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From: General Secretariat of the Council  
To: Delegations  
Subject: EUROJUST Annual Report 2016

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Delegations will find attached the EUROJUST Annual Report 2016.



# EUROJUST ANNUAL REPORT 2016

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## Acronyms and abbreviations

CBRN-E	Chemical, biological, radiological, nuclear substances and explosives
CJEU	Court of Justice of the European Union
CJM	Cybercrime Judicial Monitor
CMS	Case Management System
EAW	European Arrest Warrant
EC3	European Cybercrime Centre
ECTC	European Counter Terrorism Centre
EJCN	European Judicial Cybercrime Network
EJN	European Judicial Network
EJTN	European Judicial Training Network
ENCS	Eurojust National Coordination System
EMPACT	European Multidisciplinary Platform against Criminal Threats
EMSC	European Migrant Smuggling Centre
EPPO	European Public Prosecutor's Office
FTF	Foreign terrorist fighters
ICC	International Criminal Court
IIS	Illegal immigrant smuggling
IPR	Intellectual property rights
ISP	Internet service provider
JIT	Joint investigation team
MLA	Mutual legal assistance
MOCG	Mobile organised crime group
OAP	Operational Action Plan
OCG	Organised crime group
OPC	Organised property crime
PIF	Protection of the financial interests of the European Union
TCM	Terrorism Convictions Monitor
THB	Trafficking in human beings
VAT	Value-added tax

### ***Eurojust Council Decision***

The Eurojust Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, will be referred to in this report as the 'Eurojust Council Decision'. A consolidated version of the Eurojust Council Decision has been prepared by the Council General Secretariat for information purposes only.

The statistics on Eurojust cases included in this report were produced on the basis of data contained in the Eurojust Case Management System. The numbers were extracted on 16 January 2017 and reflect the data available at that moment. Due to the ongoing nature of cases, possible discrepancies with previously reported numbers may exist.

## Foreword

I am pleased to present the 15<sup>th</sup> Annual Report, providing insight into Eurojust's activities in the fight against serious cross-border crime.

The year 2016 has been challenging in the security context. We are facing a 'new normal' and are called upon to step up our activities to counter terrorism, cybercrime and serious organised crime, including illegal immigrant smuggling and trafficking in human beings. The visit of Sir Julian King, EU Commissioner for the Security Union, was a welcome opportunity to discuss Eurojust's pivotal supporting role in the EU's wider fight against terrorism and organised crime and its integral link in the security chain. The Council Conclusions on Eurojust's Annual Report 2015 confirmed the needed focus and role of Eurojust in treating terrorism, illegal immigrant smuggling and cybercrime as priorities, as well as in collecting and sharing best practice to further strengthen judicial cooperation.

Casework is at the core of Eurojust. Member States requested Eurojust's assistance in 2 306 cases in 2016, representing an increase of four per cent compared to 2015. Judicial cooperation, coordination and the exchange of information between Eurojust, national competent authorities, JHA agencies and third States are the fundamental elements in Eurojust's work. This report illustrates the lifecycle of a case, the effectiveness of Eurojust's coordination tools with a focus on level II meetings, and the increasing use of joint investigation teams.

Eurojust is a bridge-maker. Under its roof, Eurojust brings together the 28 National Members who support their Member States in investigations and prosecutions and in sharing best practice. Recognising also the important role of the national correspondents for Eurojust for terrorism matters, we are intensifying ties and support to the now formally established judicial cybercrime network. Further, we are looking into strengthening Eurojust's involvement in the European Counter Terrorism Centre at Europol, building on the experience of joint cooperation in EC3.

Crime is borderless, and cooperation with third States is essential. Over the years, we note an upward trend in the involvement of third States in Eurojust cases, coordination meetings and joint investigation teams. In 2016, Eurojust concluded new cooperation agreements and further enlarged its worldwide judicial contact point network. Three Liaison Prosecutors, from Norway, the USA and Switzerland, are hosted by Eurojust. In this report, the Swiss Liaison Prosecutor gives insight into her work and the added value of close cooperation with Eurojust.

Constant development as a centre of judicial and legal expertise in the European Union is an important goal of Eurojust. Eurojust produced in 2016, *inter alia*, the first two editions of the *Cybercrime Judicial Monitor*, a report on casework in the field of the European Arrest Warrant and updated guidelines on the prevention and settlement of conflicts of jurisdiction for the use of practitioners and for information to the EU institutions.

Taking into account a changing security threat landscape and legislative framework regarding Eurojust, we made important steps, in reviewing organisational structures and internal processes, towards streamlining Eurojust's core business and strategic priorities to meet Member States' expectations in times of budgetary constraints. Next year, we will move to our new premises, marking another milestone in Eurojust's history.

Eurojust is of added value due to its immediate response to requests for assistance, its help in exchanging information across borders in a minimum amount of time, its support in overcoming legal and practical obstacles in complex cases, as well as its support to, and funding of, joint investigation teams. I am confident that, together with my Vice-Presidents, the newly elected Mr Klaus Meyer-Cabri and re-elected Mr Ladislav Hamran, and with the colleagues of the College and the Administration, Eurojust will further grow as a key player in judicial cooperation and coordination in criminal matters and achieve its full potential.

