in detention, locate the relevant penal institution, consult information on the type of detention (provisional detention pending trial or execution of sentence), and also find details of the conditions of the individual's release (in particular his/her address).
- The Schengen Information System (SIS)
- The French case management system, CASSIOPEE (*Chaîne Applicative Supportant le Système d'Information Orienté Procédure pénale et Enfants*), implemented in courts of first instance. The system is used to record information relating to complaints and accusations received by judges during judicial proceedings, in order to speed up proceedings and ensure that victims are kept informed. Cassiopée will also be rolled out to appeal courts by 2015. The system is currently connected to APPI, the sentence application software, the national criminal records office and the gendarmerie. In the future it will also be connected to EPOC.

Members of the French desk also have indirect access - by submitting a query to the Europol liaison office via SIENA - to the past records kept by the French national police (*Système de Traitement des Infractions Constatées*, STIC) and the national gendarmerie (*système Judiciaire de Documentation et d'Exploitation*, JUDEX).

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

The four judges on the French national desk have access to the CMS. They register cases in the system themselves.

The secretariat also has access to the CMS.

For the moment, no French authority has access to the national part of the case management system because the Eurojust CMS is not yet accessible to the French national authorities due to technical reasons.

3.4. **EJN contact points**

3.4.1. *Selection and appointment*

In France, the decision was made to have a wide network of regional EJN contact points, who regularly share information through the contact points discussion list. The French contact points for the European Judicial Network are split into three levels:

- central administration: the Director of Criminal Matters and Pardons, the head of the European and International Affairs Department (SAEI), the head of the Office for International Mutual Assistance in Criminal Matters (BEPI), his/her deputy and a drafter from the BEPI.

- courts: there is a regional EJN contact point for each public prosecutor's office at the appeal courts (36 contact points in total) and for several of the JIRS (of which there are 8).

· internationally: all French liaison magistrates in posts in a Member State of the European Union are French contact points for the EJM.

The Director of Criminal Matters and Pardons, the head of the SAEI, the head of the BEPI (Office for International Mutual Assistance in Criminal Matters at the Directorate of Criminal Matters and Pardons) and the liaison magistrates are automatically appointed as contact points by virtue of their positions.

The regional contact points within the public prosecutor's offices and JIRS are appointed by the prosecutor-general responsible for the region in question. There is no legislative or regulatory text which establishes criteria for choosing these contact points. The appointment is therefore at the discretion of the prosecutors-general in the context of the organisation of their services.

However, it must be noted that in practice the prosecutors-general take into account the criteria listed in Article 2(5) of Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. Therefore the prosecutors usually appointed as contact points are those who are generally responsible for overseeing international judicial cooperation in criminal matters within their jurisdiction. Language skills are also taken into account as much as possible: 19 of the 36 regional contact points have indicated that they can be contacted in a language other than French.

The BEPI acts as a central authority. This office is in charge of implementing decisions relating to the EJM and running the French branch of the network. One or two regional contact points generally accompany the national correspondent at plenary meetings organised by the rotating presidencies of the European Union, with the aim of maximising personal contact with contact points in other Member States.

.

3.4.2. *Practical operation of the EJM contact points in France*

National correspondents

In France the national correspondents are responsible for the internal operation of the EJM and relations with the EJM secretariat.

With regard to the first aspect of their work, the internal operation of the EJM, the national correspondents are in charge of running the French part of the network. This involves the following tasks:

- regularly updating the list of French EJM contact points;
- contributing to the discussion list used by the French EJM contact points by circulating relevant information on legal matters (legislative reforms and case law relating to judicial cooperation in criminal matters), or practical issues;
- responding to queries from French contact points or those of other countries on legal or practical matters; and
- organising national meetings of the French regional contact points: the last such meeting took place on 24 March 2011 and aimed in particular at making the regional contact points more aware of developments relating to the European arrest warrant and the cross-border enforcement of financial penalties.

Regarding the second part of their work, relations with the EJM secretariat, the national correspondents:

- participate in various meetings organised by the EJM: plenary meetings, national correspondents' meetings (NCMs), regular meetings, tool correspondents' meetings (TCMs);
- centralise and forward the regional contact points' replies to the questionnaires circulated by the EJM secretariat;
- centralise and send to the EJM secretariat statistics on the regional contact points' activities, to be used in the EJM biennial report.

Regional EJM contact points

In addition to their participation in running the French part of the network by contributing to the discussion list, the regional contact points are in charge of responding to requests from magistrates at courts for which they are competent and from contact points of other Member States, in order to provide them with judicial and practical support in implementing tools for mutual legal assistance and recognition. Naturally, when judges, particularly examining magistrates, wish to make use of the European Judicial Network, their first port of call will be the regional contact point at their appeal court.

The regional contact points are also the main contact for the central French authority (the Office for International Mutual Assistance in Criminal Matters) within the various public prosecutor's offices. In this capacity they are regularly consulted on the execution within the jurisdiction of their appeal court of a request for mutual assistance, extradition request or European arrest warrant from another Member State of the European Union.

Liaison magistrates

In France bilateral judicial cooperation in criminal matters is largely entrusted to liaison magistrates. There are six such magistrates, covering seven countries of the European Union: Germany, Spain, Italy and Malta, the Netherlands, Romania and the United Kingdom. They are all French contact points of the European Judicial Network. This diminishes the role of the other EJM contact points for the countries in which these French magistrates perform their duties. It remains an important role according to those involved, and there does not seem to be any duplication in the work of the two groups. The liaison magistrates are experts in bilateral relations and their role goes far beyond what can be strictly defined as mutual legal assistance in criminal matters. According to the French authorities, the liaison magistrates are a great asset in achieving cooperation. They relieve the French Eurojust desk of any work relating to bilateral cooperation with the countries concerned, allowing it to concentrate on its own specific duties.

The regional contact points are also consulted on the replies to questionnaires circulated by the EJM secretariat.

A meeting of the regional and overseas contact points is organised every two years (most recently in 2009 and 2011). This gives the contact points the opportunity to get to know each other, but also to share experiences and receive training, for example on the new judicial cooperation tools.

Cross-border inter-regional meetings of contact points, funded by Eurojust, have proven to be very useful. As part of this initiative a seminar was organised in June 2012 for the authorities in Kent (United Kingdom) and Douai on the topic of migration around the Channel Tunnel.

Finally, the regional contact points are involved in the meetings organised by the EJM secretariat. One or two regional contact points usually accompany a national correspondent to the plenary meetings organised by the rotating presidency of the European Union.

3.4.3. Updating of the EJM website

The tasks of managing and updating the country information (list of contact points, "Belgian fiche") on the EJM website have been assigned to the French tool correspondent for the network.

In order to regularly update the list of regional contact points, the tool correspondent asks the prosecutors-general at appeal courts twice a year, in February and October (dates corresponding to movements within the French judiciary), if there have been any changes. Using the responses received, the tool correspondent updates the list of contact points, which can be consulted on the EJM website and on the BEPI intranet.

However, interviews and information provided by the French tool correspondent have revealed that the tool correspondent alone cannot update the Atlas website as the information relating to contact points is not always updated correctly.

Similarly, other practitioners have indicated that not everyone knows about the website and it is not considered to be reliable.

3.5. Conclusions

General conclusions

- France has not yet implemented Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime and, in view of the preparatory work which has already been completed, the experts particularly recommend that the implementation process should continue on the current track.
- The legal framework for full implementation of the new Eurojust decision remains subject to the adoption of specific legislation for this purpose. During the visit, the team of experts examined the draft transposing legislation which has been submitted to Parliament. Its adoption is expected in summer 2013.
- For the moment, the provisions of Law 2004-204 transposing the 2002 Eurojust decision remain applicable, whilst the European Judicial Network (EJN) structures in France were established through circulars (CRIM - 05 - 14/ G5 - 31-05-2005).
- In this context, the prosecutor-general has an important role, being appointed as the competent authority for automatically exchanging information with Eurojust. Moreover, the law also grants the examining magistrate the power to submit requests to Eurojust directly. In fact it is mainly examining magistrates who call upon the French desk, given the particularities of French criminal proceedings.

- The team of experts observed good collaboration between representatives of the judicial system (Ministry of Justice, public prosecutor's offices, examining magistrates, police departments), particularly in preparing to implement the 2009 Eurojust decision. As far as the future law transposing this decision is concerned, the experts noted a consensus on the main changes to be made which would then have an impact on the status and powers of the Eurojust national desk.
- One major aspect of the reform will involve broadening the powers of the French Eurojust national member. However, enlargement is subject to constitutional limitations. In view of this, the experts considered it necessary to ensure that the substantive scope of these powers remains broad enough to cover all cases which could fall under the competence of Eurojust.
- On 2 August 2011, the Directorate of Criminal Matters and Pardons issued a circular allowing a systematic obligation to inform Eurojust to be established, and inviting prosecutors to implement, without a change to the law, the obligation to inform Eurojust as established in Article 13(6) of the consolidated Eurojust decision. The circular does not therefore relate to Article 13(5) and (7).
- The offices in charge of implementing Eurojust and EJM decisions within the central administration at the Ministry of Justice (BEPI, BULCO, BEFI) ensure effective coordination at national level. They have an operational role to play, particularly in monitoring criminal proceedings: their task is facilitate mutual legal assistance in criminal matters by assisting French and foreign colleagues faced with legal or practical difficulties.

Implementation of the Eurojust National Coordination System (ENCS)

- The ENCS is not currently operational in France. The Eurojust national correspondents, who are in charge of setting up and organising the ENCS, are the Director of Criminal Matters and Pardons, as the supervisory authority, and the head of the Office for International Mutual Assistance in Criminal Matters (BEPI), which is part of that directorate.

- The ENCS has not been implemented, either in official texts (laws or circulars) or in practice. However, the current discussions seem to suggest that the ENCS will probably be located within the Directorate of Criminal Matters and Pardons, and made up of members of the BULCO, BEPI and BEFI offices. However, the establishment of a national coordination system in France in which judges with an independent status are in charge of certain criminal investigations raises questions which require detailed consideration. We wonder whether it would be wise to also appoint a contact point within each JIRS. It could be good practice to also link the Europol and OLAF contact points within the ENCS.
- A revised version of the circular should formalise the implementation and method of operation of the ENCS, as well as providing instructions for magistrates on how to use it, as no legislative transposition measures are required for its implementation.

National desk

- During the evaluation visit the national desk appeared to be very dynamic and active. It seems to maintain good quality direct contact with the competent French judicial authorities.
- French practice in recruiting and appointing the Eurojust national member or deputy shows the high level of competence which is required from potential candidates. Great importance is attached to the amount of experience any candidate must have in order to be considered for one of these posts. The experts thought that this "good practice" should be recommended to other Member States.
- However, the selection criteria for the members are not specified by law. On the other hand, the vacancy notices published for the posts of deputy (in 2010 and 2012) and assistant (in 2010), described a candidate profile requiring a minimum of 12 and 7 years respectively of professional experience, practical experience of carrying out criminal law policy, investigations and prosecutions, good knowledge of the specific aspects of international legal assistance, and language skills, particularly in English.

