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

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EVALUATION REPORT ON THE SIXTH ROUND OF MUTUAL EVALUATIONS "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 crime and of Council Decision 2008/976/JHA on the European Judicial Network in criminal matters"

REPORT ON ITALY

Table of Contents

1 EXECUTIVE SUMMARY

The on-site visit in Italy was conducted in a spirit of cooperation and transparency. The evaluation team was able to access information according to the wishes of the experts.

Italy implemented Decision 2002/187/JHA through Law n° 41 of 14 March 2005 and various administrative measures.

Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust has not been implemented and there is no clear plan and date for implementation.

The Italian State has not yet transposed into national law several instruments of importance in respect of Eurojust activities. There is no legal base for either joint investigation teams or controlled deliveries except in drug cases. Ministry staff and practitioners strive to develop informal, practical solutions, which helps but cannot fill legal gaps.

Two draft laws for the ratification and enforcement of the 2000 MLA Convention were submitted to the national Parliament in July 2013.

The ENCS is not set up. Eurojust correspondents are in place, most of them being also EJN contact points. The main Eurojust correspondents are based in the Ministry of Justice, in the National Anti-Mafia Directorate and in the major appellate districts of Italy. Cooperation between the latter and Eurojust is running smoothly.

Although Article 13 of the Eurojust consolidated Decision has not been transposed as such, Law 41/2005 obliges prosecutors conducting investigations falling under Eurojust's competence to notify the Italian national member when a letter of request has been sent. This obligation is not known and respected equally from one district to another. Information is delivered in a-non structured way.

The Italian desk at Eurojust is composed of a national member and two assistants, a seconded expert, two secretaries, all having their regular place of work in The Hague. There is no deputy to the national member.

According to Eurojust casework statistics the Italian desk handled a total of 291 cases in 2012, 110 as a requested country and 181 as a requesting country. It participated in 47 coordination meetings. These figures do not include the numerous requests dealt with by the desk in an informal way; the desk is clearly overloaded.

The Italian national member is vested with a fair range of powers (to be complemented when transposing the 2009 Decision) but has no direct access to national databases.
The OCC number works but is not used in practice. When needed, practitioners directly call the mobile phone of the national member or of his assistants.

Thanks to the efforts of the national desk, Italian practitioners increasingly turn to Eurojust. It is advisable for the Italian authorities to encourage this, whilst in parallel taking appropriate measures to avoid the extensive use of Eurojust for the facilitation of non urgent/ non-complex cases which should be dealt with through direct contacts or EJN.

The Ministry of Justice has made significant efforts over the past few years to promote EJN and stimulate contact point activities. However, it can be said that EJN remains underused in Italy and the performance of the contact points can be strengthened.

EJN contact points are located all across the country, essentially in appellate prosecutors' offices, which may facilitate the adequate dealing of incoming letters of request that fall under the competence of appellate courts. Prosecutors and judges of first instance level, competent for the issuing of outgoing letters of request, do not turn to EJN contact points as often as they should.

The evaluation team identified a need to assess and improve the knowledge of international cooperation and the linguistic skills of Italian practitioners. Such measures should be taken on a priority basis for EJN contact points.

2 INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997[1], a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to the practical implementation and operation of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime[2], as amended by Decisions 2003/659/JHA[3] and 2009/426/JHA[4] and of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network[5] repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters[6].

The evaluation aims to be broad and interdisciplinary and focus not only on Eurojust and the European Judicial Network (EJN), but also on the operational aspects in the Member States. Apart from cooperation with prosecution services, this encompasses, for instance, how police authorities cooperate with Eurojust national members, how the National Units of Europol cooperate with the

1 Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997 pp. 7 - 9.
2 Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA), OJ L 63, 2.3.2002, pp. 1-13.
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, p. 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, p. 4-7.
6 Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130-134.

Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities. The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJN. Thus, the evaluation will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002.

Experiences from all evaluations show that Member States will be in different positions regarding implementation of relevant legal instruments, and the current process of evaluation could 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 in GENVAL on 17 January 2012, Eurojust was also provided with a questionnaire. The questionnaire for Eurojust was adopted by GENVAL on 12 April 2012. The answers to the questionnaire addressed to Eurojust were provided to the General Secretariat of the Council on 20 July 2012, and have been taken into account in drawing up the present report.

The order of visits to the Member States was adopted by GENVAL on 31 October 2011. Italy was the fifteenth Member State to be evaluated during this round of evaluations.
In accordance with Article 3 of the Joint Action, a list of experts for the evaluations to be carried out has been drawn up by the Presidency. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request on delegations made by the Chairman of GENVAL on 15 July 2011.

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

The experts charged with undertaking the evaluation of Italy were Ms Tuuli Eerolainen (Finland), Ms Elisabeth Vos (The Netherlands) and Mr Tomas Krusna (Lithuania). An observer was also present: Ms Ingrid Maschl-Clausen (Eurojust), together with Mr Roland Genson and Ms Claire Rocheteau from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Italy between 10 and 14 June 2013, and on Italy's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

3 GENERAL MATTERS AND STRUCTURES

3.1 General information

The evaluation team considers it useful to start the present report with some general information that appears to be important when examining the situation of Italy in the domain under evaluation.

An essential element is the significant backlog in the transposition into national law of various instruments of judicial cooperation in criminal matters. In this connection, mention should be made in particular of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (CETS N. 182), the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, and the Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust. During the on-site visit, the evaluation team found that the Italian practitioners within the judiciary, the Ministry of Justice and the national desk at Eurojust were attempting to make up for the failure to transpose the above-mentioned instruments. This hampers the efficiency of their daily work and the effectiveness of European cooperation in the domain under evaluation. In this context the expert team welcomes the efforts of Italian practitioners to compensate, as far possible, legislative gaps with practical solutions.

During the evaluation visit, the Italian authorities were not in a position to indicate whether, or when, the implementation of the above-mentioned instruments would take place. They stated afterwards, however, that even though there were no draft laws being studied or pending before the national Parliament on this issue, two draft laws – AC 1332 and AC 1334 - had been submitted to

the Chamber of Deputies on 9 July 2013 with a view to "Ratifying and enforcing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, done in Brussels on 29 May 2000". While the outcome of this additional legislative process was not known to the expert team at the time the report was drafted, the team welcomes this positive step, as the 2000 Mutual Legal Assistance (MLA) Convention is one of the most widely used tools for judicial cooperation within the European Union and is therefore one of the instruments Eurojust has to deal with on a daily basis.

Under the Italian legislation currently in force, the following forms of mutual legal assistance are possible:

a) Forwarding of copies of judgments;

b) Service of acts, documents, summonses;

c) Hearing of witnesses, persons under investigation, experts;

d) Surrender of physical evidence, acts and/or documents;

e) Search and seizure of means of proof;

f) Wiretapping of telecommunications;

g) Temporary transfer of persons in custody to be heard as witnesses or for purposes of confrontation as provided for by Article 11 of Council of Europe (CoE) Convention no. 030,

h) Taking and analysis of DNA (*here Deoxyribonucleic Acid*) samples;

i) Videoconferencing ;

l) Controlled deliveries, but only where in compliance with the provisions of domestic law on drugs and,

o) More generally, all forms of cooperation compatible with domestic law.

With regard to the countries adhering to the Convention implementing the Schengen Agreement, letters of requests should be addressed to the Office of the Prosecutor General attached to the Italian Court of Appeal having territorial jurisdiction, which can be identified in a specific case by using the EJN Atlas or the website www.giustizia.it at the link GIUSTIZIA MAP. (N.B. Requests for temporary transfer of persons in custody under Article 11 of the CoE Convention no. 030 should always be sent to the Ministry of Justice).

The following elements relate to features of the Italian judicial system that should be kept in mind in the context of the present evaluation.

In Italy judicial functions in criminal matters are discharged by ordinary magistrates (*magistrati ordinari*), which refers to both judges and public prosecutors. Particular importance is attached to the independence and autonomy of the Judiciary, a concept which is also related to public prosecutors, in particular by having regard to the national legal provisions on compulsory prosecution.