## Executive Summary

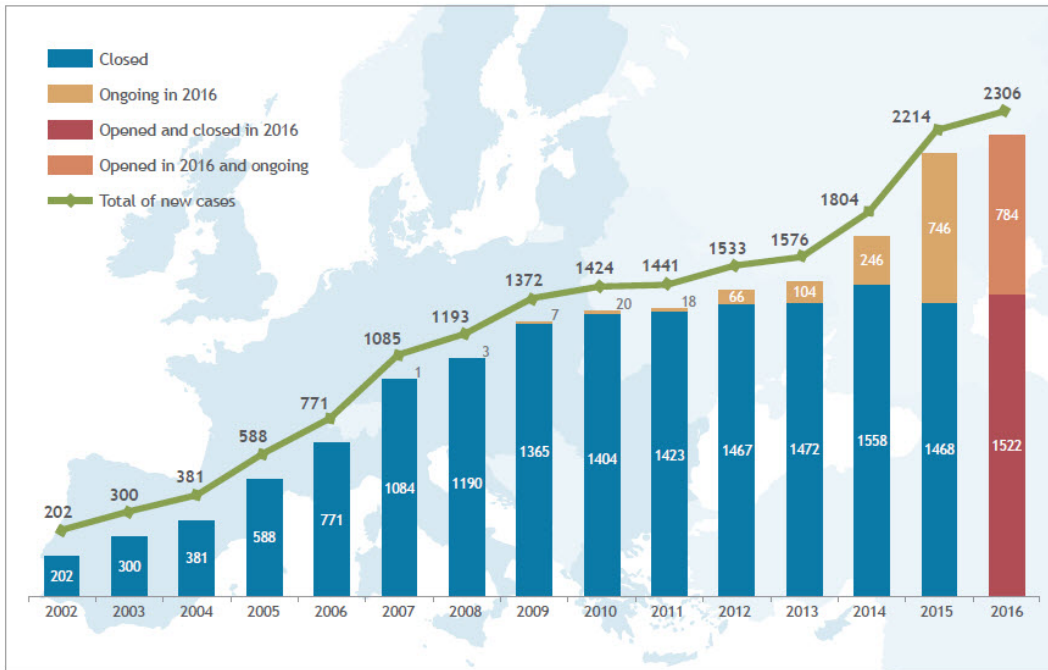
- The **number of cases** for which Member States requested Eurojust's assistance in fighting serious cross-border crime increased by four per cent, from 2 214 in 2015 to 2 306 in 2016. **Third States** were involved in 300 cases.
- **Casework** increased in: terrorism, IIS, THB, fraud and money laundering.
- Insight is given into the lifecycle of the case and, particularly, the effectiveness of **level II meetings**, also explained via case illustrations.
- Eurojust organised 249 **coordination meetings** involving 288 cases with the participation of Europol (87) and OLAF (4) and 10 **coordination centres**. **Third States** were involved in 50 coordination meetings and two coordination centres.
- Eurojust supported 148 **JITs**, a 23 per cent increase over 2015, 69 of which were new. **Third States** were involved in 14 JITs.
- Eurojust provided financial support to 90 JITs, a 32 per cent increase over 2015; nine JITs involved third States.
- Eurojust assisted in the **execution of EAWs** on 315 occasions.
- The **European Judicial Cybercrime Network** was established by Council Conclusion on 9 June 2016. The network is to be supported by Eurojust.
- **Meetings held:**
  - tactical meeting on illegal immigrant smuggling, February
  - strategic seminar, *Keys to Cyberspace*, June
  - joint meeting of the Consultative Forum, under the Dutch and Slovak Presidencies, June
  - tactical meetings on terrorism, June
  - EMPACT seminar on OPC, June
  - tactical meeting, *Judicial Cooperation in Tax Crime Matters*, October
  - kick-off meeting of the EJCEN, November
- Eurojust **published:**
  - *Terrorism Convictions Monitors* and *ad hoc* judicial analyses
  - *Fourth Foreign Terrorist Fighters report*
  - *Summary of the third Foreign Terrorist Fighters report*
  - *CBRN-E Handbook*
  - *Cybercrime Judicial Monitors* and *ad hoc* judicial analyses
  - Analysis of national jurisprudence on illegal immigrant smuggling (ES, FR, IT)
  - Eurojust-EMCDDA report, *New psychoactive substances in Europe: legislation and prosecution – current challenges and solutions*
  - *Guidelines for deciding 'Which jurisdiction should prosecute?'*
- Eurojust hosts three **Liaison Prosecutors**, from Norway, the USA and Switzerland. Insight is given into the work of the Swiss Liaison Prosecutor.
- Eurojust signed **cooperation agreements** with Montenegro and Ukraine, and a **Memorandum of Understanding** with the EUIPO. The agreement with the Republic of Moldova entered into force on 21 October.
- Eurojust extended its worldwide **network of judicial contact points in third States** to a total of 41 third States.

- To further improve judicial cooperation, Eurojust addressed the legal and practical difficulties in the field of **interception of telecommunications, tax fraud cases** and the **European Arrest Warrant** and published its revised guidelines on conflicts of jurisdiction.
- The College adopted a **new organisational structure** for the Administration.
- **Eurojust's budget** for 2016 was EUR 43 539 million. Budget implementation was 99.89 per cent.