- The members of the French desk are regularly in direct contact, in a close and informal way, with judges and prosecutors at the JIRS (good examples being the JIRS in Lille and Marseilles) and at the Paris public prosecutor's office.
- The desk has access to all data accessible to national magistrates, in particular Cassiopée, the criminal justice chain application containing all sensitive personal data relating to ongoing and archived judicial proceedings, as well as information relating to criminal records.

EJN

- With regard to the European Judicial Network, no new legislation was necessary to implement Joint Action 98/428/JHA of 29 June 1998 and Council Decision 2008/976/JHA. A circular was issued on 20 July 1999 to explain the implementation of Council Decision 2008/976/JHA.
- France has appointed 48 contact points. 33 of these can speak a foreign language, whilst the other 15 do not meet this criterion for appointment as a contact point. Most contact points are attached to an appeal court (in order to ensure coverage of the court's whole jurisdiction).
- The French EJN contact points are split into three levels (central administration, 36 regional and JIRS contact points, and the international level (liaison magistrates)).
- In France, the decision was made to have a wide network of regional EJN contact points, who regularly share information on legal issues through the contact points discussion list. This discussion forum allows the central authority to send out information, and questions and answers on various subjects to be exchanged. It has been suggested that the EJN discussion list could be linked to the very productive JIRS forum. This could also be good practice for other Member States.
- In French practice it seems that the EJN network is used only in EU countries in which there is no active accredited liaison magistrate.

- In France bilateral judicial cooperation in criminal matters is largely entrusted to liaison magistrates who are all French EJM contact points. There are six such magistrates in the EU, covering seven Member States: Germany, Spain, Italy and Malta, the Netherlands, Romania and the United Kingdom, which may diminish the role of the EJM contact points.
- The guide to international mutual legal assistance in criminal matters, put together by the BEPI and made available to all magistrates via the intranet, provides clear information on the role of the contact points and instructions for using the EJM. It also includes a link to the EJM's own website (the BEPI internet also has a link to this site).
- One or two regional contact points generally accompany the national correspondent at plenary meetings organised at the rotating presidencies of the European Union, with the aim of maximising personal contact with contact points in other Member States.
- The French tool correspondent alone cannot update the French section in the Atlas website, and is sorry to report that the information relating to contact points there is not up-to-date.

4. EXCHANGE OF INFORMATION

As the implementation of the new Eurojust decision had not been completed in France at the time of the evaluation, the details relating to the exchange of information referred to in Article 13 were supplied on the basis of the draft law still under preparation.

4.1. Information forwarded by the judicial and law enforcement authorities to Eurojust

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

In France, CASSIOPEE is intended to be the primary database for the exchange of information with Eurojust. That is the database from which the data transmitted pursuant to Article 13 of the consolidated Eurojust decision will be taken in the long term.

The files of the criminal investigation police, STIC (criminal offences processing system) and JUDEX (judicial documentation and processing system), as well as all the databases referred to above, are likely to prove useful during coordination meetings. In this context, Article 695-9 of the CCP states that the national representative has access "to information in the national criminal records and the judicial police files". The French Eurojust national desk has access to all the data accessible to national magistrates.

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

Bearing in mind the fact that the decision strengthening Eurojust is still in the process of being transposed, the provisions of Article 13 are not yet applicable in France.

As pointed out above, only Article 13(6) has been able to give rise in advance to the distribution of a circular, taking into account the pre-existing compatibility of the provisions of the Code of Criminal Procedure. *Article 695-9, subparagraph 3, is worded as follows: "The national representative is informed by the prosecutor-general of any cases liable to come under the remit of Eurojust and which concern at least two other member states of the European Union."* The circular underlines the

fact that when these conditions are cumulatively met, the Prosecutor-General has "circumscribed powers", i.e. he is under obligation to inform the national representative. It states that it is then up to the Prosecutor-General to ensure that any case likely to meet the criteria above may be identified and brought in real time to the knowledge of the national Eurojust representation to enable the Unit to intervene effectively on the operational field.

On 2 August 2011, the Directorate for Criminal Matters and Pardons (DACG) distributed that circular which generalised the obligation to inform Eurojust, and invited prosecutors to implement, on the basis of established law, the obligation to inform Eurojust as set out in the provisions of Article 13(6) of the consolidated Eurojust decision. The French national desk reported that the circular has in fact given rise to transmissions of information.

The obligation to transmit information is incumbent on the Prosecutor-General, and this transmission is effected directly, without any intermediary, to the French national desk. It should be noted that the circular is binding only on prosecutors, not on judges and, in particular, not on examining magistrates.

However, even when an examining magistrate is sent a case, the prosecution service is kept informed of developments so there is in principle no problem with complying with the obligation to notify. In practice, referral to Eurojust for the purpose of coordination is often requested by an examining magistrate, and this referral makes the "Article 13" notification superfluous. Consequently, although the Code of Criminal Procedure does not make explicit provision therefor, Eurojust may also be informed by an examining magistrate on the occasion of special procedures for which that magistrate requests its assistance, particularly if he would like compliance with international letters rogatory to be coordinated in several Member States of the Union.

In practice, most of the information sent to Eurojust is transmitted through the JIRS (specialised inter-regional courts). In principle, however, the obligation to inform applies to all prosecution authorities, even those outside the JIRS structure. It is apparent from the interviews and the information supplied by the national member that compliance with the obligation to forward information to Eurojust is observed differently by the JIRS and public prosecution offices concerned. In certain prosecution offices, the transmission of information in accordance with the criteria set out in the Eurojust decision is not generalised and occurs on a rather random basis, i.e. without discrimination based on the relevance and the mandatory nature of the transmission.

In this connection, mention should be made of the two following examples of JIRS: that of Rennes, which periodically sends Eurojust a situation report on its cases which may have links to Eurojust and Europe, and that of Lyons, whose public prosecutor's office sends all its reports intended for the DACG to Eurojust, enabling it to carry out various cross-checks between the cases thus reported to it.

Furthermore, and although the 2005 circular provides for the use of contact files, interviews with practitioners in both Paris and in the provinces and at all hierarchical levels have shown that this requirement set out in the French circular of 2005 is not widely known. However, this requirement is essential for the transmission of information to be effective and for Eurojust to be able to make use of it. It therefore seems particularly important to draw the French authorities' attention to the importance of this requirement.

The transposition of the decision strengthening Eurojust will give rise to the distribution of a new circular. In this context, Article 13 of the new decision should be formally implemented by Article 695-8-2 of the Code of Criminal Procedure (currently being drafted).

However, during the evaluation visit, it was found that the exchange of information did not take place systematically, in a structured and secure manner. It should be noted that draft Article 695-8-2 does not stipulate that the information supplied by the competent national authorities to Eurojust must be transmitted in a structured way, as laid down by Article 13(11) of the decision.

It was nevertheless pointed out to the evaluators that provision had been made at the time of the publication of the transposition circular for the standard form drawn up by Eurojust to be circulated with a view to the structured transmission of information pursuant to Article 13 of the Eurojust decision.

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

France has not deemed it necessary to amend its national law to implement this provision.

A memorandum of understanding¹ for the purposes of exchange of information was concluded on 17 June 2009 between the French national member, the Directorate for Criminal Matters and Pardons, the *Parquet général* (prosecution services attached to the Court of Cassation and courts of appeal) in Paris, and the Paris public prosecutor's office (competent with regard to terrorism). This memorandum was confirmed at a meeting between the protagonists held in Paris in March 2012.

It contains the following main points:

1) Regarding the information transmitted at the initiative of the *Parquet général* in Paris

Provision is made, with regard to proceedings concerning France and at least two other Member States of the European Union, for the following information to be transmitted:

¹ See document 15_Protocol Eurojust001.pdf.pdf

- In accordance with Article 2(5) of the decision of 20 September 2005, data which identify the person, group or entity that is the object of a criminal investigation or prosecution; the offence concerned and its specific circumstances; information about final convictions for terrorist offences and the specific circumstances surrounding those offences; links with other relevant cases; requests for judicial assistance, including letters rogatory, addressed to or by France.

- It is stipulated that the same information would be transmitted even if it were to concern only France and just one other State.

The memorandum states that this information must be transmitted at the earliest opportunity so that Eurojust can perform its tasks informally (electronic mail); the Directorate for Criminal Matters and Pardons (Office for Combating Organised Crime, Terrorism and Money Laundering - *BUREAU de la Lutte contre la Criminalité Organisée, le terrorisme et le blanchiment* - BULCO) must receive a copy of the transmission.

2) Regarding the information transmitted at the request of the Eurojust national desk

Essentially, this refers to proceedings relating to international terrorism. Under the terms of the memorandum of understanding, the Eurojust national member forwards his requests as a matter of priority to the *Parquet général* in Paris. The DACG (BULCO) receives a copy of the request. The possibility of exceptionally refusing to disclose information is provided for in the Eurojust decision (Article 695-9, subparagraph 2, of the CCP).

3) Operational exchanges between the public prosecutor's office in Paris and the national member

Apart from the cases referred to in 1) and 2), the memorandum stipulates that the public prosecutor's office in Paris may contact the national member directly for the operational needs of an investigation that is taking place.

4) Information forwarded by the national member

In accordance with the above memorandum, the national member forwards to the *Parquet Général* in Paris any detail brought to its knowledge which relates to the information communicated earlier by the latter and to the results of the coordination efforts made. These transmissions are copied to the DACG (BULCO).

The national member forwards to the DACG (BULCO) the analyses or summaries made by Eurojust on the combat against terrorism.

The national member forwards to the DACG (BULCO) the minutes of the strategic meetings organised by Eurojust which may concern the French judicial authorities.

The national member invites the DACG (Office for International Mutual Assistance in Criminal Matters - BEPI) to the coordination meetings including third States which are likely to receive or send applications for mutual assistances from or to the French judicial authorities.

*4.1.4. Channels for information transfer to Eurojust**4.1.4.1. General*

Given the delay in the legislative transposition of the 2009 decision, only Article 13(6) is starting to be applied "in advance" on the basis of established law.

During their visit to France, the experts regretted the fact that the use of the Eurojust form was not envisaged for the time being. From the assurances given, it should be used in future.

In addition, the Office for Combating Organised Crime, Terrorism and Money Laundering (BULCO), under the Ministry of Justice's Directorate for Criminal Matters and Pardons (DACG) systematically notifies Eurojust of the setting up of a joint investigation team.

The information is forwarded to Eurojust by electronic mail, in a form that is neither structured nor secure.

At the end of the transposition process, consideration may be given to arrangements to notify Eurojust by circulating the standard form, and, in the long term, using the CASSIOPEE application when the technical procedures for doing so are ready.

This prospect may also offer the opportunity to introduce a certain degree of automation into the transmission of information.

4.1.4.2. Exchanges of information on the basis of Article 13, paragraphs 5 to 7, of the Eurojust decision

Because the 2009 Eurojust decision has not been transposed, the French authorities have not been able to indicate the precise nature of the information supplied to the national members in accordance with Article 13, paragraphs 5 to 7, of that decision.