The Superior Council of the Judiciary (*Consiglio Superiore della Magistratura*, CSM) is the body responsible for self-regulation of the judiciary and for recruitment, allocation, transfer, promotion, disciplinary measures and also for training - the latter competence being shared nowadays with the School for the Judiciary.

The distribution of judicial offices in the domain under evaluation is as follows: 164 first instance courts, 26 appellate courts and the supreme court *Corte di Cassazione*. To each of these courts is attached a prosecution office.

Criminal proceedings in Italy are divided into two phases: the investigation phase during which the public prosecutor collects the evidence, and the trial phase, during which the contending parties place evidence before the court.

The investigation phase is conducted by the public prosecutor. The Code of Criminal Procedure (CPP) establishes that when carrying out their functions the judicial police must answer to and come under the authority of the judicial authorities, in compliance with Article 109 of the Constitution, which establishes that the judicial authorities can make direct use of the judicial police. There are particularly close ties between the judicial police and the public prosecutor, with special judicial police sections in all of the Public Prosecutor's Offices.

The investigation phase is under the supervision of the Judge for preliminary investigations (*Giudice per le indagini preliminari* - GIP), who is responsible for applying measures restricting the personal freedom of the person under investigation and who monitors the work of the public prosecutor so as to guarantee the rights of the person under investigation. The GIP may have to execute international letters of request (LoRs), as detailed below.

Pursuant to Article 724 of the Italian CPP, the execution of an incoming international LoR is subject to the prior acceptance by the appellate court of the place where the requested acts have to be carried out. When a LoR concerns acts which have to be carried out in more than one district, the *Corte di Cassazione* designates the appellate court having jurisdiction.

The execution of the LoR will be refused where the acts requested are prohibited by national law and are contrary to the principles of the legal system of the State; where the facts in relation to which the foreign authority initiated the proceedings are not considered an offence under Italian law and it does not appear that the defendant has freely expressed his consent to the LoR; where there are justified grounds for believing that considerations pertaining to race, religion, sex, nationality, language, political opinions or personal or social conditions may affect the performance or the outcome of the trial and it is not clear that the defendant has freely expressed his consent to the LoR. It seems that Italy has a wide range of criteria for refusing the execution of a LoR, which might not be in line with international obligations.

In ordering the execution of an incoming LoR, the appellate court delegates one of its members or the GIP of the place where the acts have to be carried out.

In this regard, no legal distinction is made between instruments of mutual recognition and other (traditional) letters of request issued by foreign authorities. However, Italy does not accept LoRs signed by police-officers, while co-signing by a public prosecutor is accepted.

Outgoing LoRs may be issued at first-instance level, either by prosecutors and judges. As the expert team was informed, under Italian law a copy of every outgoing LoR must be sent to Minister for Justice, who has the power to withdraw the request. Italian authorities underlined that the cases in which the Minister of Justice can exercise such a power are strictly laid down. Only the cases where the requested actions may jeopardise the sovereignty, safety of other fundamental public interests, or when there are grounded reasons to believe hat considerations regarding race, religion, sex, nationality, language, political opinions, personal or social conditions may impact in a negative way on the development or outcome of the proceedings and when reciprocity is not expressly guaranteed by the requesting State. Italian authorities underscored that, evidently, such rules do not find any practical application in the relationships with the other countries of the EU and that, however, such an authority has never been exercised.

European Arrest Warrants (EAW) are executed by courts of appeal. When supplementary information is required, such requests have to be made exclusively through the Ministry of Justice. This applies also when Italy is the issuing State. The expert team considers that direct contacts would be preferable and in the spirit of the international instruments. In facilitating direct contacts, the national member or the EJN contact point should be able to exercise their role.

3.2 Formal implementation of Council Decisions 2002/187/JHA of 28 February 2002 setting up Eurojust and 2009/426/JHA on the strengthening of Eurojust

Decision 2002/187/JHA was implemented by Law N° 41 of 14 March 2005. This law governs the appointment of Italian representatives at Eurojust as well as the powers and right of access of a national member, and sets up a Eurojust national correspondents network.

Decision 2009/426/JHA on the strengthening of Eurojust has not yet been transposed into the Italian legal system. The Italian authorities stated that no draft legislation had been introduced or was under preparation in this regard. After the on-site visit they specified that the drafting of the relevant legal provisions to be submitted to the Italian Parliament for approval was currently underway at the Ministry of Justice.

With regard to the operation of Eurojust, the Ministry of Justice, with the support of the Italian national member and of the National Anti-Mafia Directorate, has adopted several administrative measures with a view to improving the operational effectiveness of the system of judicial cooperation established by Eurojust. Many efforts have been made in recent years to market Eurojust activity, to consolidate an effective network of national correspondents throughout the national territory, and to highlight the competences of the European Judicial Network and Eurojust, respectively.

For the purposes of the implementation of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network as well as of the provisions of Council Decision 2008/976/JHA of 16 December 2008 repealing the Joint Action, Italy has not passed acts having the force of law, but has implemented directly the cooperation instruments through non-binding administrative acts such as notes, resolutions and circular letters.

3.3 Implementation of the Eurojust National Coordination System / National correspondents

The Italian authorities reported that they had not implemented the Eurojust National Coordination System (ENCS) provided for by Decision 2009/426/JHA. It was stated that this delay was linked to the non-transposition of some EU instruments, but it remains unclear how far the setting up of the ENCS depends on such missing legal provisions.

However, the designation of the national correspondents for Eurojust, which was recommended, though optional, by Article 12 of Decision 2002/187/JHA, was provided for by Article 9 of Law 41/2005.

The national correspondents are located throughout the territory (essentially at regional level) and, according to Ministerial circular letters, are coordinated by the Eurojust national member.

Pursuant to the above-mentioned provision, the designated national correspondents for Eurojust are:
- the "*Ufficio II*" of the Directorate-General for Criminal Justice of the Department for Justice Affairs of the Ministry of Justice (the office responsible for International Cooperation in criminal matters),
- the National Anti-Mafia Directorate (*Direzione Nazionale Antimafia* - DNA), a national judicial body specialised in organised crime matters, affiliated with the Office of the Prosecutor-General attached to the *Corte di Cassazione*;
and,
- the 26 prosecution offices attached to the courts of appeals.

The mapping of the network of Eurojust national correspondents appears to be well suited to the Italian situation, as the designated services are natural Eurojust contacts: the Ministry as a central authority and coordination unit, the DNA whose competences are similar to those of Eurojust, and finally the general prosecution offices at regional level.

A good illustration of the relevance of this approach is the DNA, a judicial institution whose main mission is to coordinate investigations at appellate district level. In principle. the DNA has no investigative powers, except under the principle of complementarity. This central office monitors on a daily basis the treatment of serious organised crime cases by ordinary prosecutors and provides support to colleagues in their mission.

The DNA is composed of 20 magistrates, of whom one acts as Eurojust correspondent and one as EJN contact point, while it could be said that all of the DNA members may be considered to be Eurojust and EJN facilitators, with daily contacts with 26 prosecutor's offices, transferring relevant information to Eurojust and helping to deal with judicial cooperation in organised crime matters.

The evaluation team also appreciated the fact that the Eurojust correspondents' mapping reflects that of the EJN contact points, and this symmetry makes it possible to appoint a single person as national correspondent for Eurojust and EJN contact point.

Another interesting initiative of the Ministry of Justice is its request to the heads of offices, by means of circular letters, to designate both a full correspondent or contact point and an alternate (deputy), in order to ensure continuity of service in the event of absence or impediment of the holder.

3.4 National desk at Eurojust

3.4.1 Organisation

The national desk at Eurojust is composed of a national member, two assistants, one seconded national expert and two secretaries under the direct authority of Eurojust.