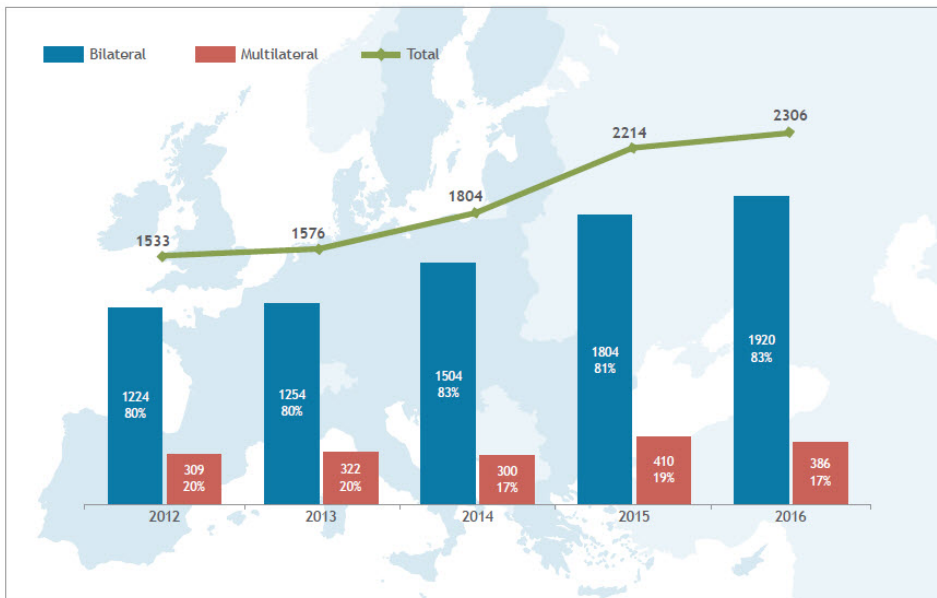


# Chapter 1 Eurojust at work

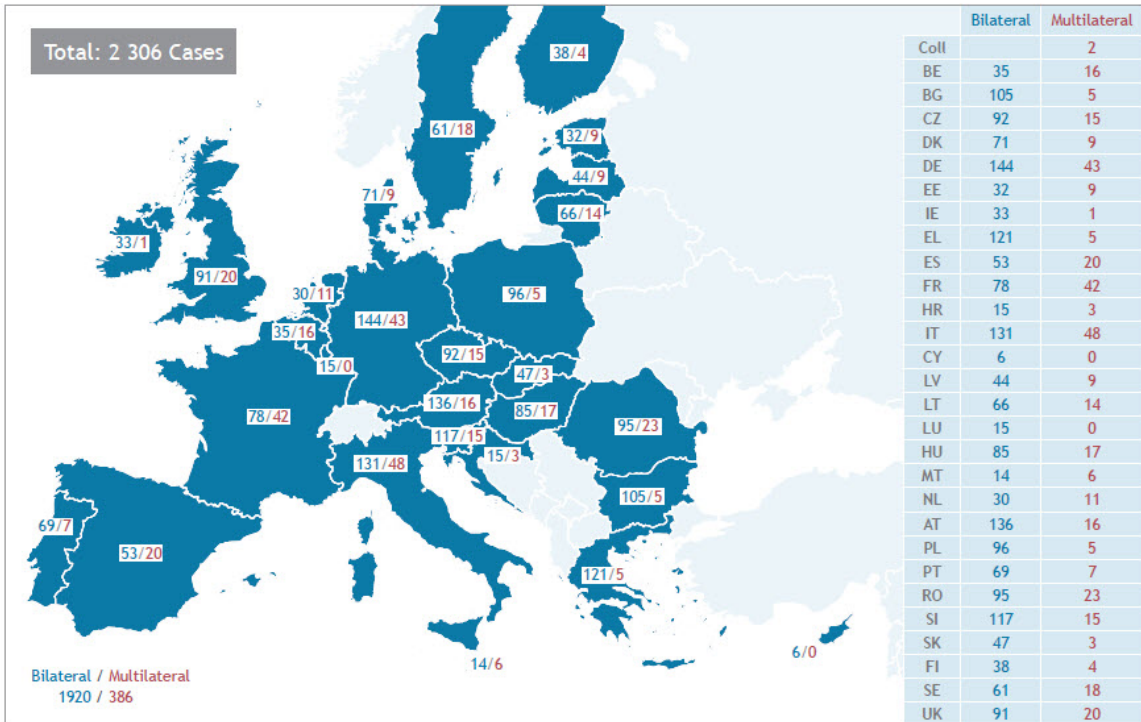
Casework 2002 - 2016



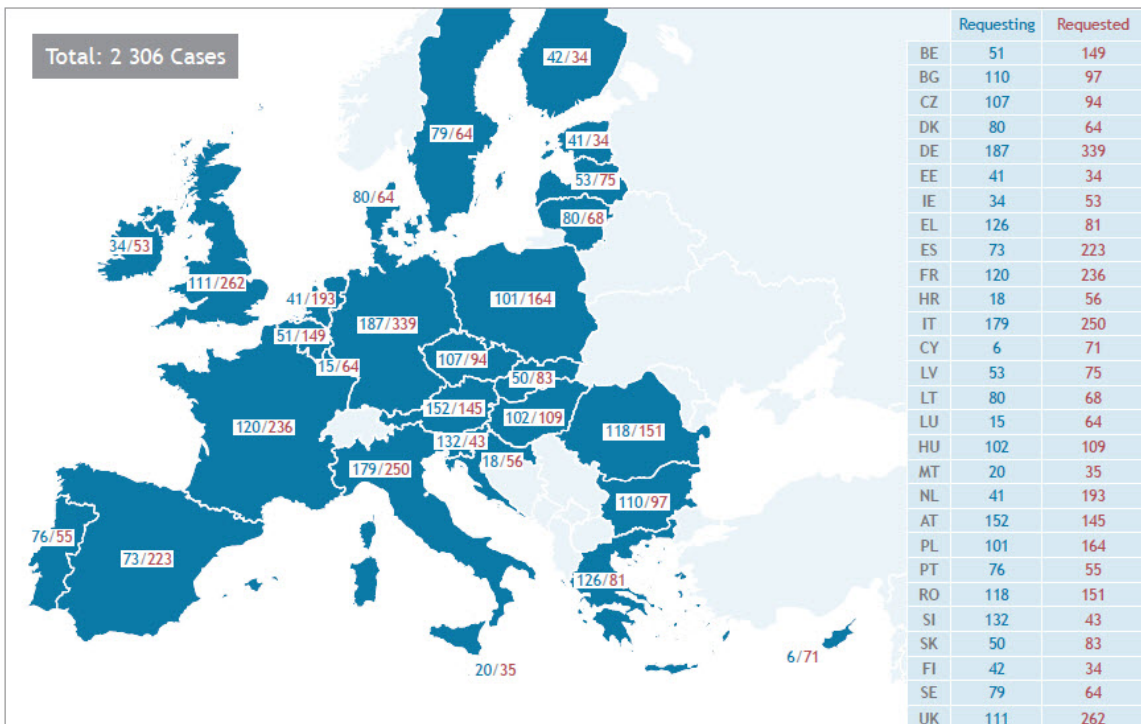
Bilateral/Multilateral cases 2012 - 2016



Bilateral/Multilateral cases



Requesting/Requested Member States



**What?** Eurojust is the European Union’s Judicial Cooperation Unit, established in 2002 to stimulate and improve the coordination of investigations and prosecutions and the cooperation between the competent authorities in the Member States in relation to serious cross-border crime, particularly when it is organised. At the request of a Member State, Eurojust may also assist investigations and prosecutions concerning a particular Member State and a non-Member State if a cooperation agreement between Eurojust and the non-Member State has been concluded or an essential interest in providing such assistance is present. At the request of a Member State or the Commission, Eurojust may also assist investigations and prosecutions concerning only that Member State and the Community.