Thus, the only details that may be mentioned refer to the advance application of Article 13(6). The information is transmitted in the form of a report stating:

- the nature and legal description of the facts,
- the identity of the persons involved,
- the procedural framework of the investigation (investigation conducted by the prosecution service or judicial investigation entrusted to an examining magistrate),
- the identity of the magistrates,
- identification of the Member States concerned,
- the designation of the applications for mutual assistance sent, and
- the States on which the case is likely to have repercussions.

Notwithstanding this, with regard to paragraph 6, the majority of the information files open in the JIRS usually meet the criteria laid down in the provision.

The JIRS of Rennes, approached in order to obtain a reply to this question, states moreover that the practice followed by its magistrates is to request in all cases that a file be opened at Eurojust as soon as investigations are anticipated in at least two other Member States or must continue once international letters rogatory are issued.

Furthermore, and as Eurojust may be instructed to follow more specifically certain aspects of the functioning of the criminal procedure within the European area, in accordance with the Framework Decision of 13 June 2002, Eurojust must be informed whenever the implementation of the surrender procedure under the European arrest warrant exceeds the 90-day period. In this context, Article 695-43 of the Code of Criminal Procedure places this obligation in the hands of the Ministry of Justice (Directorate for Criminal Matters and Pardons), which is itself notified by the Parquets Généraux concerned. It is therefore important that any instance of the implementation of a European arrest warrant exceeding the 90-day period should be brought to the knowledge of the DACG so that it can alert the French representative. For the period 2011-2012, France registered 40 cases concerning the execution of a European arrest warrant.

4.2. Feedback by Eurojust

4.2.1. *France's experience with regard to the obligation to provide information pursuant to Article 13a of the 2009 Eurojust Decision*

Following consultation of the JIRS in France, it can be said that, despite some reservations relating to the spontaneous nature of such feedback, the French desk does, on its own initiative, provide accurate, speedy and detailed information on the added value of the data that the JIRS have been able to send it.

It is felt that the information sent by Eurojust allows investigations in information procedures to be speeded up and provides real added value. The JIRS believe that Eurojust's analysts carry out work of a very high quality, within very tight deadlines, mostly at the request of the examining magistrates but also on their own initiative.

This work sometimes results in information being transferred spontaneously or at the close of coordination meetings. However, information transfers are not carried out within either a structured or a secure framework. It should also be pointed out that Eurojust is often required to contact the public prosecutor's services in the JIRS when it has received information from European judicial authorities which may be relevant to ongoing inquiries.

4.2.2. *Qualitative evaluation of the information flows between Eurojust and France*

The surveys have shown that these information flows between Eurojust and the JIRS are considered to be of a high quality and provide guidance for examining magistrates in their investigation strategy.

The magistrates surveyed have stressed that contacts with Eurojust's French desk have been very productive and that the information transmitted by the desk has been of a high quality.

The information flows are speedy, concentrated and informal in nature.

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

No such difficulties were reported by either the French national desk or the JIRS in response to this question.

However, the question of the national authorities re-using the information exchanged via Eurojust was raised. This may occur if the content of informal discussions at coordination meetings finds its way into external procedural documents.

This issue therefore comes under the wider question of using information on Eurojust's activities in national proceedings. This is a highly significant issue for both the national courts and Eurojust, which has set up a working party charged with clarifying the rules on the use of documents and information collected and provided by Eurojust in national judicial proceedings.

4.2.4. Suggestions for improving the exchange of information between France and Eurojust

The French practitioners are generally appreciative of the logistical, operational and financial support and the encouragement provided by Eurojust. The French authorities have said that France will be in a position to ensure that the obligations under Article 13 of the Eurojust Decision are fully implemented once it has completed the transposition of the decision on the strengthening of Eurojust and has issued the relevant circular.

However, a number of magistrates - from courts of various levels and jurisdictions - reported major problems related to the slow speed and quality of translations of procedural documents (international letters rogatory). This is seen as a serious obstacle to the fluidity of information exchanges and to international judicial cooperation in criminal matters in which the time factor is crucial. Eurojust has been asked to explore ways of overcoming this problem.

4.2.5. The EPOC project

France has been associated with the EPOC project since it began in 2002.

The EPOC-NAS software was delivered in mid-May 2011 to enable France to assess its relevance and specific usefulness. However, only virtual machines were made available. They were supplied without the technical documents which would normally accompany software in a commercial configuration; instead, only limited documentation required for testing purposes was provided. The tests initially focused only on the functionalities of the software and not on its compatibility with and integration into national computer systems.

In 2009 the "*tribunal de grande instance de Marseille*" (Marseilles court of first instance) was selected as the site for a pilot project for testing a link with the Directorate for Criminal Matters and Pardons (DACG) using fictitious data. This test was not, therefore, at a level equivalent to the tests carried out in Bulgaria, Italy and the Netherlands, which were aimed at testing not only exchanges of information with Eurojust but also information exchanges between the three countries.

At the meeting organised by Eurojust on this subject in Paris on 19 and 20 January 2012, the French testers were given additional training by SirfinPA, the Italian company that developed the application.

It became apparent on that occasion that the EPOC-NAS architecture involved a server and user stations based on Smart Client, which would entail major installation, upgrade and support costs for users. This architecture did not correspond to the French Ministry of Justice's technical guidelines, which were based on access to applications via a web browser such as Mozilla Firefox. Moreover, since 2001, France has developed a national Case Management System known as "CASSIOPEE" which relies, like all its other customised IT applications, on web-based technology.

France therefore decided to opt for a scenario which would best meet its strategic requirements, namely, Eurojust's Scenario 1, consisting of a direct link-up between CASSIOPEE and Eurojust-CMS, without using EPOC-NAS. Under this scenario, exchanges with Eurojust-CMS are operated by CASSIOPEE via the sending and receiving of XML flows in EPOC format. The information transmitted to Eurojust concerns cases which are flagged for notification to Eurojust. For each case, such transmission involves a standardised subset of the data contained in CASSIOPEE.

Eurojust was informed of this policy approach at the final EPOC-IV conference held in Noordwijk aan Zee (Netherlands) on 29 March 2012.

In August 2012, the Commission rejected a proposal from Eurojust to continue the EPOC programme in the form of a version V. EPOC-related development work is now therefore suspended for the time being due to lack of funding.

Eurojust's future efforts should definitely focus on "implementation projects", i.e. operational projects for sending information from a national system to Eurojust CMS. In the case of France, this would correspond to the choice it has made by selecting Option 1 (sending information from Cassiopée to Eurojust CMS).

In the context of these national implementation projects, it could no doubt be useful for Eurojust to try to set up a light coordination structure which would take over from the former EPOC-IV coordination structure, to ensure optimal implementation of Article 13 of Council Decision 2009/426/JHA.

4.3. Conclusions

- The evaluation revealed a certain degree of scepticism within the French authorities as to the usefulness of full implementation of the information exchange set out in Article 13. The obligation to transmit information to Eurojust in accordance with Article 13, paragraphs 5 to 7, of the Eurojust decision still has to be enshrined in legislation. Only Article 13(6) has given rise in advance to the distribution of a circular "taking into account the pre-existing compatibility of the provisions of the Code of Criminal Procedure". In view of the primacy of European law, it nevertheless seems strange that France cannot already transmit at least some of the information referred to in Article 13(7), insofar as most of this information is held by the DACG.
- The circular of 2 August 2011, which governs the information exchange with Eurojust with regard to Article 13(6) of the Eurojust decision, is only binding on the prosecutor's service. It cannot be binding on judges of the ordinary courts and particularly examining magistrates. However, even if a case is referred to an examining magistrate, the prosecution service, which remains informed of developments in the case, is able to provide the information required: therefore, it would appear that there is no real obstacle as regards the obligation to notify.
- In practice, it is mainly the JIRS which send the information to Eurojust. The JIRS are Eurojust's natural and preferred interlocutors and most requests addressed to Eurojust come from them. They may contact Eurojust directly, which allows for rapid and efficient exchanges.
- The BULCO (*Bureau de lutte contre le crime organisé, le terrorisme et le blanchiment*) is informed of all the direct requests sent from the JIRS to Eurojust. It organises coordination between the JIRS by means of periodic meetings, and between the JIRS and Eurojust.
- The BULCO is involved in drawing up the authorisation that must be issued by the Keeper of the Seals (Minister for Justice) (or, by delegation, by the Director for Criminal Matters and Pardons, his deputy or his assistant directors) before the signing of any agreements setting up a joint investigation team (JIT). It maintains direct and favoured relations with the French Eurojust desk. In its fields of competence, this desk therefore occupies an excellent observation post regarding judicial cooperation in international criminal matters.

- In France, CASSIOPEE is intended to be the fundamental database for the exchange of information between the judicial authorities. With this technical application it is possible to process sensitive personal data relating to court proceedings and to make them accessible to those with responsibility in the courts.
- The form provided for in Article 13 (prepared by Eurojust) for the structured transmission of information to Eurojust is not used. The exchange of information does not take place systematically, in a structured and secure manner.
- With regard to Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, no difficulty with transmitting information to Eurojust was reported.
- The JIRS stated that their assessment of feedback from the French desk at Eurojust – although the information was not structured or secure - was positive in terms of speed, accuracy and added value.
- In general, Eurojust provides feedback whenever coordination is necessary or in the context of specific questions in the field of organised crime and terrorism. Eurojust also provides feedback when it offers its assistance to the national authorities to facilitate the execution of a request for mutual legal assistance or extradition.
- France has been associated with the EPOC project since it was launched in 2002. However, France has chosen to give preference to a different development which more effectively meets its strategic needs.

5. OPERATIONAL ASPECTS

5.1. Statistics

5.1.1. French desk at Eurojust

The French national desk does not hold an inventory of all contacts maintained with the national judicial authorities, in view of their essentially informal nature (telephone and electronic mail).

147 cases were opened by the French Eurojust national desk in 2011, compared with 82 in 2010. For 2011, the cases that have been opened on the initiative of the specialised inter-regional courts (JIRS) break down as follows:

- Bordeaux : 5
- Lille : 12
- Lyons : 18
- Marseilles : 5
- Nancy : 10
- Paris : 10
- Rennes : 7

Between 1 October 2004 and 23 November 2012, a total of 2 495 proceedings (including 1 443 pending and 1 052 definitively closed) were referred to the JIRS, with the following breakdown: 1 985 organised crime cases and 510 cases concerning economic and financial matters, i.e. 80 % and 20 % respectively. Finally, 65.8 % of the JIRS cases have links with other countries, particularly with the Member States of the European Union.

Although 2012 was characterised by a decrease in the number of cases opened by France (110, see 5.1.2. below), the proportion of multilateral files continued to increase.

5.1.2. *Practical experience in relation to Eurojust*

The French desk administers most of the multilateral cases involving at least two countries in addition to France.

Especially if the bilateral case does not seem likely to concern other States in the future, the court magistrates are invited to refer it to the liaison magistrates, if they exist in the country in question, or to call upon one of the contact points of the European Judicial Network.