The desk has no deputy, a situation which, aside from the fact that it is contrary to the requirements of the 2009 Eurojust Decision which has not yet been implemented by Italy, is also considered problematic from an operational point of view given the workload of the Italian desk and of its national member. According to Eurojust statistics, the Italian Desk at Eurojust is one of the national desks most involved in Eurojust operational activities. It is mainly involved in the following types of crime: participation in a criminal organisation, drug trafficking, money laundering.

3.4.2 Selection and appointment

In accordance with Article 2 of Law 41/2005, the national member at Eurojust is appointed from among judges or prosecutors by means of a decree of secondment issued by the Minister for Justice.

Candidates must have at least twenty years' service. The Minister for Justice, after receiving an opinion from the CSM concerning a list of candidates from among whom he/she appoints the national member, asks the CSM itself to place the appointed magistrate temporarily outside the judiciary structure.

In cases in which the magistrate is currently temporarily outside the judiciary structure in another position, the Minister directly notifies the CSM of the appointment.

In accordance with Article 3 of Law 41/2005, the national member may be assisted by one person and, if necessary and with the agreement of the College, up to three persons. One of these assistants may replace the national member in the performance of his/her tasks, provided that he/she is a judge or a prosecutor.

The national member's assistants may be appointed from among:
- judges or prosecutors with at least the title of court magistrate,
- executives of the administration of justice.

The procedure for appointing a judge or prosecutor as an assistant of the national member is the same as for the national member. Where an executive of the administration of justice is appointed as assistant, he/she is temporarily placed outside the establishment plan to fill another position.

The term of office of a national member and his/her assistants is four years and may be extended for no longer than a further two years.

3.4.3 Powers granted to the national member

3.4.3.1 General powers

For statutory reasons, an Italian national member must be placed outside the judiciary structure, which means that he/she does not have the competence and powers of a national public prosecutor. Whilst the expert team took note of these reasons, the team is concerned that this may not be entirely in line with the spirit of the Eurojust Decision, in particular as regards the possibility of using judicial powers.

Pursuant to Article 2 of Law 41/2005 the Minister for Justice may, through the Head of the Department of Justice Affairs, send instructions to the national member concerning the performance of his/her tasks. These instructions should not involve operational matters, taking into account the status of independence granted to all magistrates, including when they have been placed on temporary leave from their position in the judiciary (*fuori ruolo*), following an appointment made by the Minister. According to the Italian authorities, there is no precedent in this regard.

The national member is not obliged to report to the Ministry of Justice, but the incumbent does so each semester. The reports include the most important activities, statistics, etc. of the Italian desk. There is good cooperation between the two authorities.

The powers granted to the national member for Eurojust are laid down in Article 5 of Law 41/2005, which stipulates that, in the context of investigations and prosecutions concerning the types of crimes and offences in respect of which Eurojust is competent, as referred to in Article 4 of the Decision, and with a view to accomplishing the objectives of promoting and improving the coordination of the investigations and prosecutions themselves, and to improve cooperation between the competent national authorities of the Member States of the European Union, as well as with a view to supporting those authorities, as laid down in Article 3 of the Decision, the national member will exercise the powers referred to in Article 6 of the Decision.

In order to carry out his tasks, the national member may, in particular,

a) ask the competent judicial authorities to consider:

1) undertaking an investigation or prosecution of specific acts;

2) accepting that one of them may be in a better position to undertake an investigation or to prosecute specific acts;

3) coordinating between the competent authorities of other Member States concerned;

4) setting up a joint investigation team with the competent authorities of other Member States concerned, in keeping with the relevant cooperation instruments - even if those instruments have not yet been implemented by Italy;

b) ensure that the competent judicial authorities of the Member States concerned inform each other of investigations and prosecutions of which Eurojust has been informed;

c) assist the competent national authorities and those of the other Member States concerned, at their request, in ensuring the best possible coordination of investigations and prosecutions, including by organising meetings between the above-captioned authorities;

d) give assistance in order to improve cooperation between the competent authorities of Member States;

e) cooperate and consult with the European Judicial Network, including by making use of and contributing to the improvement of its documentary database;

f) receive from judicial authorities, through the national correspondents or directly in urgent cases, and forward requests for judicial assistance when they concern investigations or prosecutions in relation to the types of crimes and the offences in respect of which Eurojust is competent, as referred to in Article 4, paragraph 1 of the Decision, and request the assistance given by Eurojust, with a view to their coordinated execution;

g) give assistance, with the agreement of Eurojust's College and at the request of the competent judicial authority, including where the investigations and prosecutions only concern the Italian State and a third Country, if a cooperation agreement has been concluded with the said Country pursuant to Article 27, paragraph 3, of the Decision, or where there is an essential interest in providing such assistance, or where the investigations and prosecutions only concern Italy and the Community;

h) participate, by providing assistance, in the activities of a joint investigation team set up in keeping with the relevant cooperation instruments, even if, as stated above, Italy has not yet implemented these instruments.

Since Decision 2009/426/JHA has not been transposed into national law as yet, neither the additional powers provided for therein, nor any further powers, have been granted to the national member.

3.4.3.2 Access to national databases

Article 7 of Law 41/2005 provides that, in furtherance of the objectives under Article 3 of the Decision, the national member:

- may request and exchange with the competent judicial authority, including by way of derogation from the prohibition provided for by Article 329 of the code of criminal procedure, written information on the criminal proceedings and the content of the relevant acts;

- has access to the information contained in the criminal records, in the records of pending charges, in the register of administrative sanctions resulting from an offence and in the register of administrative torts resulting from an offence, under Articles 21 and 30 of the Consolidated Text of provisions and regulations on criminal records, register of administrative sanctions resulting from an offence and the relevant pending charges, under the decree of the President of the Republic of 14 November 2002, n. 313, in the registers of reported offences and in the other registers set up in judicial offices and in any other public register;

- may request the Authority having central jurisdiction for the national unit of the Schengen Information System to be notified of the information included in the System.

The request for access to the information has to be sent by the national member to the competent judicial authority, which means that the Italian national member is not granted with direct access to any national database. The incumbent stated that he does not feel the need to operate various computers and programmes by himself and that indirect access does not adversely affect the efficiency of the desk.

Nevertheless the experts deemed it highly desirable to provide the Italian national member with at least the possibility of consulting, from Eurojust headquarters in the Hague, the centralised database of criminal records, which includes information relating to convictions and pending proceedings and is operated and maintained by the Ministry of Justice, Criminal Records Bureau (*Ufficio del Casellario Giudiziale*) in Rome.

It is also important to note that, under Italian law, in the case of preliminary investigations taking place in Italy, the decision to transmit a piece of information requested by the national member is made by the public prosecutor in charge of the investigation. Nevertheless, if the latter foresees any impediment to granting the request, he must send it, together with his opinion, to the GIP, who will issue a grounded order of grant or dismissal.

In the subsequent phases of a criminal proceeding, the GIP (or the judge currently in charge of the case) himself, after receiving the public prosecutor's opinion, will take the decision. The order granting or rejecting the request can be challenged by the public prosecutor or the national member at Eurojust within the twenty days following notification, before the Court of Cassation. As a result of this challenge, the enforcement of the order granting the request is discontinued.

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

The entering of new cases (and files) in the CMS is at the initiative and by order of the national member; the information/documents necessary to deal with the case are entered in the system and are shared with the other national desks involved. It is up to the national member to decide whom to share the case information with and whom to give access to it.

Furthermore, the Italian Desk set up a system to manage and record pending files, within CMS Outlook. This system allows all the members of the Desk to constantly check open cases and all the documents, included e-mail exchanges, entered by the Secretary's Office; this updating activity takes place every day. In order to run this system, which was considered valid and cited as an example by the Data Protection Officer of Eurojust, the national member circulated a note containing instructions and directives for the members of the Desk.

Italian national correspondents do not have access to the restricted part of the CMS, since such access is not provided for by their national law and also because the necessary technical means are lacking. According to the Eurojust report provided for under Article 16b of the Eurojust Decision, as of 9 July 2013 Italy was (apart from Croatia) the country furthest from achieving the implementation of the network connection between Member States and the Eurojust Case Management System.