**Who?** The College of Eurojust is composed of 28 National Members, who are prosecutors and judges seconded by each Member State. National Members are based at Eurojust in The Hague. Most National Members are assisted by a Deputy and/or an Assistant. In addition, Liaison Prosecutors from Norway, Switzerland and the USA are currently posted at Eurojust.

**How?** Eurojust’s key roles and powers include responding to requests for assistance from the competent national authorities of the Member States. In return, Eurojust can request Member States to undertake the investigation or prosecution of specific acts. National Members carry out Eurojust’s mandate to coordinate the work of the national authorities at every stage of criminal investigation and prosecution. Eurojust manages its meetings on casework on three levels (*see* sections 1.2 and 1.3).

## Eurojust case cycle



\* May also occur at different stages of the cycle

## 1.1 Eurojust level II meetings

Cooperation, coordination and exchange of information are fundamental to Eurojust's work. Effective and timely communication, particularly between the National Desks functioning as the link to the national authorities, is the cornerstone of Eurojust's activities.

Upon the proposal of the National Member whose national authorities asked for Eurojust's assistance, the College of Eurojust decides during its operational meetings - the so-called **level I meetings**, on the registration of cases, as well as on the closing of cases when the goal of Eurojust's involvement has been reached.

After a case is accepted by Eurojust and registered, the involved National Desks may call for a **level II meeting** if necessary for the coordination of the case. Level II meetings are meetings between National Members and, if involved, the liaison prosecutors hosted at Eurojust. They can be organised at short notice. This flexibility is of great value in urgent situations requiring a quick response. The National Desk that opened the case explains the details of the case and the legal and/or practical matters of judicial cooperation at stake, as well as the support needed from other involved States. A level II meeting may be sufficient to address the needs of the case.

Level II meetings are prerequisites for organising level III meetings, also known as coordination meetings (*see* section 1.2), and signify the transition from internal to external work. If a National Desk intends to organise a coordination meeting, the level II meeting is used to assess the need, purpose and objectives of a coordination meeting. Level II meetings are also used to agree on the modalities, external participation, confidentiality and disclosure obligations and related security issues, as well as the use of video-conferencing. Further, participants in a level II meeting may assess the need for analysis and possible contribution from Europol or the setting up and functioning of a JIT. Coordination meetings are an expensive tool, and level II meetings ensure that these meetings take place only if they bring added value in resolving outstanding issues of judicial cooperation. In addition, some coordination meetings deal with more than one case.

### **Jurisdiction issues in an IIS case solved in a level II meeting**

Following the tragic death of approximately 300 migrants on the Mediterranean Sea in June 2016, the Italian authorities initiated a criminal investigation into the circumstances of the shipwreck that caused the loss of lives. The investigation showed that while attempting to reach the Italian coast in an overloaded wooden boat, the migrants were detected by the Greek authorities, and a Norwegian oil tanker, sailing in the vicinity of the vessel, was called to rescue the migrants. Before the migrants could be brought on board, the wooden vessel capsized. Due to rough sea conditions, the migrant vessel repeatedly struck the hull of the oil tanker and sank.

The case presented some jurisdictional issues that affected the actions of the Italian authorities. The shipwreck occurred on the high seas and, thus, outside the jurisdiction of the Italian authorities. The oil tanker flew the Norwegian flag and its captain was a Spanish national. On the basis of these facts, both Norway and Spain had an interest in the case.

Contrary to most of the previous cases in which Eurojust was requested to assist in determining which jurisdiction was best placed to investigate and carry out criminal proceedings, the peculiarity of this case consisted in the possible existence of a negative conflict of jurisdiction. Italian jurisdiction was

excluded for the reasons mentioned above, and whether the prevalent jurisdiction was then Norway or Spain was not clear. The risk thus encountered was that none of the jurisdictions dealing with the case would prevail.

To avoid a possible conflict of jurisdiction, Eurojust was requested to assist in determining which jurisdiction was best placed to investigate and carry out criminal proceedings in the case. At a **level II meeting** in July, organised by the Italian National Member, the Spanish National Member and the Norwegian Liaison Prosecutor reached a common understanding of the jurisdictional issues involved and agreed to approach the respective national authorities with a preferred solution. As a result of Eurojust's coordination efforts, the national authorities from Norway, as the flag State, accepted the exercise of primary jurisdiction in the case on the basis of the 1982 UN Convention on the Law of the Sea (UN Montego Bay Convention) and, thus, ensured a joint strategy and common approach to the criminal proceedings.