Judicial organisation in France, particularly the existence of the JIRS, may also explain this large number of multilateral cases, since investigating magistrates practising in a JIRS call upon Eurojust with regard to almost all the cases they deal with. In this context, notification of files is preferably given at an early stage; the files are followed up rapidly and informally until the end of proceedings, if the judicial authorities transmit sufficient feedback to the French Eurojust desk.

In 2010, multilateral cases represented 17.34 % of all cases opened at Eurojust, while the French desk opened 42.68 % of multilateral cases, which is a far higher percentage than for the four other "top" countries in this category.

In 2011, multilateral cases represented 28 % of all cases opened at Eurojust. The French desk opened more than 50 % of multilateral cases involving more than three countries, including France (75 multilateral cases compared to a total of 147).

In 2012, multilateral cases represented 20.09 % of all cases opened at Eurojust. They accounted for 60 % of the cases opened by the French desk.

The majority of referrals to the French national desk are made during the judicial inquiry stage, i.e. after referral to an examining magistrate. Fewer than one case in five is referred to Eurojust at the stage of an investigation conducted by the prosecution services.

It should be stressed that the opening of a judicial inquiry is mandatory when the investigation concerns actions defined as crimes, and generally proves essential when the investigation relates to actions defined by law as offences, but of a complex nature.

In fact, a judicial inquiry is eventually opened with regard to virtually all the cases referred to the French national desk.

The French national desk notes that cases are referred increasingly early, with magistrates realising that early referral to Eurojust proves the most efficient method. Referral is often made even before the requests for mutual legal assistance are transmitted.

5.2. Allocation of cases to Eurojust, the EJM or other bodies

Generally speaking, the criteria used by the French courts to judge whether involvement of the Eurojust Unit is necessary are those laid down in Article 4 of Council Decision of 28 February 2002 setting up Eurojust.

French law does not have a list of criteria or reasons which oblige French judicial authorities to favour referral to either Eurojust or the EJM contact points. Article 695-4 of the Code of Criminal Procedure defines the remit of Eurojust by reference to the Decision of 28 February 2002 only. Only the third paragraph of Article 695-9 of the Code of Criminal Procedure lays down an obligation for public prosecutors to inform the national Eurojust representative of cases liable to come under the remit of Eurojust and which concern at least two other Member States of the European Union.

In practice, the main criteria considered by the competent French authorities are the number of Member States concerned by an investigation and the complexity of the investigations to be carried out. For investigations involving more than two Member States and requiring the use of special or complex investigative techniques or the creation of a joint investigation team, judicial authorities prefer to involve Eurojust. In other cases they consult the EJM contact points or, where there is one, the French liaison magistrate in the Member State concerned.

These practices are not framed by any official recommendation or instruction. The Office for International Mutual Assistance in Criminal Matters has, however, posted a manual on international assistance in criminal matters on its website. The manual contains, in particular, information on developments in fields that fall within the remit of Eurojust and indications as to what issues require special attention when French courts refer cases to Eurojust.

The Office for International Mutual Assistance in Criminal Matters notifies magistrates of such developments, if so requested, and steers them to the EJM contact points or Eurojust depending on which it considers most appropriate in the case at hand.

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

5.3.1. Tasks of the national member, deputy or assistant in relation to operational cases

Cases are distributed among the four magistrates on the desk according to the following rules:

- cases in which France is the requested State are allocated on a rota basis, but if a case is related to terrorism it is dealt with by the national member, or if a case is related to an existing case the new case is dealt with by the magistrate already dealing with the existing case.
- where a French court sends a request for assistance the case is dealt with by:

The national member (Sylvie Petit-Leclair)

Court of Appeal (CA) and Regional Court (RC) of Paris, CA and RC Basse-Terre, RC Pointe-à-Pitre, CA and RC Fort-de-France, RC Cayenne, CA and RC Papeete, CA and RC Nouméa, Court of First Instance Wallis and Futuna, CA and RC Saint-Denis, RC St Pierre, RC Mamoudzou and Court of First Instance Saint-Pierre and Miquelon.

Deputy national member (Olivier Bray)

CA Agen, Aix, Bastia, Bordeaux, Bourges, Limoges, Montpellier, Nîmes, Orléans, Pau, Toulouse and Versailles and all courts within their jurisdiction.

Assistant (Nicolas Chareyre)

CA Amiens, Besançon, Colmar, Dijon, Douai, Metz, Nancy, Reims and Rouen and all courts within their jurisdiction, RC Auxerre, Bobigny, Fontainebleau, Meaux, Melun and Sens.

Assistant (Vincent Jamin)

CA Angers, Caen, Chambéry, Grenoble, Lyon, Poitiers, Rennes and Riom and all courts within their jurisdiction. RC Créteil and Evry.

Unless it does not fit in with the hierarchical set-up of the French national desk, each magistrate is fully responsible for his cases, follows them throughout the procedure and attends coordination meetings.

5.3.2. Specific procedures in respect of cooperation between the French authorities and Eurojust

Cooperation between the French judicial authorities and national desk is informal and direct and does not involve the central authority.

The law makes no provision for a formal record in the case-file. The magistrate in charge of the case evaluates what action to take on a case-by-case basis.

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

This kind of cooperation takes place informally. No requests pursuant to Article 6 have been made.

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

According to the French authorities, there has only been one case, namely referral to the College in the Prestige case.

It is therefore difficult to evaluate the manner in which the French authorities cooperate in the tasks listed in Article 7.

In the Prestige case, the French authorities followed the opinion issued by the College.

5.3.4.1. *Example of a conflict of jurisdiction resolved by the College*

In stormy weather on 13 November 2002 the hull of the oil tanker Prestige ruptured and the cargo began to leak off the Finisterre coast. On 19 November, the breach in the hull having worsened due to bad weather, the vessel broke in two and sank.

The fuel oil reached the coasts of Portugal, Spain and France, causing considerable damage, the cost of which was estimated to run into several billion euro.

In January 2003, the examining magistrate in Brest (France), to whom the case had been referred, contacted the French national member of Eurojust in order to coordinate the proceedings between the French and Spanish authorities. Three coordination meetings were held: in La Coruña and Brest in 2003, and in January 2005 at Eurojust headquarters.

The Eurojust College ultimately decided that it would be advisable to conduct two investigations in order to identify the victims of the tragedy and estimate the amount of damages caused in both countries, but that Spain was better placed to prosecute, for two reasons. Firstly, most of the evidence was located in Spain. Secondly, given that there were more injured parties (800 in Spain and 71 in France), a single trial would make it easier to come to a more effective verdict and better serve the interests of the victims while avoiding double prosecutions and double verdicts, which would have violated the *ne bis in idem* principle.

5.3.4.2. Examples of recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation

The French authorities stated that a file had been opened in early 2011 at the request of the Directorate for Criminal Matters and Pardons. The case concerned an individual arrested by the French Border Police on 8 January 2011 at St Pancras Station, London when leaving British territory. This case was typical of a recurrent problem encountered with the UK in enforcing European arrest warrants.

When someone leaves British territory (by Eurostar or ferry), they are subject to passport control by the French authorities only. If it transpires that a European arrest warrant has been issued by a Member State for the person concerned, the French police on British territory are supposed to surrender him or her to the British authorities. Nevertheless, the British authorities very frequently refuse to take charge of the person and leave him or her on the train or ferry for the French to arrest them and enforce the arrest warrant in France.

This practice, which is deemed not to comply with the Framework Decision on the European arrest warrant, could be explained by the fact that the British officials generally only arrest a person on the basis of a faxed arrest warrant accompanied by a translation which has to be certified by the Serious Organised Crime Agency (SOCA), which might seem difficult to achieve in the limited 48 hours allowed before the person has to be brought before a magistrate.

As this problem was recurrent and met with incomprehension on the part of the French prosecutor's offices, Eurojust suggested a meeting with SOCA on 29 March 2011. The Office for International Mutual Assistance in Criminal Matters under the Directorate for Criminal Matters and Pardons was to take part in the meeting, but in the end it was postponed for technical reasons.

The Directorate for Criminal Matters and Pardons has not consulted Eurojust again as no new difficulties have been reported.

5.4. Practical experience related to coordination meetings

5.4.1. Qualitative perception

The French desk, which has dealt with numerous multilateral and complex cases, has frequent coordination meetings (known as "level III" meetings). In 2011-2012, the French desk organised 109 coordination meetings, and France was invited to attend 65.

A level II meeting, attended by national members only, may be held before the coordination meeting in order to identify and take stock of investigations in the countries concerned. According to a recent College decision, coordination meetings must be preceded by a level II meeting.

The French desk is very active; it is the French desk which has organised the most coordination meetings.

Coordination meetings are considered a valuable tool for international judicial cooperation by the judicial authorities consulted, nearly always yielding results which could not have been achieved merely by sending letters rogatory.

They are seen as having considerable advantages since meetings grant an opportunity at a single time and place to devise a coordinated investigative strategy among the judicial authorities of several European States.

The quality of the follow-up given to the meetings by the French desk is greatly appreciated.

The contribution these meetings make is deemed essential for the conduct of investigations from several points of view:

- communication: coordination meetings are an opportunity for judicial and police authorities to get to know each other and to identify the correspondents magistrates can consult if needed;
- responsiveness: each Member State outlines the facts of its file so that difficulties can be ironed out, the links between proceedings and the other countries' objectives can be better understood, joint strategies can be developed, any risk of double prosecutions can be avoided and the resources allocated to the investigation and the deadline for completing operations can be determined;
- peer emulation: coordination meetings generate a kind of emulation between the authorities which helps dispel any lack of interest on the part of certain Member States in individual cases and helps overcome certain reservations, which are sometimes of an institutional nature. The Member States' representatives are a significant driving force here.

In February 2011 the French Eurojust desk came up with the idea of setting up a coordination centre for operations taking place simultaneously in the countries concerned. When national magistrates decide to commence arrests as part of national investigations or pursuant to European arrest warrants on a date fixed at a coordination meeting, the national members meet at Eurojust in order to gather, in real time, all information received from local authorities. They can then indicate whether it is desirable to issue new warrants or make supplementary requests for mutual assistance.

The quality of the organisation of the coordination meetings and the quality of interpreting was stressed unanimously.

However, some magistrates have concerns as to the position and authority of some national desks in relation to their own national authorities, in particular in terms of the ability to mobilise good contact points and ensure an appropriate follow-up to coordination meetings.

5.4.2. Role of the ENCS

As no Europol National Coordination System (ENCS) has been set up in France, it has no role in the meetings.

5.5. Use of On-Call Coordination (OCC)

There have been no changes further to the launch of the OCC to the extent that the system had already been provided for in the form of an on-call service in the French national desk through which the duty magistrate can be contacted at a single phone number.

The Eurojust 2011 Annual Report outlines a practical example of use of the Eurojust OCC by the French authorities:

On a night in December 2011, Eurojust's French OCC representative on duty was contacted by a national prosecutor. Three suspects had been detained by the police, and material seized suggested criminal links to a bank account located in Luxembourg, containing approximately four million euro. The national prosecutor wished to restrain the account as a matter of urgency, and needed assistance with the appropriate procedures to be followed in another jurisdiction. Eurojust's French representative contacted the Eurojust Luxembourg counterpart,

who advised immediately on the legal and evidential requirements for a restraining order, and who initiated contacts with the Luxembourg Financial Intelligence Unit at the Prosecutor's Office. When banking business opened the following morning, the account was frozen by the Luxembourg Financial Intelligence Unit and then seized by a Luxembourg investigating judge during the course of the same day.