However, the Italian authorities emphasised that, thanks to the above system developed by the national member, the competent national authorities can at all times obtain information entered in the files, which at their request is sent to them by the Italian desk.

3.5 EJN contact points

3.5.1 Selection and appointment

In compliance with the provisions of Council Decision 2008/976/JHA, a central contact point (national correspondent) is appointed by the General Director of Criminal Affairs at the Ministry of Justice from among the magistrates working in *Ufficio* II, the office in charge of international and European cooperation in criminal matters.

In each appellate prosecutor general's office, at least two contact points should be appointed from among the magistrates working at the office, one incumbent and one deputy. Similarly, contact points are appointed at the National Anti-Mafia Directorate - DNA - to coordinate and improve judicial cooperation in investigations concerning offences whose coordination is assigned to the DNA (e.g. kidnapping with a view to extortion, mafia-type association, drugs, etc.); these contact points are the National Anti-Mafia Prosecutor and/or one or more National Anti-Mafia Prosecutors, respectively.

The General Prosecutor at the Court of Cassation and/or his Deputies are designated as contact points.

All the Italian contact points, with the exception of the national correspondent at the Ministry, who has administrative functions only, carry out judicial activities.

The criteria for selection of contact points are established by means of notes and circular letters issued by the Ministry of Justice and are as follows: the magistrates are required to have a sufficient knowledge of one other official language of the European Union (preferably English and/or French) and to have minimum computer skills (in particular for communicating through the Internet) in order to be able to constantly monitor the personal e-mail addresses created for each single magistrate, in the "giustizia" intranet network, as well as the e-mail account devoted to the European Judicial Network, expressly created for the contact points. It is highly recommended that magistrates who are motivated and interested in performing international judicial cooperation functions be appointed.

As the contact points are nominated by the Head of their prosecution offices, the Ministry of Justice, in its coordinating capacity, has no way of knowing their skills. It seemed that many of them did not fulfil the language requirements to the degree expected. The expert team was told that the national correspondent quite often translates messages between the Italian and foreign contact points. Although this service is a solution to the language problem, it is contrary to the principle of direct contact between contact points.

3.5.2 Practical operation of the EJN contact points in Italy

Contact points, language skills allowing, communicate directly with competent national or foreign authorities and may exchange all the information necessary to perform their tasks.

When contact points receive by e-mail, fax or mail a request for intervention or information from the contact points attached to the Judicial Authorities of another Member State or from the national correspondent of Eurojust, if they are not in possession of the information to be supplied they are instructed to forward the request without delay, generally by the ad hoc computer, to the competent judicial authorities and verify that the latter provide prompt and appropriate judicial cooperation. If - for any reason - the Italian contact point approached cannot respond or remains silent, the expert team was informed that the national correspondent steps in to speed up the process.

The Italian contact points provide the legal and practical information necessary to submit requests for judicial cooperation, both to the foreign judicial authorities and to the Italian judicial authorities. Their task is to participate and promote, at local level, the organisation of training sessions for judicial authorities, where they have territorial jurisdiction, on judicial cooperation in criminal matters and the relevant instruments, in particular with regard to the role of the European Justice Network. At the direct request of the secretariat of the EJN and /or the national correspondent, they respond to various questionnaires and/or forms, including statistical forms, circulated by the Network's secretariat, which do not fall within the exclusive jurisdiction of the national correspondent. They take part, together with the national correspondents of Eurojust, in coordination meetings, organised by the Ministry of Justice on an annual basis, where general issues, practical and legal problems encountered by the contact points are dealt with and/or inefficiencies or best practices are reported.

3.6 Conclusions

3.6.1 Formal (legislative) implementation process

- Italy has satisfactorily implemented Eurojust Decision of 2002, in particular in granting its national member a fair range of powers equivalent to Article 9(3) (with no direct access).
- Eurojust Decision of 2009 has not been implemented; no draft has been completed and no legislative timetable is envisaged. However, the expert team was informed that under Italian law (Article 7 of Law 41/2005) an obligation has been placed on the Italian national authorities to inform Eurojust of transnational investigations concerning the serious crimes for which Eurojust has the remit, an obligation that appears to go beyond the scope of Article 13; however, the article in the Italian Law (Article 7) only stipulates situations where a LoR has been sent to another Member State. This limits the scope of the obligation under Italian Law to a certain category of cases. Another obstacle could be the fact that, under Italian Law, the electronic template developed by Eurojust in line with Article 13 is not obligatory. Moreover, the national member is not vested with other important powers, notably those under Article 9c, whilst the expert team was informed that provisions exist under Italian law corresponding to Article 9 b (1) and 9 e of the consolidated Eurojust Decision.
- The Italian State has accumulated a significant delay in the implementation of various instruments of judicial cooperation in criminal matters, a situation which limits the potential added-value of Eurojust and EJN in cases where Italy is involved.

3.6.2 The national desk

- The general assessment by the Italian judicial authorities of the quality and efficiency of the support received from Eurojust is positive. The current national member at Eurojust is an experienced prosecutor with a favourable reputation throughout the country and well known to a number of his colleagues. This helps considerably in increasing the awareness of practitioners involved in judicial cooperation in criminal matters. A possible drawback of this could be that cases which should be handled by EJN are sent to Eurojust. The expert team was informed that prosecutors like to work through the Italian Desk at Eurojust, even in the case of bilateral, relatively simple requests.
- The Italian desk is one of the most heavily involved in Eurojust operational activities; the appointment of a deputy to the national member is needed.
- The Italian desk has no direct access to any national database.

3.6.3 ENCS

- ENCS has not been implemented in accordance with the 2009 Eurojust Decision; however, Eurojust national correspondents and a Eurojust national correspondent for terrorism matters are in place. It therefore seems that the establishment of ENCS could be further advanced to the fullest extent permitted by national law.

3.6.4 EJN

- EJN CP are EJ national correspondents.
- As in many Member States, practitioners act as contact points as a part of their daily work with no reduction in their workload.
- The level of activities, involvement and skills of the contact points may vary considerably.

4 EXCHANGE OF INFORMATION

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

4.1.1 Obligation to exchange information under Article 13(5) to (7)

Article 13 of the Eurojust Decision of 2009 has not been transposed by Italy.

Article 7, paragraph 3, of Law No. 41 of 14 March 2005 transposing Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust stipulates that: "In order to accomplish the objectives referred to in Article 3 of the Decision, the Prosecutor of the Republic of Italy, where he/she is conducting investigations for any of the forms of crime or offences in respect of which Eurojust is competent, as referred to in Article 4, paragraph 1, of the Decision, involving at least two Member States of the European Union, or a third Country, where a cooperation agreement has been concluded with the said Country pursuant to Article 27, paragraph 3, of the Decision, or the Community, shall notify the Eurojust national member thereof".

Public prosecutors have been informed of the above specific rule which is disseminated in training sessions and in their daily work. In addition to training, the need to disseminate the above rule is stressed during the periodic meeting organised between the Network Contacts Points and the Eurojust national members. Furthermore, the Ministry of Justice has sent various circular letters – the latest being the circular letter of 20 March 2012 – to point out that all public prosecutors' offices have to comply with the obligation imposed on them by Article 7, paragraph 3, of Law no. 41 of 14 March 2005.

The Italian national member has recently drawn the attention of the Prosecutor-General attached to the Court of Cassation to the fact that a number of prosecutor's offices do not always comply with this obligation. In response, a circular letter dated on 15 March 2013 was sent, addressed to the prosecutor-generals attached to courts of appeal and to the National Anti-Mafia Prosecutor, asking that the awareness of the prosecutors in their respective districts be raised in order to enhance co-operation with Eurojust.

At the time being, as there is a legal obligation on magistrates to send to the Anti-Mafia Directorate a copy of each active (outgoing) letter of request concerning crimes that come within the competence of this Directorate, the information, once it is recorded in the DNA database, may also be transferred to Eurojust in accordance with national law. The close cooperation between the DNA and the Italian national desk helps to "fill the gap".