## 1.2 Eurojust coordination meetings

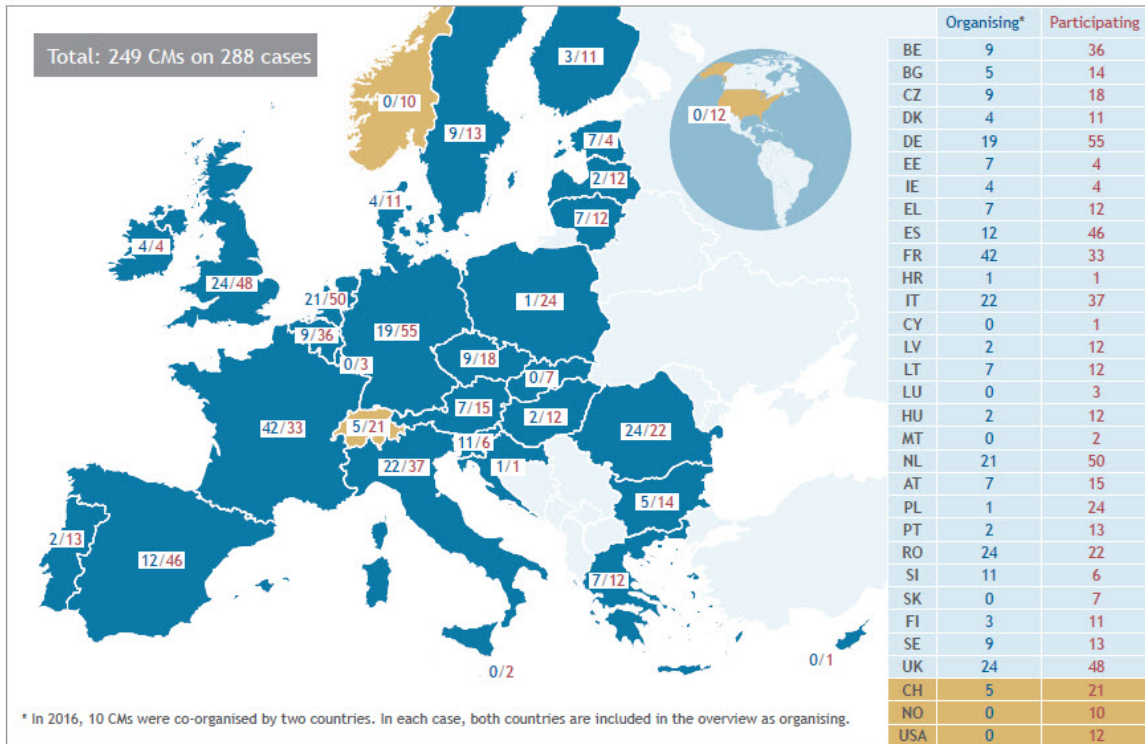
The purpose of a coordination meeting, a so-called **level III meeting**, is to stimulate and reach agreement between national authorities on their cooperation and/or the coordination of investigations and prosecutions at national level, taking into account the legal and practical difficulties resulting from the differences among the 30 existing legal systems in the European Union.

Coordination meetings are a frequently used operational tool. Eurojust organises on average one coordination meeting per working day, totalling 249 meetings in 2016, 31 of which were held outside Eurojust's premises, either in Member States (for example, in Greece, Czech Republic and Slovenia) or third States (Bosnia and Herzegovina and Switzerland). The cases dealt with addressed virtually all areas of serious organised cross-border crime, the most common of which are money laundering, fraud and drug trafficking. In these 249 coordination meetings, 288 cases were dealt with. In 2016, Eurojust hosted its largest coordination meeting, with 93 participants from 23 Member States and Europol.

These meetings are attended by external participants, i.e. the national judicial and law enforcement authorities from the Member States. In addition, representatives from third States, as well as officials from cooperation partners such as Europol and OLAF and international organisations such as INTERPOL, may be invited.

One crucial service provided during coordination meetings is simultaneous interpretation, which allows the participants to communicate directly with their counterparts and to present the issues of judicial coordination arising in criminal investigations or prosecutions in their own languages.

Coordination meetings are used to facilitate the exchange of information, to identify and implement means and methods to support the execution of MLA requests or coercive measures (e.g. search warrants and arrest warrants), to facilitate the possible setting up and functioning of a JIT, to coordinate ongoing investigations and prosecutions, and to detect, prevent or solve conflicts of jurisdiction, *ne bis in idem*-related issues or other legal or evidential problems.

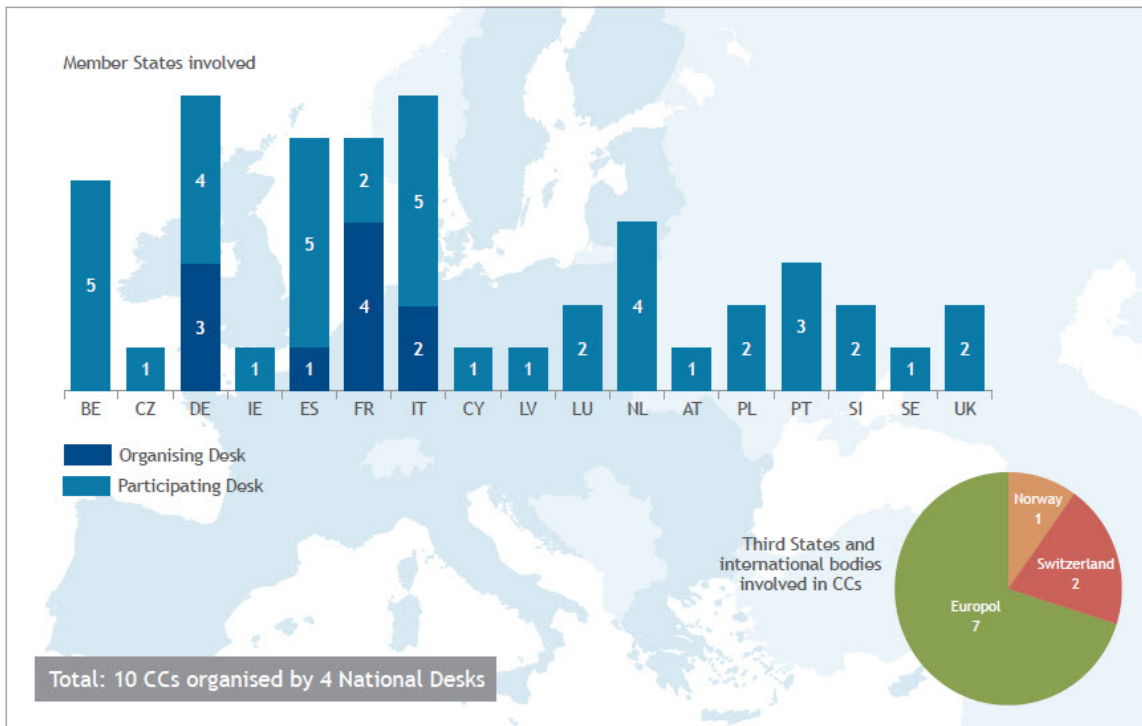


### 1.3 Eurojust coordination centres

When complex cases require real-time exchange of information and large-scale multilateral actions (e.g. the execution of several arrest warrants in different countries), Eurojust may support the concerned national authorities by setting up a coordination centre at its premises. Coordination centres are designed to serve as a central hub for the real-time exchange of information as well as for coordinating the joint execution of judicial and law enforcement measures in different countries (seizures, arrests, house/company searches, freezing orders and witness interviews).