The French authorities explained that Eurojust's annual reports are published on the dedicated internal website of the Office for Mutual Assistance in Criminal Matters (BEPI) in the Directorate for Criminal Matters and Pardons in the Ministry of Justice, which can be accessed by all French magistrates.

The dedicated page also mentions that a magistrate from the French national desk can be contacted 7 days a week, 24 hours a day. The 24/7 number is indicated.

The 24/7 number of the French Eurojust national desk is also indicated in the file for the weekly duty rota of the Ministry of Justice. The document is sent to all "*parquets généraux*" in France.

Finally, the circular to be issued once the legislative process of transposing the Decision on the strengthening of Eurojust has been completed will contain information on developments relating to the On-Call Coordination system.

5.6. Conclusions

- France is increasingly acting as a driving force in practical cooperation with Eurojust. The number of cases dealt with by its national desk is growing fast; they mainly originate from specialist examining magistrates in the specialised interregional courts (*JIRS*).
- Cases are preferably referred at an early stage (best practice) and are followed up swiftly and informally until the end of proceedings, provided that the judicial authorities send the French desk at Eurojust adequate feedback.
- Cases are allocated to members of the French Eurojust desk according to criteria such as a rota, geographical origin and links to other cases. No list of criteria is laid down in French law. In practice, multilateral and complex cases (for instance, those requiring the use of special investigative methods or the creation of a joint investigation team) are sent to Eurojust.

- The allocation of cases between Eurojust and the EJM has not caused any problems in France. Generally speaking, the criteria are those established by Article 4 of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust.
- On request, the Office for International Mutual Assistance in Criminal Matters issues an opinion on whether the Eurojust or EJM channel should be used.
- The significant role played by liaison magistrates in France should also be noted.
- The principle of direct contact is applied between the judicial authorities and the French Eurojust desk.
- France has organised the most coordination meetings, and the quality of the French desk's follow-up to those meetings is greatly appreciated.
- The handbook on international mutual assistance in criminal matters produced by the Office for International Mutual Assistance in Criminal Matters and made available to all French magistrates via the internal website means that they are well-informed as to the role of contact points and the rules for using the EJM. It gives a link to the EJM site (the BEPI internet also has a link to this site).
- It is not possible to make any meaningful evaluation of tasks pursuant to Articles 6 and 7 as they are very rarely called for.
- As is the case for some of the other EU Member States, the On-Call Coordination system had a precursor in the French national desk's duty rota.

6. COOPERATION

6.1. Cooperation with EU agencies and other bodies

The French authorities do not apply any particular policy in this area. They welcome their sustained and sometimes fruitful relations with Europol.

A cooperation agreement regulating relations between Eurojust and Europol was signed on 9 June 2004 and provides that Eurojust may ask the European Police Office for information and, where relevant, to open a temporary case file so that the data gathered on a given type of crime can be analysed. However, it is always up to Europol to decide what information can be made available to the judicial authorities in accordance with the rules governing the working methods of the Office.

In the course of conversations with each of the parties concerned during the evaluation visit, cooperation between the French Eurojust national desk and the French Europol liaison office was mentioned in positive terms.

In particular:

1. Contact between the French national desk and the French Europol liaison office is close and frequent. The Eurojust desk often invites the Europol liaison office to its coordination meetings. Contacts are not formal and consist of the discussion of operational files.
2. Europol Analysis Work Files (AWF) are often linked to Eurojust files subject to the agreement of the magistrates in charge of the case. Eurojust is linked to 17 of the 21 AWFs.
3. The French national desk endeavours to attend meetings organised by Europol, in particular if a file is opened at Eurojust.
4. Europol is integrated in the coordination centres.

As far as OLAF is concerned, very few cases of effective contact with the French Eurojust national desk were mentioned. According to the fourth paragraph of Article 695-9 of the Code of Criminal Procedure, the national representative is "competent to receive and send to the prosecutor-general any information relating to investigations by the European Anti-Fraud Office", namely into Community fraud.

6.2. Cooperation with third States

6.2.1. Policy on Eurojust involvement

France supports the involvement of Eurojust in external relations.

In particular, it welcomes the coordination carried out in the financial cases following the events known as the Arab Spring.

The French authorities also appreciate the fact that the Decision strengthening Eurojust broadened the scope for the Unit's involvement in judicial cooperation with third countries, in particular by allowing it to "coordinate" the execution of requests for judicial cooperation issued by a third State where the requests are part of the same investigation and require execution in at least two Member States and, with the agreement of the Member States concerned, to intervene in order to facilitate execution in that third State where requests for judicial cooperation which relate to the same investigation are made.

They highlighted that this external dimension is bound to evolve, and it is probable that in the future Eurojust will be able to delegate liaison magistrates. In France, it has transpired, magistrates do not always know the Eurojust contact persons in third countries.

6.2.2. Added value of Eurojust involvement

If requested by magistrates referring cases to the French national desk, an effort is made to involve third countries directly linked to the case. This has occurred with Switzerland, Turkey, Ukraine, Albania and several South American countries (drugs cases).

Such steps require data protection precautions in order to ensure an equivalent level of protection.

The French desk's practice is to involve the third countries in case follow-up only if doing so gives an added value and the judicial authorities in charge of the case agree.

Interesting results have been achieved, in particular with Albania and Switzerland.

Sometimes the authorities from a third country take part in coordination meetings. In such cases, coordination always takes place in two stages, with a "European" meeting first, followed by another one attended by the third country. Involving a third country is a useful way of facilitating and rationalising the execution of requests for mutual assistance, preparing for the operational phases of a case as thoroughly as possible and anticipating and overcoming legal difficulties.

On 12 and 13 December 2011, the Office for International Mutual Assistance in Criminal Matters took part in two meetings organised by Eurojust with the Tunisian and Egyptian authorities respectively. The meetings brought together all European and non-European partners who had, as had France, received requests for mutual assistance from the Tunisian and Egyptian judicial authorities following the events of the Arab Spring. They afforded an opportunity to exchange information on the problems raised by the requests and to kick-start discussion with the competent authorities in order to overcome them.

6.3. Practical experience of the EJM

6.3.1. Cooperation between the French member and the EJM

The French contact points of the EJM are the French Eurojust desk's natural interlocutors, mainly for cases in which France is the requested State, to keep abreast of the state of play in a given case. Contact is very frequent.

There are also cases in which the EJM contact points consult the French national desk in relation to the European arrest warrant.

Lastly, the French national desk steers cases which obviously do not fall within its remit to the EJM correspondents.

6.3.2. Resources allocated to the French EJM contact points

The European Judicial Network's contact points do not have a separate budget or resources earmarked for their work in that capacity. The costs arising from their participation in EJM meetings are paid for out of the budget of the court to which they belong.

The national correspondent and the tool correspondent in the Central Administration have at their disposal all the resources allocated to them for the performance of their tasks.

6.3.3. Operational performance of the EJM contact points

With regard to the number of cases handled by the EJM contact points each year, it was mentioned that the statistics vary considerably from one geographical area to another and that it is therefore difficult to give a representative average. While there are some contact points which are almost never consulted (especially the contact points in courts in overseas territories), there are others which are consulted very regularly (between 10 and 100 times a year). It appears from the replies given that the most frequently consulted contact points are those at the appeal courts near the borders (Douai and Pau).

As for the kind of cases handled, most contacts concern the execution of European arrest warrants and the follow-up of requests for mutual assistance in criminal matters.

All contact points that replied to the questionnaire indicated that outcomes were successful in the great majority of cases, in particular by speeding up the handling of the procedure concerned.

The contact points consulted also said that they had not had any particular problem with the time and manner of responses from their counterparts in the other Member States.

6.3.4. *Exchange of information*

Subject to rules on mutual legal assistance and, in particular, provided that a request for mutual assistance is actually necessary in order to request or obtain certain information, the French contact points are allowed freely to contact all relevant authorities and to exchange with them any information necessary to perform their tasks.

6.3.5. *Perception of the EJM website and its tools*

The European Judicial Network's website is a very useful tool which the French judicial authorities use very often for the operational implementation of mutual legal assistance with other EU Member States. The site is used all the more frequently because there is a direct link to it from the internal website of the Office for International Mutual Assistance in Criminal Matters (*BEPI*). So as to facilitate access to the list of contact points, the user name and password enabling access to restricted parts of the EJM website are posted on the internal website of the Office for International Mutual Assistance in Criminal Matters (*BEPI*).

The directory of contact points and the Atlas are some of the site's tools most frequently used by the contact points because they can be used to identify swiftly and easily the competent authority to which a request should be sent and whom to contact should a problem or question arise.

However, some aspects of the site could be made more user-friendly or updated.

Some contact points pointed out that the "Belgian fiches" published on-line only partly met their expectations since some of the information they contain is too out of date for the requesting authorities to be informed in good time of the requirements of the requested State which have to be met for a given measure to be carried out.

It was also pointed out that the structure of the Atlas for some Member States does not take into account the entry into force of new instruments. As far as France is concerned, for example, the Atlas only offers a choice between the Convention on Mutual Assistance in Criminal Matters of 20 April 1959 or the Schengen Implementing Convention as a legal basis for requests other than those dealing with terrorist offences; the entry into force of the Convention of 29 May 2000 has not been taken into account.

The French tool correspondent has drawn the attention of the EJM Secretariat to this problem and was told that the structure might be reviewed as part of current work on upgrading the EJM's website.

It was also suggested that certain instruments adopted by the EU which the competent judicial authorities sometimes need to consult should be added to the on-line library, such as the extradition Conventions (Convention relating to extradition between the Member States of the European Union, Convention on simplified extradition procedure between the Member States of the European Union).

Lastly, the French judicial authorities do not make much use of the Wizards for drawing up requests for mutual assistance and European arrest warrants. They are found impractical and difficult to use. Moreover, the internal website of the Office for International Mutual Assistance in Criminal Matters (*BEPI*) has templates of the European arrest warrant and international letters rogatory which can be downloaded in Word format and completed directly by the judicial authorities.