After the on-site visit the Italian authorities indicated the following.
An additional circular letter is in preparation to the attention of judicial authorities in this respect, and this draft circular letter will also provide indications and suggestions with a view to resolving two further criticalities highlighted in the present report: in the first place, Italian judicial authorities failure to adopt the template, drafted by Eurojust, when reporting information to Eurojust itself (extension at national level of the protocol concluded between the DNA in relation to the transmission of information to Eurojust); in the second place, the improper use of Eurojust in cases which fall within the competence of the EJN (guidelines specifying the cases in which judicial authorities have to address Eurojust and those in which they should use the network of EJN contact points shall be drafted).

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

Italy has not implemented yet Decision 2005/671/JHA of the Council concerning the exchange of information and cooperation on terrorist offences.

Nevertheless, by an act of the Ministry of Justice the central Contact Point was designated, and the national correspondent is currently a magistrate from the Office of the Prosecutor General of the Court of Cassation.

No organised system has been adopted yet to exchange information and the contact point is generally involved in the updating of judicial data (judgments) in this field, which are gathered by Eurojust with a view to drawing up TE-SAT.

4.1.3 Channels for information transfer to Eurojust

No implementing provision has been established for the transmission of the information in a structured way. The information is mainly provided by fax, e-mail, telephone or letters.
Since, as already mentioned, the Eurojust template is not used, the transfer of information to the Eurojust-system is a very time consuming task for the Italian desk.

However, it was found during the on-site visit that a protocol concluded between the DNA and the Italian desk allows for the sending of structured information to Eurojust - in a manner similar to that provided for under Article 13 of the 2009 Eurojust Decision. It would be advisable to extend that practice as far as possible, as an interim measure pending the full implementation of the consolidated Eurojust Decision.

4.2 Feedback by Eurojust

According to Eurojust responses to GENVAL questionnaire, in the period from May 2011 to April 2012 inclusive, 22 of the 72 notifications to Eurojust under Article 13 which were registered in the CMS originated from the Italian desk (Mainly Art. 13(6)).

The information provided is cross-checked against the information of the CMS at the request of the national judicial authority and when there are reasons for believing that the information provided may have connections with other investigations that have already been recorded in Eurojust. These checks have already led to the identification of connections with other Eurojust "operational files" and, as a result, have led to coordination procedures being initiated.

4.2.1 Qualitative perception of the information flows between Eurojust and Italy

The flow of information from Italian national judicial authorities to Eurojust has increased considerably in recent years, in the case of both explicit requests for assistance and notifications pursuant to Article 7, third paragraph, Law 41/2005.

In a number of cases, information is sent by forwarding a copy of the LoR to the Italian national member, according to whom this system is particularly useful when there are subsequent requests for assistance.

4.2.2 Practical or legal difficulties encountered when exchanging information with Eurojust

No practical or legal difficulties in the exchange of information with Eurojust have been noted.

4.2.3 The E-POC project

Italy has been part of the E-POC project from the very beginning.

In their reply to the questionnaire, the Italian authorities regretted that the E-POC project is used not only for the objectives set out in the Eurojust Decision but also to gather information on letters of request and European arrest warrants between Italy and other Member States. In their view, using E-POC IV for objectives other than those prescribed by the law reduces the quality of work, thus imposing on Eurojust a basically intermediary role between contact points in the exchange of information.

4.3 Conclusions

- Although the obligation to inform Eurojust regarding cases falling within its scope of competence is enshrined in the law of 2005, there is room for improvement as regards prosecutors' awareness of and compliance with this legal obligation.
- Italy has not implemented Decision 2005/671/JHA concerning the exchange of information and cooperation on terrorist offences, but a central contact point has been designated by the Ministry of Justice.
- The Eurojust template is not used.

5 OPERATIONAL ASPECTS

5.1 Statistics

The various offices and, in particular, the single national correspondents do not have statistics available on their contacts with Eurojust. This situation could be improved, so as to allow the central authority (Ministry of Justice) to monitor activity in this regard.

Italy is without doubt one of the busiest desks at Eurojust. Statistics presented by Eurojust as part of its reply to the questionnaire confirmed this.

As Italy is the requested State in a large proportion of the Eurojust cases the Italian desk deals with, a reinforcement of the personnel of the Italian desk would be also beneficial for other countries.

5.2 Practical experience in relation to Eurojust

The cases referred to the national member by the Italian judicial authorities, both judges and prosecutors, cover complex and non-complex, urgent and non-urgent, bilateral and multilateral cases; as regards prosecutors, requests are made as a rule when the transnational nature of the offences in question is identified or when letters of request to other countries are needed.

5.3 Allocation of cases to Eurojust, the EJN or others

No guidelines or specific documents are available in this respect. However, during the periodical meetings with EJN Contact Points and Eurojust National Correspondents, attention is drawn to the fact that simple requests for judicial cooperation between two countries should be addressed to Contact Points while the Eurojust channel should be used for the coordination of investigations in respect of offences committed in more than one country. The expert team noted that guidelines had been requested at a meeting of contact points[7].

It is acknowledged by the Italian authorities that awareness of the possibility of using the expertise and network of the EJN contact points is uneven across the country and that, where it is known, they are not always addressed. This might be one of the reasons for which the Italian desk at Eurojust is also addressed in cases that fall under EJN competence.

One reason for this might be that, as described in point 3.1 above, while incoming LoRs are under the exclusive competence of appellate courts and transit through appellate prosecutors (who are EJN contact points and Eurojust correspondents), outgoing LoRs may be issued either by first instance prosecutors during the investigation phase, or by first instance judges during the trial phase. It appeared during the on-site visit that in many regions of Italy no overview of outgoing LoRs is possible. This possible gap in information sharing may hamper the investigations both in Italy and the other Member States and may make coordination more difficult.

A good exception to this situation is the region of Bologna, where the expert team found that cooperation between EJN contact points located at appellate level and prosecutors and judges of the court of first instance is very well organised and fruitful, and that EJN contact points also provide local training to practitioners. It would appear that this is the result of good cooperation between the prosecutors and the supporting staff of the prosecutor's office (at appellate level) in Bologna.

[7] Source: Minutes of the meeting for the coordination of the EJN's Italian contact points and of Eurojust national correspondents, 9th April 2013

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

Italian authorities indicated that, in practice, a judicial authority that needs to start an international judicial cooperation activity will turn to either Eurojust or the European Judicial Network; its choice may, for instance, depend on previous professional relationships with a contact point or a member of the Italian desk, on the provision of prompt answers, etc. Another reason given during the on-site visit was the ease with which a member of a national desk can walk to the desk of the other Member State with the request and get a speedy response.

The practitioners are increasingly using Eurojust rather than EJN or outgoing requests. Interviews during the on-site visit showed that one of the reasons is that, thanks to the Ministry and the national member, awareness of Eurojust's possibilities is increasing.

As a matter of consequence, a number of outgoing letters of request concerning bilateral and non-complex cases dealt with by the Italian desk could be dealt with by EJN contact points instead. This could possibly also burden the other national desks at Eurojust. The expert team is aware of the fact that this is also the situation with some of the other desks.

According to the national member, this has the very positive effect of progressively increasing awareness among Italian practitioners and of achieving better results in judicial cooperation. The experts team share the opinion that it may be easier for practitioners to go through a unique channel - especially in view of the fact that a request "unduly" received by the Italian desk at Eurojust may easily be transferred to a competent EJN contact point - as most of them are also national correspondents to Eurojust. However, concerns remain that the Italian desk is heavily burdened and should focus on matters that come within the core competence of Eurojust.

5.3.2 Requirements for cooperation between national authorities and Eurojust

There are no formal requirements or specific procedures provided for by Italian law in respect of cooperation between the national authorities and Eurojust. Therefore, cooperation takes place in a more or less informal way, depending on the nature of the activity requested. Within Eurojust, the national member keeps a record according to the rules of procedure of the cooperation unit.

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

The Italian national member has the power to request action in all of the cases listed under Article 6, and national authorities generally respond to any request made by him in a satisfactory manner. However, formal requests are only rarely made by the national member. The Italian authorities admitted that the response depends on the good will of the requested authorities.