During coordination centres, all participating authorities are linked to each other at all times, via dedicated telephone lines and computers, and information is quickly passed from one authority to another via Eurojust. The joint execution of measures is constantly monitored and coordinated with a view to anticipating and resolving any operational or judicial obstacles that may impact the operation's success. In addition, prior to a coordination centre, Eurojust typically provides all participating authorities with an overview of relevant information concerning all targets subject to the joint actions, including their telephone numbers, locations and bank accounts, if applicable.

Seven out of the ten coordination centres held in 2016 dealt mainly with financial crime (e.g. fraud and money laundering). On four occasions, the coordination centres dealt with cases for which a JIT had been set up.



## 1.4 Eurojust and joint investigation teams

Eurojust plays a prominent role in this area, both by providing relevant support to JITs and by advising practitioners, as a centre of judicial and legal expertise. In 2016, 148 JITs were supported by Eurojust, 69 of which were newly formed. Following the entering into force in Italy in March 2016 of the law implementing Council Framework Decision 2002/465/JHA, Eurojust assisted the national authorities in eight newly established JITs involving Italy. Eurojust also supported 14 JITs involving third States, three of which were set up in 2016 (Bosnia and Herzegovina (2), Moldova (2), Norway (3), Serbia (3), Switzerland (2), USA (1) and Ukraine, Australia, Malaysia (co-participating in 1 JIT)).

In the context of the recent unprecedented number of migrants entering the European Union and the growing involvement of OCGs in IIS related to this crisis, Eurojust facilitated discussions with practitioners to identify legal and practical challenges, to share best practice and to enhance the use of JITs. Eleven JITs dealt with IIS, five of which were newly formed and one of which involved Serbia.

At the tactical meeting on judicial challenges in IIS, and at the 12th annual meeting of JITs experts, the challenges and opportunities provided by JITs in IIS cases were discussed, including a possible strategy to enable practitioners to initiate cross-border investigations and make more proactive use of JITs to dismantle smuggling networks. The added value of involving third States in JITs was emphasized. To facilitate such involvement, Eurojust and the JITs Network developed a tool identifying – for every third State – the applicable legal basis to establish JITs and practical experience of the concerned country in this area. The tool, introduced at the annual meeting and available on the JITs Network restricted area, will be updated regularly.

Feedback on the benefits of JITs with third States was gathered during the evaluation of JITs. In a JIT set up between Bosnia and Herzegovina and France in a THB case (*see Eurojust Annual Report 2015, p.*

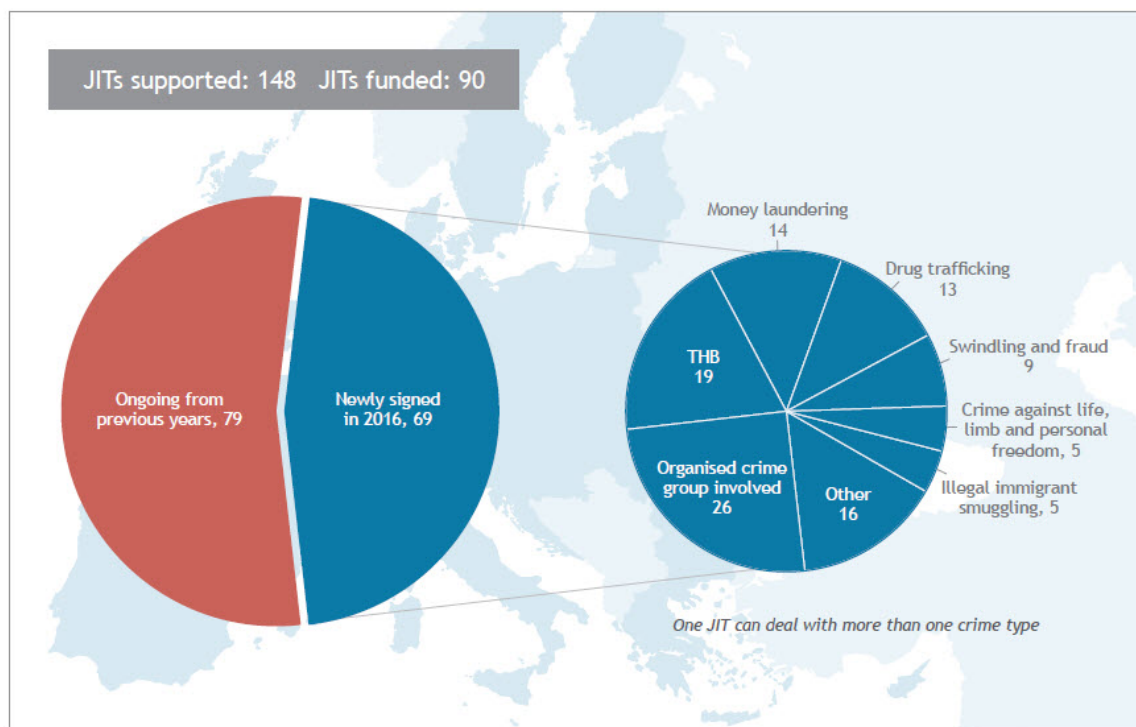


51), the JIT was found to be the most efficient way to respond adequately to the mobility of the members of the criminal organisation, to carry out a coordinated operation within a short timeframe, and to facilitate a joint approach to victim support.