6.4. Conclusions

- All the parties regard cooperation between Europol and Eurojust as essential and focus considerable attention on it. A cooperation agreement was signed on 9 June 2004. This agreement organised relations between both agencies and laid down that Eurojust could request information from Europol and, where appropriate, open a temporary work file for the analysis of data collected regarding a particular form of crime.
- As regards cooperation with other EU agencies and bodies, such as OLAF, the French authorities have shown no particular interest or involvement. While the Eurojust national member is authorised to receive OLAF cases or bring them to the attention of the prosecutor-general, no specific example has been provided to show that this authority is exercised.
- As regards cooperation between Eurojust and third states, the importance of enhancing relations with such states has been acknowledged.
- France's experience is clearly positive when it comes to cooperating with third states by means of coordination meetings at Eurojust to which third states were also invited (for example, Turkey, Ukraine or Switzerland).
- The evaluation team observed that not all practitioners knew about the Eurojust contact points in third countries, although the countries which have designated a Eurojust contact point are made available on the website of the office for mutual assistance in criminal matters.
- As regards in the first instance the number of cases dealt with annually by the EJM's contact points, the figures are particularly subject to variation depending on the geographical areas under consideration, and it is difficult to give a representative average.
- The site of the European Judicial Network is an especially useful tool very often used by the French judicial authorities for the operational implementation of mutual legal assistance with other Member States of the European Union. However, it has been pointed out that information has proved difficult to update - it has been suggested that the Belgian fiches; the Atlas and the on-line library be updated.

7. SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

7.1. Controlled deliveries (Article 9d(a))¹

In France authorisation to conduct a controlled delivery at the request of another European Union Member State may be granted only on the basis of an application for mutual assistance in criminal matters by the judicial authority which has territorial jurisdiction. In general, if no judicial investigation concerning the same facts has been instituted in France, authorisation is provided by the public prosecutor with territorial jurisdiction.

The French national member has never had to authorise or coordinate controlled deliveries.

On the possibility for Eurojust to authorise controlled deliveries:

While this possibility was provided for by the new Article 9c of the Eurojust Decision, it is not the case with the ongoing transposition of the Decision strengthening Eurojust pursuant to Article 9e.

On the possibility for Eurojust to coordinate and follow up controlled deliveries:

While there has been little feedback on this subject, such a possibility would be welcomed by the French authorities, especially since the coordination centre started operating. However, the French authorities point out that controlled deliveries are above all a police measure that requires maximum coordination prior to judicial authorisation.

¹ Notwithstanding the translation of the 2009 Decision, the term "livraison surveillée" (monitored delivery) rather than "livraison contrôlée" (controlled delivery) is used in France, in line with the wording of Article 12 of the Convention of 29 May 2000.

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

7.2.1. Practical experience

- Practitioners using JITs generally appreciated the added value that they bring and the role of Eurojust in their creation and operation. The central authority confirmed that the Eurojust national member is systematically informed of the creation of a joint investigation team and invited to take part in it if it is set up under the aegis of Eurojust.

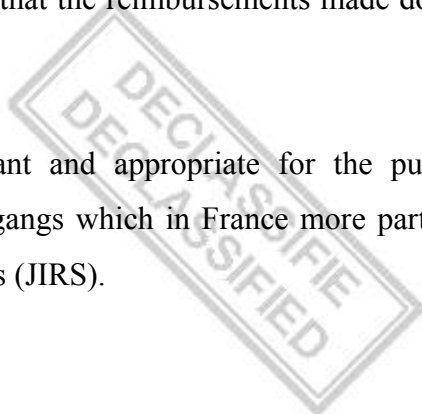
In France the establishment of a JIT requires authorisation from the Ministry of Justice. It has been explained that this requirement stems from Article 3 of the Constitution (*"National sovereignty shall be vested in the people. No section of the population nor any individual may arrogate to itself, or to himself, the exercise thereof [...]"*). Also, this requirement makes it possible to verify the content of the written agreement. Moreover, members of the Directorate for Criminal Matters and Pardons have certified that all authorisation requests have been agreed to date.

Such intervention by the executive power in the implementation of a joint investigation team (a judicial cooperation instrument) is intentional and therefore provided for by the legislature (Article 695-2 of the Code of Criminal Procedure). In fact, assistance given on national territory to French investigators in the context of their criminal investigation tasks by investigators from a foreign state (police officers or gendarmes) who may carry their service weapons (if provision is made for this in the protocol) is a violation of national sovereignty. Only the French nation, which exercises sovereignty through its representatives, can provide for this and lay down the limits and procedures for it.

The French judicial authorities have already taken part in **58 JITs** and in some cases have received EU funding.

However, the funding of JITs by Eurojust is described as particularly important. In this context the Eurojust funding procedure has been portrayed by some practitioners as bureaucratic and cumbersome, which is in contrast to the opinion expressed by others. One surprising problem is linked to the reimbursement of expenses granted by Eurojust on the basis of the JIT funding project subsidised by the European Commission: it would appear that the reimbursements made do not go to the department that incurred the costs.

This international cooperation tool seems highly relevant and appropriate for the pursuit of international investigations involving organised criminal gangs which in France more particularly are the responsibility of the specialised inter-regional courts (JIRS).



7.2.2. *Added value*

The Eurojust national members are at the same time available, responsive and legally effective. Their assistance proves very valuable for the French courts, whether inter-regional or not, enabling them to prepare with their foreign interlocutors the joint investigation team protocol and obtain in good time the Ministry of Justice authorisation provided for by Article 695-2 of the Code of Criminal Procedure.

Eurojust also provides significant logistical support (meeting place and interpreting facilities).

France has already taken part in joint investigation teams conducted partly on its territory. This participation has met expectations.

7.3. **Other special investigative techniques**

The Directorate for Criminal Matters and Pardons reported the case of a file opened by the specialised inter-regional court in Nancy and followed up by Eurojust when a joint investigation team was set up. In this case an infiltration had been planned subsequently by the German side, with a possible extension in France. In the end the termination of the joint investigation team meant that the infiltration was cancelled.

7.4. Conclusions

- The possibility for Eurojust to authorise controlled deliveries (Article 9c of the Eurojust Decision) is not provided for by the ongoing transposition of the Decision strengthening Eurojust pursuant to Article 9e.
- During the evaluation round the experts found that there was insufficient feedback on the subject to coordinate controlled deliveries.
- Practitioners using JITs generally appreciated the added value that they bring and the role of Eurojust in their creation, operation and funding.
- Practitioners generally had a positive view of experiences involving Eurojust, such as JITs. The central authority confirmed that the Eurojust national member is systematically invited to take part in a joint investigation team.

8. TRAINING AND AWARENESS RAISING

8.1. Promoting the use of Eurojust and the EJM

8.1.1. Training

1) Eurojust

Students at the French National School for the Judiciary, where all French judges and public prosecutors are trained, receive training in international cooperation in criminal matters, which includes developments relating to Eurojust. Training and awareness raising with regard to Eurojust's activities and the scope for using the EJM continues throughout the course at the School, both during the period of preliminary training, as it is called, and while students are being prepared for taking up their first posts.

Furthermore, members of the French national desk regularly visit the various appeal courts to explain the tasks of the Unit and how it operates¹.

Lastly, continuous training sessions on Eurojust/Europol aimed at French judges and public prosecutors are organised twice a year, with 15 participants attending each session.

2) EJN

There is no specific training devoted exclusively to the European Judicial Network and its Internet site. However, information on the EJN and the tools available on its site are circulated to the French judicial authorities during several training activities.

Firstly, preliminary training at the French National School for the Judiciary includes a course focusing on the "International Dimension of Justice", the purpose of which is in particular to train future judges and public prosecutors in the issues arising with mutual assistance in criminal matters and raise their awareness of the instruments and tools at their disposal.

Secondly, as part of the continuous training, the School offers two three-day modules, each focusing on international cooperation in criminal matters. These modules include a presentation on both the Network and its website by members of the Office for International Mutual Assistance in Criminal Matters.

In addition, the Office for International Mutual Assistance in Criminal Matters cooperates with the School and the relevant regional contact points of the EJN in organising localised training activities where judges from the Office for International Mutual Assistance officiate in the appeal courts to provide training, generally lasting one day, to magistrates within the jurisdiction of those courts in issues relating to mutual assistance in criminal matters. Part of this training is devoted to mutual assistance networks.

¹ For an example, see: <http://www.justice.gouv.fr/europe-et-international-10045/amiens-venue-deurojust-21911.html>

8.1.2. Other measures

Information on the existence and role of Eurojust is provided via circulars and by distribution of the contact details of Eurojust duty staff. Information is also available on the intranet site of the Directorate for Criminal Matters and Pardons and, in particular, sections of the Office for International Mutual Assistance in Criminal Matters and of the department for negotiation and transposition of international criminal law standards.

Continuous and updated information on the existence, role and activities of the EJM is available on the intranet site of the Office for International Mutual Assistance in Criminal Matters, which is frequently used by the competent judicial authorities.

Members of the Office for International Mutual Assistance in Criminal Matters also provide interlocutors with information on a daily basis, either by telephone or e-mail.

The methodological guide to international mutual assistance in criminal matters, which is available on the Office's website, also contains developments relating to the EJM, Eurojust and their respective tasks.

Information on Eurojust projects can be circulated on the intranet site of the Office for International Mutual Assistance in Criminal Matters. Information on projects implemented by the European Judicial Network is provided to national authorities both on the Office's intranet site and via the contact points' discussion list.

8.2. Specific training for national members and EJM contact points

The Eurojust national member and his or her deputy or assistant do not receive specific training with respect to their tasks. The members of the French national desk are selected for their suitability to perform these duties and their ability to be immediately operational, which requires a perfect knowledge of the mechanisms for judicial cooperation in criminal matters that they will have to use on a daily basis.

As regards the EJM, designation as a contact point follows on from the post held (Head of the Directorate for Criminal Affairs and Pardons, Head of the European and International Affairs Department, Head of the Office for International Mutual Assistance in Criminal Matters and his or her deputy). It does not involve specific training in EJM tasks.

8.3. Conclusions

- Improvements could be made to continuous training and as regards information. In practice, however, this does not seem to hinder the use of the judicial cooperation instruments and channels.
- While there is no systematically organised Eurojust or EJM-related training, courses, work placements and awareness raising activities are organised by the French National School for the Judiciary and by Eurojust.
- Students at the National School, where all French judges and public prosecutors are trained, receive training in international cooperation in criminal matters, which includes developments relating to Eurojust. Training and awareness raising with regard to Eurojust's activities and the scope for using the EJM continues throughout the course at the School.
- However, experts have the impression that awareness raising and the provision of information by the national competent authorities, particularly at regional level, could be improved.
- There is no specific information for members of the Eurojust national desk, nor for the EJM contact points.

9. GENERAL OBSERVATIONS

9.1. Overall assessment

France was a driving force in the establishment of the European Judicial Cooperation Unit and recognises the considerable progress achieved since 2002 in coordinating the fight against serious cross-border crime.

This highly positive assessment is no more than a reflection of almost unanimous appreciation of French judges and public prosecutors who have had the opportunity to use Eurojust, whether occasionally or on a regular basis (in the specialised inter-regional courts). The coordination of investigations and prosecutions, the productive nature of the coordination meetings where obstacles can generally be overcome, the competence and availability of the members of the French desk are also factors repeatedly cited by practitioners.

Systematic use of Eurojust by the specialised inter-regional courts responsible for complex multilateral cases shows that the fight against cross-border crime is no longer possible without its assistance.

All the French contact points within the European Judicial Network take the view that this system brings significant added value to international judicial cooperation in criminal matters where the cases in question do not fall within Eurojust's sphere of competence (e.g. simple bilateral matters). It was emphasised in particular that the EJN is a very practical operational means of identifying good interlocutors in other Member States; it creates a climate of confidence for discussion and ensures that requests are traceable, thus enabling them to be given preferential treatment and expedited.

