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NOTE

From:	Netherlands Delegation
To:	Delegations
No. prev. doc.:	13681/2/13 REV 1
Subject:	Mutual Evaluation report on the sixth round of Mutual Evaluations "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters" - Follow-up to the Report on the Netherlands

As a follow-up to each Round of mutual evaluations, each Member State is requested to inform the General Secretariat of the Council of the actions it has taken on the recommendations given to it. This follow-up should be submitted within the 18 months of the adoption of the report concerned.

Delegations will find in the Annex the follow-up of the Netherlands regarding the recommendations that were made in the report 13681/2/13 REV 1 for the Sixth Round of Mutual Evaluations.

Recommendations to the Netherlands

The Netherlands should:

- ensure the regular presence of the Dutch national member at the seat of Eurojust in order to fulfil the obligations under Articles 2(2)(a) and 2(2)(b) of the Eurojust Decision to allow the national member to perform his duties continuously, and find an effective solution to remedy the current situation and to avoid such instances in the future (see 3.5);

This recommendation relates to a temporary and exceptional situation which was unprecedented and has not arisen for a long time since. The Netherlands is aware of the importance of the regular presence of the national member. Since autumn 2013, the Netherlands has had a new permanent national member working at the headquarters of Eurojust: Han Moraal is a former Procurator General who has also held various senior positions in the Dutch Public Prosecution Service, which contributes to his considerable authority.

- promote to assessment groups and steering teams that a request from the Eurojust national member is given particular attention, in order to avoid that such a request is rejected for the sole reason that it falls outside national priorities (see 3.1.);

The Netherlands has developed a policy of prioritising the execution of legal assistance and in particular requests from the national member as such as a matter of course, which means that in principle they are always executed. Furthermore, as part of the reorganisation of the Dutch police into one national police force, International Legal Assistance Centres (Internationale Rechtshulpcentra/IRCs) are provided for within the police, which – alongside public prosecutors – can have members of the police available specifically to execute mutual legal assistance (MLA) requests. In principle there can therefore be no question of rejecting such requests. Given the high volume of requests received by the Netherlands annually, it may not always be possible to execute all such requests, however. In that regard, it should also be mentioned that the Netherlands receives a disproportionately high number of MLA requests, far more in any case than those it sends abroad. Often, the quality of MLA requests received by the Netherlands is particularly low, which prevents them being executed smoothly. Both Eurojust and the national and regional IRCs act as intermediaries in this complex issue.

- implement the obligations mentioned in art. 13 of the Eurojust decision, in such a manner as to ensure that they are applied by all stakeholders effectively, while taking account of the fact that the obligations under art. 13 imply transmission of personal data (see 3.5. and 4.3.);

The Netherlands recognises the importance of this obligation, which the Board of Procurators General regularly brings to public prosecutors' attention. Specific categories of public prosecutors (e.g. investigating officers, information officers) are made aware of this obligation through targeted information sessions. Nevertheless, practical implementation remains a cause for concern. This is because the communication of information takes place outside the usual operating systems, which entails not only greater awareness and additional work, but also a risk of errors. Further development of an automated solution within a new European Pool against Organised Crime (EPOC) project would therefore be desirable (see also recommendation 10.2, first bullet point). In addition, consideration could be given in the first place to the possibility of limiting the scope of the information to be provided to certain essential data, to be followed with further details only where necessary (see recommendation 10.3, second bullet point).

As far as the implementation of the notification obligation is concerned, joint investigation teams are always initially notified to the national desk at Eurojust. In any case, the suspect's personal data are provided (first) as a minimum. This information enables Eurojust to monitor whether there are any links to cases recorded in the Eurojust Case Management System (CMS), to provide timely assistance to Member States and to give operational and strategic feedback to national authorities. The Public Prosecution Service must supply the above-mentioned case information to the Dutch Desk (DD) of Eurojust. The relevant information is the responsibility of the case officer and is recorded in systems such as Compas TR and LZOZ. When this obligation was introduced it was decided to create a digital service in 'GPS investigation' so that officers do not have to actively contact the DD, but receive a request to notify the case to Eurojust by means of a 'reminder' (when registering the case). However, developing ICT services is a long-term process, particularly when funds are few and far between.

- encourage its authorities to apply Article 13 by providing further training and raise awareness among its practitioners with regard to the structured transmission of information. It should consider making use of the Eurojust template mandatory (see 4.1. and 4.3.);

We are giving this our attention. See reply above.

- speed up its implementation of the ENCS in the national system in line with Article 12 of the Eurojust Decision (see 3.5.);

The Netherlands does have a Eurojust national coordination system (ENCS), but, partly due to the existence of the IRC structure, the need to use the ENCS remains limited for the time being and it does not meet frequently, at least not under the name 'ENCS'. The IRC structure is responsible for the execution of MLA (requests) and consists of 1) a national IRC, which is also the contact point for requests from the national member and which liaises with the 'special' ENCS members, and 2) 10 regional IRCs, where the public prosecutors are also EJM contact points. Regular consultations are held within that structure in which the DD of Eurojust also participates. In special cases ENCS members consult via that structure if necessary.

- connect the members of the ENCS to the national part of the CMS in accordance with Article 12(6) of the Eurojust Decision (see 3.5.);

This recommendation is no longer/less valid, since the connection between the ENCS and the CMS within Eurojust is under discussion.

- provide its practitioners with instructions or practical and simple guidelines on when to refer a case to Eurojust or the EJM (see 5.8.) and encourage the ENCS to define and assist in determining whether a specific case should be dealt with the assistance of the EJM or Eurojust (see 5.8. and 6.4.);

Due to the intensive cooperation between the Netherlands EJM desk and the Eurojust Dutch Desk (DD), cases usually end up in the right place eventually, even if practitioners have not sent them to the right address to begin with. Nevertheless, attention must be paid to the dissemination of the instructions/guidelines so that cases can be referred correctly immediately.

In particular, during its current EU Presidency, the Netherlands will organise a full half-day session (workshop) for EJM contact points and Eurojust national members during the plenary meeting of the EJM in criminal matters on 8-9 June 2016, entirely dedicated to that topic, to examine the subject in more detail together with the participants from the 28 Member States, the associated participants and the external participants and to come up with a workable procedure. This will then be shared with practitioners in the Netherlands.

- continue to promote the OCC system to competent national authorities (see 5.8. and 5.8.);

The Netherlands is continuing to do this. It should not be forgotten that all EJM contact points are also IRC officers with on-call duties. Even though it has a different name, the purpose of the on-call coordination (OCC) service is thus achieved