In 2016, the JIT established between the Netherlands, Belgium, Ukraine, Australia and Malaysia in relation to the crash of Flight MH17 on 17 July 2014 (*see Eurojust Annual Report 2014, p. 22*) reached an important milestone with the presentation of the first results of the investigation. The case benefitted from the flexibility and swiftness of the exchange of information enabled by the JIT. In such a high-profile, complex investigation – in which the direction of the investigation is difficult to predict – the use of MLA would be extremely burdensome and impractical. On the spot, the JIT facilitated the participation of seconded members (Dutch and Australian officers), who participated in interviewing witnesses in Ukraine and analysing evidence, a significant part of which was also located in Ukraine. Trust built via the JIT facilitated a common approach to victims that was coordinated by the Dutch authorities. After the setting-up phase, the JIT operated on its own and received funding through Eurojust, which facilitated meetings and communication with Ukrainian authorities.

The extension of JITs to third States was taken into account when revising the practical tools developed to support the use of JITs by practitioners: the JITs [model agreement](#) and the [JITs Practical Guide](#). The new model agreement is no longer based exclusively on EU legal instruments, incorporates other JIT legal bases and should facilitate the setting up of JITs with third States. It will contribute to speeding up the drafting of future agreements. The JITs Practical Guide has been designed to facilitate access to JITs by practitioners, particularly from third States.

*JITs supported by Eurojust, including the main crime types*



#### *Eurojust's financial support to JIT operations*

The increased use of JITs is reflected in the growth in the number of applications for financial support received by Eurojust: 180 applications for funding were processed by the Secretariat of the JITs Network (144 applications in 2015). The number of applications received from JITs involving third

States (18) is consistent with this upward trend (13 applications in 2015). Fifteen awards were granted, funding nine JITs and involving Serbia (2), Switzerland (2), Norway (2), Moldova (1), Bosnia and Herzegovina (1) and Ukraine, Australia and Malaysia (co-participating in 1 JIT).

In total, financial support was provided to 90 JITs (68 in 2015). Out of these, 58 were funded for the first time during the year.

JITs grant processes were reviewed to respond to operational needs and improve efficiency, and the following measures were implemented:

- introduction of a new cost category (cross-border transfer of evidence/seized items);
- extension of financial support to persons contributing to cross-border operational activities of the JIT without being formally appointed as members (e.g. interpreters, forensic experts, etc.);
- introduction of unit costs for one category (travel and accommodation) to speed up reimbursement;
- implementation of budget-differentiated appropriations to gain flexibility in using and reusing released funds; and
- simplification regarding supporting documents for reimbursement.

To assist JIT practitioners in navigating the funding process, an [infographic](#) and a [JITs funding guide](#), available in most official EU languages, are available on our website.

*Funded JITs per Member State*



### **Serbia participates in JIT dealing with counterfeiting of currency**

A Czech investigation into a case involving counterfeit US dollars and Euro banknotes revealed an OCG composed mainly of Serbian nationals, also involved in drug trafficking. The OCG offered large amounts of counterfeit banknotes for sale, primarily in Prague. A print shop near Belgrade, Serbia, was detected by the investigators. The main organiser was believed to have acted as a liaison between perpetrators in other Member States. For transportation of the forged banknotes, the OCG used secret compartments in trucks. The banknotes were offered for 15-20 per cent of face value to regular customers and for 30 per cent of the actual price to others.

Intensive police cooperation between the Czech Republic, Hungary, Austria, Serbia and Europol started in December 2014. Europol confirmed that counterfeit banknotes with the same serial numbers had been found not only in the Czech Republic, but also in Austria, Hungary, Germany, the Slovak Republic, Slovenia, Romania, Croatia and Latvia, as well as in the USA. All seized counterfeit banknotes were of a very good quality.

At the beginning of 2015, Eurojust was requested to facilitate judicial cooperation among the national authorities of the Czech Republic, Austria, Hungary, Serbia and the Slovak Republic, and to provide assistance in setting up a JIT. As a result of a coordination meeting in March, the Czech and Serbian delegations agreed to establish a JIT and to apply for funding through Eurojust. As no investigations had been initiated in the Slovak Republic and Hungary, and as the Austrian authorities were at a very early stage in their investigation, these Member States did not join the JIT, but offered their support. Based on an MLA request, Hungary cooperated with the Czech authorities on a covert operation whereby an undercover agent bought counterfeit dollars from one of the suspects in Hungary.

Eurojust played an important role in establishing contacts between the Czech and Serbian authorities and in building trust among them. In the beginning, the parties took a cautious approach and the exchange of information was slow. The JIT meetings and a second coordination meeting contributed to a rapid improvement in the relationship among the national authorities and to successful JIT cooperation. A Czech police liaison officer in Serbia actively participated in all meetings and helped to overcome the language barrier. Working within the framework of the JIT greatly facilitated the efforts of both parties, particularly when exchanging and ensuring the admissibility of evidence. Evidence gathered in Serbia, including the results of a house search and fingerprint data, etc., were handed over to the Czech authorities quickly.

Despite good cooperation, the JIT parties faced some legal challenges in relation to the admissibility of evidence. With regard to police records of the activities of a covert agent, the Czech court was prudent at first, as police provocation is unlawful in the Czech Republic. Eventually, the court considered this evidence admissible, together with records of the surveillance of suspects in Serbia that had been exchanged within the framework of the JIT.

Another issue raised was that one of the persons arrested in Serbia was scheduled to be heard as a witness in the Czech proceedings, but was considered a suspect in Serbia. The fact that the person eventually was heard as a suspect created a legal obstacle and the testimony was declared

inadmissible before the Czech court. Fortunately, a sufficient amount of other evidence was available to ensure a conviction.

The arrest of two suspects and the seizure of USD 130 000 in counterfeit banknotes took place in the Czech Republic in September 2015. In Serbia, another seven persons were arrested and a house search was carried out. A fully equipped print shop was discovered, including USD 33 000 in counterfeit banknotes ready for distribution, other banknotes in preparation and stocks of materials needed for counterfeiting. The two suspects in the Czech Republic were brought to trial. In September 2016, each was sentenced to 8.5 years of imprisonment. By the end of 2016, the Czech judgement had not yet become final. In Serbia, the case against some members of the OCG had reached the trial stage.