9.2. Further suggestions from France

As regards Eurojust, France supports the principle of refocusing the national member's activities on his or her operational prerogatives.

France considers that the EJM should continue and deepen its policy of interfacing with other networks and that the Memorandum of Understanding concluded with the IberRed network should be effectively implemented.

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

The fact that the mutual evaluation focuses on operational cooperation with Eurojust and the European Judicial Network is regarded as constituting real added value. It was therefore regarded as essential that this evaluation should lead to an open debate with judges and public prosecutors who regularly use the services of Eurojust and the EJM.

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

10. RECOMMENDATIONS

The evaluation team thought it useful to make a number of suggestions for the attention of the French authorities. This does not detract from the fact that France has a deserved reputation for adopting a policy promoting Eurojust and the European Judicial Network. The evaluation team found the practitioners who work in this area to be highly motivated and dedicated to their tasks and duties.

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

10.1. Recommendations to France

1. The measures necessary to implement Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (cf. point 3.1.2) should be adopted as soon as possible. Following the evaluation visit it appears that the National Assembly and the Senate have voted to extend the duty of information to examining magistrates, in the same terms. Subject to the outcome of a joint committee meeting, the legislation should be adopted at the beginning of July.
2. The competences of the Eurojust national member and deputy national member should be widened. In this context steps should be taken to ensure that the 2009 Eurojust Decision is transposed as correctly and effectively as possible when parliamentary proceedings are underway. Attention is drawn primarily to the fact that adequate national powers should be conferred on the Eurojust national member to enable him to fully carry out his operational tasks, particularly in relation to controlled deliveries. The material scope of powers of the national member and his deputy must be sufficiently broad to encompass all cases that might fall within Eurojust's sphere of competence (cf. point 3.3.3);
3. Ensure that the mandatory forwarding of information to Eurojust is accompanied by a requirement that the information be structured. This should be ensured by the use of the Eurojust form, which facilitates the entry of data into the Eurojust Case Management System (CMS);

4. For the purposes of Article 12 of the Eurojust Decision it is recommended that the ENCS be set up and put into operation as soon as possible and that meetings be regularly organised to perform the tasks referred to in Articles 12 and 13 of the Eurojust Decision. Ensure also that there is a link between the specialised inter-regional courts and the ENCS. It might be good practice to bring the Europol and OLAF contact points within the ENCS (cf. point 3.2);
5. Make it mandatory in national legislation to forward information to Eurojust in accordance with Article 13(5) and (7) of the Eurojust Decision and adopt the instructions required, if necessary by means of legislative provisions, for ensuring that this obligation is complied with by the judicial authority (cf. point 4.1.2). Ensure, through training and the distribution of circulars and brochures or checklists, that the authorities concerned are fully informed of the scope of Article 13 of the Eurojust Decision (cf. point 4.1.2);
6. It transpires that there are in practice different channels for exchanging information between Eurojust and the judicial authorities in France. There must be consultation and coordination between the competent French judicial authorities and the French desk at Eurojust to ensure that information is in practice exchanged in the manner provided for by Article 13 of the Eurojust Decision and the French circular of 2011;
7. Insist that all necessary measures be taken to continue the development of the Cassiopée system for the purpose of connecting up to the Eurojust Case Management System pursuant to Article 12(6) of the Eurojust Decision (cf. point 4.2.5);
8. Given the number of EJM contact points and their geographical distribution, more regular consultation between them should be organised at national and regional level. More meetings should be organised, emphasis should be laid on the importance of statistics on cases dealt with in the Network and language courses for contact points should be promoted (cf. points 5.2, 6.3 and 8.2);
9. Improve the information given to practitioners regarding the cooperation agreements concluded between Eurojust, third countries and its network of contact points (cf. point 6.2);
10. Improve the distribution to national judicial authorities of information on the funding of JTs by Eurojust. Administrative issues linked to the collection of Eurojust subsidies for JTs should be examined in this framework, ensuring that the subsidies are received without difficulty by the services which incurred the costs (cf. point 7.2).

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

11. Member States should take note of the following good practices: I. Designating as national member or deputy only candidates with long practical experience in criminal prosecution (cf. point 3.3.2); II. Providing the Eurojust national desk with access to all data accessible to national judges and public prosecutors (cf. point 3.3); III. Designating liaison magistrates in neighbouring countries or in those with which a Member State has a special relationship, thereby enabling the actors involved in multilateral cooperation (Eurojust) to focus on the role they were set up to perform (cf. point 3.4.2); IV. Basing the division of "powers" and cases within the Eurojust national desk essentially on suitable criteria. e.g. geographical, so as to strengthen the links and mutual trust between court judges and public prosecutors and members of the desk (cf. point 3.3.3);
12. Member States are requested to analyse the problems connected with the time taken to translate procedural documents in the area of judicial cooperation in criminal matters and the quality of the translation and to try to find suitable ways of providing solutions (cf. point 4.2.4);
13. Member States are requested to take note of the usefulness of guidelines/instructions regarding the advisability of forwarding a dossier to Eurojust or to an EJM contact point (cf. point 5.2);
14. Member States are requested to take note of EJM's usefulness regarding the scope for communication and coordination between the various national judicial authorities, especially in territorially extensive countries (points 3.4.2 and 6.3);
15. Member States are requested to take note of the practice of the Office for International Mutual Assistance in Criminal Matters whereby the French contact points invited to attend meetings of the European Judicial Network are rotated (cf. point 6.3);
16. Member States are requested to take note of the usefulness of the "Methodological Guide on International Mutual Assistance in Criminal Matters", made available via the Internet to all judges and public prosecutors by the Directorate for Criminal Affairs and Pardons. Chapter 5 of the Guide which sets out in explanatory fashion the actors involved in international judicial cooperation, i.e. the liaison magistrates, the European Judicial Network and Eurojust (cf. point 5.2);

17. Member States are requested to ensure that appropriate follow-up is given to coordination meetings by the national authorities (cf. point 5.4.1);
18. Member States are requested to provide information to practitioners regarding the Eurojust cooperation agreements with third countries and Eurojust contact points in third countries (cf. point 6.2);
19. Member States are requested to take note of the French experience of including Europol in joint investigation teams and making full use of their capabilities, thus generating added value for the investigation (cf. point 7.2).

10.3. Recommendations to Eurojust/the EJM

20. Eurojust should improve information exchange by expressly indicating the source/origin of information to be exchanged and by making it clear that it can be used in the framework of criminal-law proceedings (cf. points 4.2 and 4.3);
21. Eurojust should draw up a form for the structured and secure forwarding of information and feedback to the national authorities in accordance with Article 13a of the Eurojust Decision (cf. point 4.2);
22. Eurojust should draft guidelines for information exchange at Eurojust coordination meetings. In this regard Eurojust should draw up a model form (or checklist) to help national authorities to participate in Eurojust coordination meetings (cf. point 5.4);
23. Eurojust should examine the possibility for delegations to participate in a coordination meeting via videoconferencing where it is difficult for them to go to Eurojust premises (cf. point 5.4);
24. Eurojust is requested to analyse the problem reported by several magistrates regarding the slowness and the quality of translations of procedural documents (international letters rogatory) and possibly propose ways of rectifying the situation.. This problem is described as a serious obstacle to the smooth exchange of information and to international judicial cooperation in criminal matters in which the time factor plays an essential role (cf. point 4.2.4);

25. In the context of these national implementation projects Eurojust could usefully endeavour to set up a streamlined coordination structure to supersede the old EPOC IV coordination structure, the aim being to optimise the implementation of Article 13 of Council Decision 2009/426/JHA (cf. point 4.2.5);
26. Eurojust should ensure via the EJM Secretariat that the Network's tools are updated and their quality maintained. The EJM should add to the EJM Atlas a functionality indicating the language in which the competent authorities wish to receive requests for assistance (cf. point 6.3.5);
27. Eurojust should ensure via the EJM Secretariat that information supplied directly by the Member States is updated on the Network site (cf. point 6.3.5);
28. Eurojust should ensure that national authorities are properly informed of the opportunities open to them for using cooperation agreements which Eurojust has concluded with third countries and the Eurojust contact points designated in third countries.

ANNEXE A: PROGRAMME DE LA VISITE ET PERSONNES INTERROGEES/ RENCONTREES

Evaluateurs :

- Monsieur Thomas LAMIROY (Belgique, Magistrat fédéral au parquet fédéral, Correspondant Eurojust et RJE)
- Monsieur Jakub PASTUSZEK (République Tchèque, Directeur du département pénal international, en charge de l'entraide en matière pénale, correspondant du RJE)
- Monsieur Ilias KANELLOPOULOS (Grèce, Juge au tribunal de première instance d'Athènes)

Participants UE:

- Monsieur Hans NILSSON, chef de la division Droits Fondamentaux et Justice pénale de la Direction Justice et Affaires intérieures au Conseil de l'Union européenne.
- Monsieur João Manuel DA SILVA MIGUEL membre national portugais d'Eurojust.
- Madame Catherine DEBOYSER, chef du service juridique d'Eurojust.
- Madame Maria MAVRIDAKI, administratrice au Conseil.
- Madame Vera ALEXANDROVA administratrice à la Commission européenne.

Lundi 21 janvier 2013

Arrivée des évaluateurs et participants.

Mardi 22 janvier 2013

09h20

Prise en charge à l'hôtel

Direction des affaires criminelles et des grâces (PARIS), 14 rue Halévy, 9^e arrondissement.

09h45

Accueil des évaluateurs et participants à la Direction des affaires criminelles et des grâces (DACG) par Madame Marie-Suzanne LE QUEAU, directrice des affaires criminelles et des grâces, Monsieur Eric MATHAIS, directeur adjoint, et Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée, en présence de Madame Sylvie PETIT-LECLAIR, membre national français d'Eurojust.

- Salle de visioconférence, 1^{er} étage.

Présentation de la direction.



10h00

Présentation des bureaux en charge de la mise en œuvre des décisions Eurojust et Réseau judiciaire européen (RJE), en présence de Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée :

- Bureau de l'entraide pénale internationale (BEPI) : Elie-Victor RENARD, chef de bureau.
- Bureau de la lutte contre la criminalité organisée, le terrorisme et le blanchiment (BULCO): Philippe DE MONJOUR, chef de bureau.
- Mission pour les négociations et la transposition des normes pénales internationales et européennes : Fabienne SCHALLER, chargée de mission et point de contact pour l'évaluation de la France.
- Bureau du droit économique et financier (BEFI) : Régis PIERRE, chef de bureau.

Questions-Réponses.

10h30

Présentation de la mise en œuvre par la France de l'Action commune et de la décision relatives au RJE, en présence de Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée:

- Jean-François BOHNERT, Procureur de la République près le tribunal de grande instance de ROUEN, ancien point de contact du RJE (par visioconférence)
- Elie-Victor RENARD, chef du BEPI,
- Stéphane DUPRAZ, rédacteur au BEPI.