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

In their answers to the questionnaire the Italian authorities explained that Article 7 had not been applied to Italy to date.

5.4 Practical experience related to coordination meetings

According to Eurojust statistics, the Italian desk is one of the desks most frequently involved in coordination meetings.

During the on-site visit, many Italian practitioners underlined the added value of coordination meetings organised by Eurojust.

From the standpoint of the Ministry of Justice and the national desk, subsequent coordination meetings are extremely useful.

It is worth noting that, as a result of the recent coordination meeting involving Italy, the need to start ad hoc training meetings was identified.

5.5 Use of the On-Call Coordination (OCC)

National authorities were informed of the existence of the OCC through the transmission of explanatory documents and during marketing seminars held in Italy and organised by the Italian desk, in addition to the different meetings at local level held by the national member with Italian colleagues.

The expert team learned that all OCC phone calls are directed to the mobile phone of the national member for Italy.

The OCC number has never been used by the Italian national authorities at this stage. However, many urgent requests were submitted by means of other channels, in particular by calling the mobile phone of the members of the desk outside Eurojust opening times; in such cases, the national member and his assistants have always executed the requested actions as promptly as possible.

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

No cases reported - ENCS not set up.

5.7 Conclusions

- Many of the practitioners interviewed during the on-site visit said they prefer direct contacts with the national member of Eurojust and usually do not use the possibility of assistance through the EJN contact points. This may burden not only the Italian desk, but also the other desks.
- The Italian desk is one of the desks most frequently involved in coordination meetings.
- Guidelines on choosing between Eurojust and EJN are needed.
- No On-call coordination cases by national authorities have been reported.

6 COOPERATION

6.1 Cooperation with EU agencies and others

Subject to explicit consent by the national judicial authority, Europol or OLAF were involved in proceedings with a view to cross-checking Europol databases as well as to allow the participation of representatives of both agencies (both OLAF and Europol) in coordination meetings.

No cases of involvement by Frontex have been reported.

6.2 Cooperation with third states

Not many details were provided by Italy in this respect. The Italian authorities said that the same policy is followed as with EU Member States, and expressed the positive opinion that the involvement of Eurojust has given added value to cases relating to third States on several occasions, including through the participation of the representatives of non EU countries in coordinating activities.

6.3 Practical experience of the EJN

6.3.1 Cooperation between the national member and the EJN

The national member and his assistants have frequent and positive contacts with EJN contact points. As the Ministry of Justice encourages to appoints, whenever possible, the same persons for the roles of both Eurojust national correspondent and EJN contact point, the relationships are further facilitated and improved.

This practice makes it possible to fast-track the processing of requests for judicial cooperation regarding non-serious offences, helps in facilitating incoming letters of requests or, less frequently, receiving requests from national judicial authorities and disseminated through EJN contact points.

6.3.2 Resources allocated domestically to the EJN

EJN contact points do not have specific resources to carry out their tasks. As they are appointed from among the staff of the prosecution offices attached to the courts of appeal and the Court of Cassation, including the Anti-Mafia National Directorate and, at central level, within the *Ufficio II* of the Ministry of Justice, the resources at their disposal are those assigned to these offices.

The EJN contact points have no reduction in their workload. So they carry out their work as EJN contact points as part of their daily work. They have their own tasks and, on top of that, take turns in a pool of international cooperation.

6.3.3 Operational performance of EJN contact points

Italian authorities have noted a remarkable increase in requests for cooperation submitted through the EJN, notably due to a growing awareness of and trust in the network at EU level, on the part of judges.

It needs to be underscored that contact points at prosecutors general's offices of the districts having a higher territorial extension, with the highest population density, or including metropolitan areas (i.e. Rome, Milan, Naples), as well as the national correspondent, given his function of coordination and assignment of requests, use the EJN more frequently than the other contact points.

Many requests for cooperation are executed informally through direct telephone contacts, of which no data are available for statistical purposes. At any rate, from statistics gathered from the forms drafted by the EJN Secretariat, the requests submitted and/or executed in 2011 amount to 77, as compared with 131 in 2012. As can be seen, the requests have nearly doubled from 2011 to 2012.

The requests handled concerned different procedures. A large part of them dealt with internal procedures for the enforcement of EAWs, information on the state of criminal prosecution proceedings, reminders regarding requests for judicial cooperation not executed in due time. Less frequently, some requests dealt with the punishability of a given conduct under national legislation.

As a rule, all the requests are executed, though the timing differs. The replies from the contact points of other Member States are also usually timely and accurate.

The expert team has found that the local Italian contact points do not usually receive the incoming requests directly, but rather through the EJN national correspondent located in the Ministry of Justice. Such a situation is understandable given the country's size and the number of local EJN contact points. In this regard, it is noteworthy that the Ministry of Justice has made an effort to set up a mechanism to monitor the follow-up of incoming requests. However, the expert team considers that direct contact should always be the first choice.

6.3.4 Perception of the EJN Website and its tools

It is regrettable that, notwithstanding the efforts made by the central authority and at local level by the contact points to promote it, the EJN website is not widely used by Italian judicial authorities, despite the fact that the website is considered quite user-friendly for those who understand English.

However, users are growing in number and the website is highly appreciated by those who deal regularly and directly with judicial cooperation cases. Among its users the EJN website is considered a useful tool in that it contains updated information and forms to facilitate the drafting of requests for cooperation and identify the legal instruments transposed in the different countries. They particularly appreciate the prompt identification of foreign contact points to be contacted in case of need, the availability of phone numbers, email addresses, office addresses and the mention of the preferred foreign language for contacts.

A number of critical remarks were made about the updating of the website.

The Italian authorities added that it was not always easy to download from the website files to be processed directly, or to retrieve information on the status of implementation of EU law within each country. Practitioners should always be able to fill in, save and reuse the forms on the EJN website.

The Italian authorities would recommend the preparation of a handbook, also in electronic form, specifying the various steps to be taken for optimal use of the EJN website. The expert team feels that a short introductory demonstration of the use of the website as part of a training session would be more beneficial.

6.4 Conclusions

- Cooperation between the national member and the EJN is good. This cooperation is facilitated by the fact that EJN contact points are also Eurojust correspondents.
- The EJN website is not widely used by Italian practitioners.
- Practitioners requested regular updating of the EJN Website and user-friendly forms.

7 SPECIAL INVESTIGATIVE TECHNIQUES - PRACTICAL EXPERIENCES

7.1 Controlled deliveries (Article 9d (a))

As mentioned in Eurojust Report for 2012, "Controlled deliveries are considered a useful investigative tool, particularly in drug trafficking cases. The Eurojust Decision foresees that national members may be granted the power to authorise and coordinate controlled deliveries. To date, that power has been granted to only a limited number of national members."

Currently the Italian national member is not vested with such a power.

7.2 Joint investigation teams (Article 9f)

Although Italy has not ratified the Convention on Mutual Legal Assistance in Criminal Matters between the Member States and has not implemented the Council's Framework Decision on joint investigation teams (JITs), Italian cooperation in joint investigations may currently be conducted through the bilateral/multilateral exchange of information within the framework of police cooperation. The expert team wishes to stress that information exchange is only one of the possibilities for cooperation within a JIT. It is therefore a missed opportunity not to be able to exploit these possibilities to the full.

If other Member States set up joint investigations teams, Italy (and the Italian national member) may take part in them as an observer country. The Italian authorities advocated that such informal participation be without impediment to operational information exchange, as has been the case, for example, of the so-called "Joint Investigation Team VETO" recently instituted between Austria, Germany, Finland, Hungary and Slovenia to tackle match-fixing in football and supported by Europol, Eurojust and Interpol. Although this is an example of working together, Italy still misses out on the specific benefits of being a JIT-Member State. It would still have to make use of LoRs when gathering evidence in Italy from other Member States and vice versa.
Here again, practitioners are inventive in following the spirit of intensifying international cooperation, while awaiting full implementation of international instruments.

8 TRAINING AND AWARENESS RAISING

8.1 Promoting the use of Eurojust and the EJN

8.1.1 Training

Both the Italian School for the Judiciary and the *Consiglio Superiore della Magistratura* (High Council for the Judiciary) provide training and refresher training courses for judges and public prosecutors. Years ago the Italian CSM incorporated European law into the yearly training programmes for Italian magistrates and promoted the European Judicial Training Network.

Training and refresher training courses in international legal cooperation, and especially in the running of Eurojust and the European Judicial Network, are offered at both centralised and decentralised levels.

In addition, the CSM set up a network of decentralised trainers. Every appellate court district has an office composed of magistrates working together with the Scientific Committee and the Council itself. Decentralised training is an integral part of the overall training provided by the CSM.

In general, each judge or public prosecutor is ensured of being able to participate in at least one in-depth yearly course organised by the Italian School for the Judiciary. Alternatively, one may decide attend, without limits, the courses organised at decentralised level.

In implementing the *European Gaius* training plan, the High Council for the Judiciary (C.S.M.) and now the Italian School for the Judiciary increased the number of courses in European law at centralised and decentralised level. One or more judges and public prosecutors mainly responsible for European law are appointed at the offices with responsibility for decentralised training.

Although the number of available training courses is already considered reasonable, after the last periodic meeting organized with the EJN contact points and with Eurojust national members, the Ministry of Justice sent various circular letters – the last being the circular letter dated 9 May 2013 – in which it pointed out to the Italian School for the Judiciary and the High Council for the Judiciary that it would be desirable to implement training courses to distribute as much information as possible on the above topics. In the same circular letter, the Ministry underlined the need to pay special attention to language training courses, as well as to technical and legal courses.

Language-courses are provided by the Court of Appeal or locally. They are not mandatory. According to the circular letters, language skills should be regarded as part of the evaluation of the professional skills of EJN contact points, but this is not necessarily done.

The expert team notes that, although training is available, there is no organised incentive to follow any specific training course on language or international cooperation.

8.1.2 Other measures

At the moment there is no intranet available for the practitioners. All the information is to be found in open source on the Internet. Such an intranet would bring together all relevant information on legal texts, instructions, guidelines, handbooks, forms, case law and other available tools. Members of the expert team know from personal professional experience that practitioners need such tools in their daily work.

8.2 Specific training for national members and EJN contact points

No specific training is offered to the members of the national desk and to contact points. All of them belong to the judiciary and, therefore, their initial training provides for appropriate specialization.

However, in a recent circular letter dated 9 May 2013, the Ministry highlighted the opportunity for the School for the Judiciary to provide technical and language courses intended exclusively for EJN Contact points and Eurojust national correspondents.

8.3 Conclusions

- The Ministry of Justice underlined the need for special attention to language training courses for contact points. The expert team shares this view.
- There is no systematic or mandatory training in international cooperation or/and languages, although there are some local initiatives in this area.
- There is no intranet concerning international cooperation for practitioners.

9 GENERAL OBSERVATIONS

9.1 Overall assessment

The overall assessment by the Italian authorities of Eurojust and the European Judicial Network is definitively positive; they feel that these tools offer unquestionable added value to international cooperation.

They noted in particular that, by using European Judicial Network cooperation, cases can be resolved faster, because direct and informal contact between judicial authorities means that requests are better expressed and established, according to the specific needs of the requesting State and the requested State. However, they are of the opinion that the different responsibilities of the Network and Eurojust should be taken into account more precisely, with the aim of avoiding overlaps and confusion, which undermine the quality of work that Eurojust is credited with.

9.2 Further suggestions from Italy

Italy highlighted the need to better distinguish between the respective responsibilities of the European Judicial Network and of Eurojust at statutory and regulatory level, and even at European level, in order to make both organisations more operational and efficient. According to Italy, the preparation of a document containing shared guidelines to be distributed among all national authorities would be highly desirable.

10 RECOMMENDATIONS

As regards the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters, the expert team involved in the evaluation of Italy has been able to satisfactorily review the system in Italy.

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

10.1 Recommendations to Italy

Italy should :

1. Ensure implementation of the consolidated Eurojust Decision. In particular, Italy should focus on the setting up of the Eurojust national coordination system (ENCS) and the establishment of further necessary measures for the transmission of information to Eurojust on the basis of Article 13 of Eurojust decision; in the meantime, Italy should set up the ENCS to the fullest extent possible and make arrangements for information to be sent to Eurojust in a structured way (cf. 3.3, 3.6, 4.1.1 and 4.1.3);

2. Ensure implementation of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (CETS N. 182), the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, Decision 2005/671/JHA of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences (cf. 3.1);

3. Create a legal basis allowing Italian judicial authorities to be members of joint investigation teams - JITs being an essential tool to facilitate mutual legal assistance and enable coordination; the same recommendation could be made for controlled deliveries other than those already permitted by current national law (drug cases), in particular in the type of cases in which the Italian national desk is most frequently involved (cf. 3.1, 7.1 and 7.2);

4. Nominate a deputy to the national member for Italy, with regular place of work in the Hague. If it cannot be done before, this should be done as part of the implementation of the 2009 Eurojust Decision and would be appropriate in view of the heavy workload of the Italian desk at Eurojust (cf. 3.4.1 and 3.6);

5. Consider providing the national desk with direct access to the main relevant databases established at national level, in particular the criminal records (cf. 3.4.3);

6. Consider making the necessary arrangements to ensure that, when supplementary information is requested for the execution of an incoming or outgoing EAW, such information can also be requested directly or with the help of the EJN contact point or by the national member in accordance with Article 9 b of the Eurojust decision 2009 (cf. 3.1);

7. Continue and enhance efforts in training, raising the awareness of judges, prosecutors and the police authorities regarding the respective competences and activities of Eurojust and EJN; in this regard, the setting up of a dedicated national intranet site (intranet for practitioners in judicial cooperation in criminal matters), which would bring together all relevant information on legal texts, instructions, guidelines and other available tools, would be very useful (cf. 3.2, 4.1.1, 5.3, 5.7, 6.3.1, 6.3.4 and 8.1);

8. Involve the Ministry of Justice, in its capacity as coordination unit, in the selection and oversight of EJN contact point activities, or otherwise consider the establishment of a mechanism to monitor at national level the technical and linguistic skills and performance of EJN contact points; in the view of the expert team, ideally language tests - and training where it is needed - should as far as possible be imperative for all contact points (cf. 3.5.1, 6.3.4, 8.1.2);

9. Ensure that contact between first instance practitioners working on outgoing LoRs and EJN contact points (who are placed in appellate instances) is made easier and more regular; consider also whether it would be advisable to nominate as EJN contact points prosecutors at first instance or judges (cf.3.1 and 5.3);

10. Consider (either) amendments to the current system of competencies for the execution of incoming letters of request and EAWs, so that the public prosecutor's offices in first instance would be the executing authorities (subject to, where necessary, authorisation of coercive measures by the court), or otherwise ensure that information on domestic investigations is brought together with related incoming letters of request; this would have the advantage of facilitating coordination when Italy is involved and it would be one and the same authority dealing with domestic investigations and incoming letters of request relating to the same case (cf. 3.1 and 5.3);

11. Consider amending the law so that the Ministry of Justice would not have the power to stop a request being sent to another country within the European Union (cf. 3.1);

12. Consider whether the system of dealing with incoming LoRs concerning more than one court should be simplified or accelerated (cf. 3.1);

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

13. The Member States should consider Italy's practice of nominating EJN contact points as Eurojust correspondents (cf. 3.3, 5.3.1, 6.3.1);

14. The Member States should reflect on possible ways of reducing the normal workload of the EJN contact points so as to allow them to devote sufficient time to their tasks as EJN contact points (cf. 3.6, 6.3.2);

15. The Member States should ensure that their information in the EJN Atlas is updated regularly (cf. 6.3.4);

16. The Member States should consider the establishment of a mechanism for monitoring at national level the technical and linguistic skills and performance of EJN contact points; in the view of the expert team, ideally language tests - and training where it is needed - should as far as possible be imperative for all contact points (cf. 3.5.1, 6.3.3 and 8.1.2);

10.3 Recommendations to Eurojust/the EJN

17. Eurojust and the EJN should consider cooperating in providing written and easily accessible common guidelines to practitioners on when a case should be referred to the EJN and when it should referred to Eurojust (cf. 5.3 and 8.2);

18. The EJN should provide user-friendly forms in all official European Union languages; the practitioners should always be able to fill in, save and reuse the forms on the EJN website (cf. 6.3.4);

19. The EJN (and the EJTN) should continue to organise technical and language courses for practitioners in the field of international cooperation (cf.8.1. and 8.2).