Fonctionnement du RJE en France, désignation des points de contacts, rôle de la DACG, présentation du site intranet du BEPI.

Questions – Réponses.

12h00

Déjeuner

14h00

Salle de réunion du 4^e étage.

Présentation de la mise en œuvre normative des décisions Eurojust.

Transposition de la décision instituant Eurojust, transposition de la décision renforçant Eurojust, explication des options de transposition, éléments de procédure législative et de calendrier.

Fabienne SCHALLER, chargée de mission pour les négociations et la transposition des normes pénales internationales et européennes.

Francis STOLIAROFF, adjoint à la chargée de mission.

Michaël GIHR, rédacteur.

Questions – Réponses

14h45

Mise en œuvre de l'article 13 relatif à la transmission d'informations

Présentation de la circulaire du 2 août 2011 relative à l'information d'Eurojust.

Michaël GIHR, rédacteur.

Présentation de CASSIOPEE, notamment au regard des possibilités de mise en œuvre technique de l'article 13 de la décision Eurojust (*Powerpoint*).

Yannick MENECEUR, directeur du projet CASSIOPEE

Questions – Réponses

15h30

Présentation du rôle de la DACG dans la mise en œuvre opérationnelle des décisions Eurojust, en présence de Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée :

- Elie-Victor RENARD, chef du BEPI
- Philippe DE MONJOUR, chef du BULCO

Présentation des réflexions sur la mise en œuvre du système national de coordination Eurojust (**ENCS-SNCE**).

Elie-Victor RENARD, chef du BEPI

Philippe DE MONJOUR, chef du BULCO

Michaël GIHR, rédacteur.

Présentation du protocole d'accord sur l'information en matière de **terrorisme**

Philippe DE MONJOUR, chef du BULCO

Questions – Réponses

16h15

Présentation de la **participation de la France au programme EPOC IV**, en présence de Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée :

Christophe BARRET, procureur de la République adjoint près le tribunal de grande instance de Marseille.

Philippe DE MONJOUR, Chef du BULCO

Pascal DEC, rédacteur au BULCO.

Questions – Réponses

16h45

Présentation de la juridiction interrégionale spécialisée (JIRS) de Marseille et de sa pratique d'Eurojust, en présence de Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée.

Christophe BARRET, procureur de la République adjoint près le tribunal de grande instance de Marseille.

Mercredi 23 janvier 2013

Déplacement à la Cour d'appel et au tribunal de grande instance de Paris.

(Accompagnateurs : Madame Sylvie PETIT-LECLAIR, Membre national français d'Eurojust, Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée, Monsieur Michaël GIHR, rédacteur, Madame Fabienne SCHALLER, Chargée de mission pour les négociations et la transposition des normes pénales internationales et européennes.)

9h30

Accueil au parquet général de Paris par Monsieur le procureur général François FALETTI, Monsieur le procureur de la République François MOLINS, Monsieur Philippe LAGAUCHE, avocat général, Madame Marie-José AUBE-LOTTE, avocat général, Monsieur Jean-Charles LECOMPTE, avocat général.

Salle des délibérés de la première chambre de la Cour d'appel.

10h00

Présentation de l'activité du point de contact du RJE : Monsieur Philippe LAGAUCHE, avocat général, Madame Marie-José AUBE-LOTTE, avocat général, Monsieur Jean-Charles LECOMPTE, avocat général.

10h45

Rencontre avec les sections C1 (antiterroriste) et C2 (criminalité organisée) du parquet de Paris, en présence de Monsieur le procureur de la République François MOLINS et de Madame Véronique DEGERMANN, procureur de la République adjoint.

- Section C1 : Monsieur Olivier CHRISTEN, vice-procureur, chef de section, Madame Juliette LE BORGNE, vice-procureur, Monsieur Thomas FIQUET, substitut, Monsieur Benjamin CHAMBRE, substitut.

Présentation de la section et des spécificités du cadre procédural.

Relations avec Eurojust en matière de lutte antiterroriste.

Mise en œuvre de l'obligation d'échange d'informations prévue à l'article 2 de la décision 2005/671/JAI du Conseil relative à l'échange d'informations et à la coopération concernant les infractions terroristes.

Questions - Réponses

- Section C2 : Monsieur Jean-Julien XAVIER-ROLAI, vice-procureur, chef de la section C2.

Relations avec Eurojust en matière de criminalité organisée, stade procédural de la saisine d'Eurojust, types de dossiers concernées, pratiques en matière d'information d'Eurojust, appréciation qualitative et quantitative des flux d'information avec le bureau national français, éléments statistiques, pratique des réunions de coordination, appréciation de la plus-value de la saisine d'Eurojust, présentation de cas concrets.

Question - Réponses

13h00

Déjeuner

15h00

Accueil à la première présidence de la cour d'appel de Paris par M. Vincent REYNAUD, secrétaire général de la première présidence.

Salle du conseil de la première chambre de la cour d'appel.

15h15

Accueil à la présidence du tribunal de grande instance de Paris (salle Diet).

Rencontre avec M. David BENICHOU, vice-président chargé de l'instruction à la section antiterroriste.

Présentation du service, des spécificités de l'instruction préparatoire en matière de lutte contre le terrorisme, pratique d'Eurojust.

Questions-Réponses.

16h15

Rencontre avec M. Alain PHILIBEAUX, premier vice-président chargé de l'instruction de la juridiction interrégionale spécialisée de Paris.

Présentation des magistrats spécialisés, relations avec Eurojust en matière de criminalité organisée, stade procédural de la saisine d'Eurojust, types de dossiers concernées, appréciation qualitative et quantitative des flux d'information avec le bureau national français, éléments statistiques, pratique des réunions de coordination, appréciation de la plus-value de la saisine d'Eurojust, présentation de cas concrets.

Questions-Réponses.

Jeudi 24 janvier 2013

Déplacement à Lille.

(Accompagnateurs : Madame Sylvie PETIT-LECLAIR, Membre national français d'Eurojust, Madame Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée, Monsieur Michaël GIHR, rédacteur)



08h16

Départ pour Lille par le TGV 7015 – Arrivée en gare de Lille-Flandres à **9h18**

10h00 Salle 226

Accueil au parquet de Lille par Monsieur Pascal MARCONVILLE, Procureur de la République adjoint en charge de la JIRS et de l'entraide pénale internationale, en présence de Madame Claude Lafont, avocat général, référente JIRS au parquet général, représentant Monsieur DE BAYNAST, procureur général près la Cour d'appel de Douai.

Présentation de la juridiction et du ressort

Présentation de la JIRS

10h45 Salle 226

Entretien avec le point de contact du RJE ou son représentant (Mme Claude LAFONT, avocat général)

11h15 Salle 226

Rencontre avec les magistrats du parquet près la JIRS de Lille.

M. Frédéric FOURTOY, vice-procureur
Mme Virginie GIRARD, vice-procureure
Mme Maud MARTY, substitut

Relations avec Eurojust en matière de criminalité organisée, stade procédural de la saisine d'Eurojust, types de dossiers concernées, pratiques en matière d'information d'Eurojust, appréciation qualitative et quantitative des flux d'information avec le bureau national français, éléments statistiques, pratique des réunions de coordination, appréciation de la plus-value de la saisine d'Eurojust, présentation de cas concrets.

Questions – Réponses.

12h45 (Restaurant administratif 12^{ème} étage)

Déjeuner offert par le tribunal de grande instance de Lille

14h30 Salle 226

Accueil à la Présidence

M. Eric NEGRON, président

Rencontre avec les magistrats instructeurs de la JIRS de LILLE

Mme Fabienne ATZORI, premier-vice président chargé des fonctions de juge d'instruction (sous réserve)

M. Jean-Marc HERBAUT, vice-président chargé des fonctions de juge d'instruction

M. Richard FOLTZER, vice-président chargé des fonctions de juge d'instruction

M. Stanislas SANDRAPS, vice-président chargé des fonctions de juge d'instruction

Présentation des magistrats spécialisés, relations avec Eurojust en matière de criminalité organisée, stade procédural de la saisine d'Eurojust, types de dossiers concernées, appréciation qualitative et quantitative des flux d'information avec le bureau national français, éléments statistiques, pratique des réunions de coordination, appréciation de la plus-value de la saisine d'Eurojust, présentation de cas concrets.

Questions – Réponses.

18h11 Départ pour Paris par le TGV 7076 – Arrivée en gare de Paris-Nord à **19h14**

Vendredi 25 janvier 2013

9h30

Accueil à la DACG

Salle de visioconférence du 1^{er} étage.

- **Entretien avec Monsieur Quentin FAURE, Chef du bureau de liaison France-Europol (par visioconférence)**

Nature et modalités des relations entre Eurojust et Europol au niveau français.

Perception du rôle d'Eurojust par les autorités en charge de la coopération policière.

10h30

Bilan / Questions – Réponses

Sylvie PETIT-LECLAIR, membre national français d'Eurojust.

Frédéric BAAB, président du tribunal de grande instance de Dunkerque, chargé de mission pour la réforme d'Eurojust et le parquet européen.

Isabelle JEGOUZO, secrétaire générale adjointe au secrétariat général des affaires européennes.

Catherine SORITA-MINARD, sous-directrice de la justice pénale spécialisée

Fabienne SCHALLER, chargée de mission pour les négociations et la transposition des normes pénales internationales.

Philippe DE MONJOUR, chef du BULCO.

Elie-Victor RENARD, chef du BEPI.

Régis PIERRE, chef du BEFI.

Francis STOLIAROFF, adjoint à la chargée de mission pour les négociations et la transposition des normes pénales internationales.

Stéphane DUPRAZ, rédacteur.

Michaël GIHR, rédacteur.

(Liste des personnes présentes en cours de finalisation)

11h30

Clôture par Madame Marie-Suzanne LE QUEAU, directrice des affaires criminelles et des grâces, ou son représentant.

ANNEXE B: LISTE DES ABREVIATIONS/GLOSSAIRE DES TERMES UTILISES

LISTE DES ACRONYMES, ABREVIATIONS ET TERMES UTILISES	FRANÇAIS OU ACRONYME DANS LA LANGUE ORIGINALE	ANGLAIS
ADBA/TPI		Database, part of the TPI/REA IT system, containing records of past legal cases
AWF	fichier d'analyse	Analytical Work File
CMS	système de gestion des dossiers	Case Management System
EAW	mandat d'arrêt européen	European Arrest Warrant
EJD		Eurojust Decision
EJN	Réseau judiciaire européen	European Judicial Network
ENCS	SNCE	Eurojust National Coordination System
GENVAL		Working Party on General Matters including Evaluations
<i>JIT</i>	équipe commune d'enquête	Joint investigation team
MLA	entraide judiciaire	Mutual legal assistance
MoU		Memorandum of understanding
NAS		Software developed by the <i>E POC IV</i> project.
NC		National correspondent
NLCEU		Network for Legislative Cooperation between the Ministries of Justice of the European Union
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
SIRENE		Supplementary Information Request at the National Entry,
SNE	Expert national détaché	Seconded national expert
TE-SAT		Europol's EU Terrorism Situation and Trend Report
TPI/REA		IT system