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

6th Round of Mutual Evaluations - Italy 11 - 14 June 2013

TUESDAY 11 JUNE 2013

10.00: INTRODUCTORY MEETING WITH REPRESENTATIVES OF THE MINISTRY OF JUSTICE, EJN AND EUROJUST NATIONAL CORRESPONDENTS AND EUROJUST NATIONAL MEMBER FOR ITALY

And follow-up after lunch.

17.30: VISIT TO THE "DIREZIONE NAZIONALE ANTIMAFIA" PROSECUTOR'S OFFICE

WEDNESDAY 12 JUNE 2013

10.00: VISIT TO THE COURT OF APPEAL OF ROME AND TO THE PUBLIC PROSECUTOR'S OFFICE ATTACHED TO THE COURT OF APPEAL OF ROME

14.00: VISIT TO THE FIRST INSTANCE COURT OF ROME AND TO THE PUBLIC PROSECUTOR'S OFFICE ATTACHED TO THE TRIBUNAL OF ROME

THURDAY 13 JUNE 2013

08.35: Departure from Rome Central railway station

11.00: Arrival at Bologna main railway station

11.30: VISIT TO THE COURT OF APPEAL OF BOLOGNA

Welcome by the President of the Court

Meeting with judges, discussion about experiences with EUROJUST and EJN

13.15: Lunch

Afternoon

14.30: VISIT TO THE PUBLIC PROSECUTOR'S OFFICE ATTACHED TO THE COURT OF APPEAL OF BOLOGNA

Welcome by the Chief Prosecutor - Meeting with public prosecutors, discussion about experiences with EUROJUST and EJN

16.30: Visit of the city
18.35: Departure for Rome from Bologna main railway station

FRIDAY 14 JUNE 2013

10.30: CONCLUDING MEETING AT THE MINISTRY OF JUSTICE
Discussion and additional questions

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ANNEX B: PERSONS INTERVIEWED/MET

Meetings 11 and 14 June 2013

Venue: **MINISTRY OF JUSTICE (ROME)**

Person interviewed/met	Function/Organisation represented
Mrs. Annamaria Cancellieri	Minister for Justice
Mr Giuseppe Berretta	Sotosecretary
Mr. Eugenio Selvaggi	Head, Department of Justice Affairs
Mr. Alessio Scarcella	Head, Office of International Affairs
Mrs. Maria Antonietta Ciriaco	Director - International Cooperation Office
Mrs. Allegra Migliorini	National Correspondent of Eurojust
Mrs. Barbara Modesta Grasso	National Correspondent of European Judicial Network
Mr. Luca De Matteis	Magistrate - Office for Legislative and International Affairs
Mr. Francesco LoVoi	national member at Eurojust

Meetings 11 June 2013

Venue: **NATIONAL ANTI-MAFIA PROSECUTING OFFICE (ROME)**

Person interviewed/met	Organisation represented
Mr. Pier Luigi Maria Dell'Osso	Deputy National Anti-Mafia Prosecutor (EJN Contact Point)
Mr. Gianfranco Donadio	Deputy National Anti-Mafia Prosecutor
Mr. Roberto Pennisi	National Anti-Mafia Prosecutor
Mr. Giovanni Russo	National Anti-Mafia Prosecutor
Mr. Francesco Mandoi	National Anti-Mafia Prosecutor
Mr. Carlo Caponcello	National Anti-Mafia Prosecutor
Mr. Filippo Spiezia	National Anti-Mafia Prosecutor (Eurojust National Correspondent)

Meetings 12 June 2013

Venue: **COURT OF APPEAL OF ROME and PROSECUTOR GENERAL'S OFFICE ATTACHED TO THAT COURT OF APPEAL**

Person interviewed/met	Function/Organisation represented
Mr. Catello Pandolfi	Deputy Chief Justice of the Court
Mr. Luigi Ciampoli	Chief Prosecutor at the Prosecutor-General's Office
Mr. Antonio Marini	Advocate General at the Prosecutor-General's Office
Mr. Pietro Giordano	Prosecutor at the Prosecutor-General's Office
Mr. Mario Remus	Deputy of the Prosecutor-General
Mrs. Roberta Barberini	Deputy of the Prosecutor-General
Mrs. Carmelita Agata Russo	Chief Justice of the Fourth Criminal Division of the Court
Mrs. Alida Montaldi	Chief Justice of the Juvenile Criminal Division of the Court
Mr. Roberto Reali	Secretary-General of the Court
Mrs. Mariella De Masellis	Judge at the Court of Appeal
Mrs. Maria Luisa Paolicelli	Judge at the Court of Appeal
Mr. Alfredo Mantovano	Judge at the Court of Appeal
Mr. Giannicola Sinisi	Judge at the Court of Appeal

Venue: **COURT OF FIRST INSTANCE OF ROME and OFFICE OF THE PROSECUTOR ATTACHED TO THAT COURT**

Person interviewed/met	Organisation represented
Mr. Mario Bresciano	Chief Justice of the Court
Mr. Mario Palazzi	Deputy of the Prosecutor
Mrs. Milena Cipriani	Judge for Preliminary Investigations

Meetings 13 June 2013

Venue: **COURT OF APPEAL OF BOLOGNA and PROSECUTOR-GENERAL'S OFFICE ATTACHED TO THAT COURT**

Person interviewed/met	Function/Organisation represented
Mr. Giuliano Lucentini	Chief Justice of the Court
Mr. Maurizio Passarini	Judge at the Court of Appeal
Mrs. Marinella De Simone	Judge at the Court of Appeal
Mr. Alberto Pederiali	Judge at the Court of Appeal
Mr. Marcello Branca	Deputy Chief Prosecutor
Mr. Alberto Candi	Prosecutor
Mrs. Maria Longo	Prosecutor
Mr. Umberto Palma	Prosecutor
Mrs. Vilma Zini	Public Manager of the Prosecutor's Office
Mrs. Giovanna De Rugeriis	Chief Clerk of the Public Prosecutor's Office
Mrs. Federica De Rugeriis	Police Inspector
Mrs. Anna Maiello	**T**raining Public Manager

Venue: **COURT OF FIRST INSTANCE and PROSECUTOR OFFICE ATTACHED TO THAT COURT**

Person interviewed/met	Organisation represented
Mr. Maurizio Millo	Chief Judge for Preliminary Investigations
Mr. Giuseppe Di Giorgio	Prosecutor

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ITALIAN OR ACRONYM IN *ORIGINAL LANGUAGE*	ENGLISH
CMS	-	Case Management System
CoE	-	Council of Europe
CSM	Consiglio Superiore della Magistratura	Superior Council of the Judiciary
DNA	Direzione Nazionale Antimafia	National Anti-Mafia Directorate
EAW	-	European Arrest Warrant
EPOC	-	European Pool against Organised Crime
EJN	-	European Judicial Network
GENVAL	-	Working Party on General Matters including Evaluations
GIP	Giudice per le indagini preliminari	Judge for Preliminary Investigations
JIT	-	Joint Investigation Team
LoR	-	Letter of Request
MLA	-	Mutual Legal Assistance
OLAF	*Office européen de lutte anti-fraude*	European Anti-Fraud Office
TE-SAT		Europol's EU Terrorism situation and Trend Report