## 1.5 Eurojust Information Management

Eurojust worked towards increasing the functionality and operability of the CMS, the in-house database that stores and processes case-related information, as well as facilitates the monitoring of compliance with data protection rules. Two upgraded versions of the CMS were released, to increase the data processing speed and set up an e-mail management system that allows users to import or link large quantities of e-mails from the shared CMS mailboxes of the National Desks into the CMS.

Eurojust monitored the flow of notifications under Article 13(5) to (7) of the Eurojust Council Decision received from Member States. Upon consulting the national correspondents for Eurojust, the College approved an improved version of the Article 13 form. The form was restructured to make use simpler for Member States, and is directly importable into the CMS.

The establishment of network connections with the 28 Member States to improve overall security in the exchange of information between Eurojust and Member States progressed. The secure network connection with Austria became operational, bringing the total to 14 (BE, BG, CZ, ES, LV, LU, HU, NL, PL, RO, SI, FI, SE).

The development and implementation of solutions to connect the members of ENCSs in the Member States with the CMS was put on hold due to financial constraints.

New approaches were developed to increase Eurojust's ability to retain operational and strategic knowledge: the Case Information Form to collect qualitative information, excluding personal data, on Eurojust cases, looking for patterns, best practice and lessons learned, and the Knowledge Management Interface, centralising strategic information, such as casework reports on the application of judicial cooperation instruments and crime priority areas, case illustrations, and results of Eurojust's meetings.

### ***Fiches Suédoises***

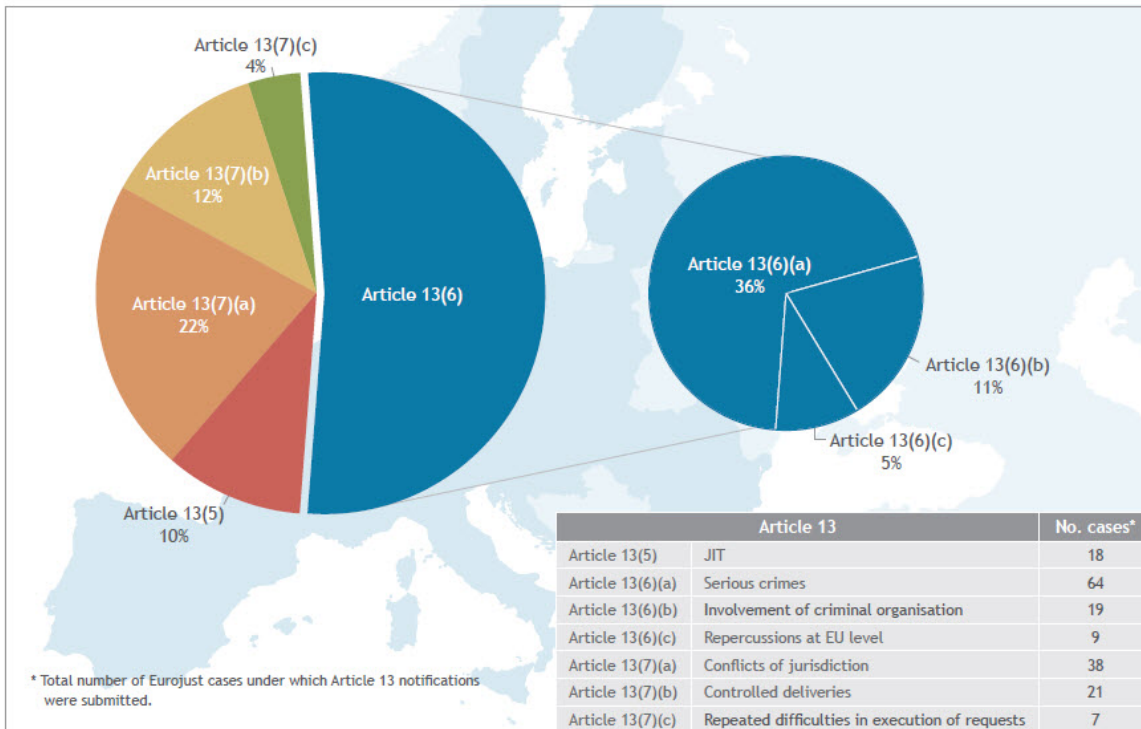
The ENCS has so far been established in 25 Member States.

The *Fiches Suédoises* provide: (1) an overview of the structure and functioning of the ENCS in the Member States, and (2) a collection of national guidelines relating to the application of Article 13 of the Eurojust Council Decision, for the purpose of improving the exchange of information from the Member States to Eurojust and the distribution of cases between Eurojust and the EJN. To better respond to practitioners' needs, Eurojust developed a new template in 2016 describing each national ENCS in full.

Additionally, the new *Fiches* include a specific section on national experience and best practice, for the information of all Member States.

The *Fiches* are regularly updated and available to the national correspondents for Eurojust in the Eurojust restricted area.

#### Article 13 cases



# Chapter 2 Eurojust's casework

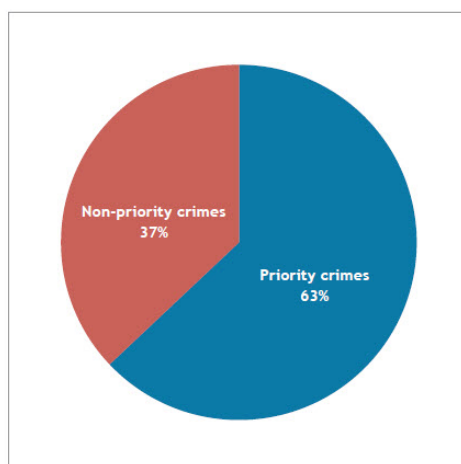
## 2.1 Introduction

Eurojust's operational focus is aligned with the priorities of the European Agendas on Security and Migration, adopted by the European Commission in 2015. The Agenda on Security identifies terrorism, cybercrime and organised crime as priorities for the period 2015-2020, due to the growing threat they pose as well as their cross-border dimension. The Agenda on Migration calls for immediate action to dismantle criminal smuggling networks. Further, the EU Action Plan against migrant smuggling 2015-2020 sets out specific actions necessary to implement the two agendas.

Eurojust's role in judicial cooperation and coordination is vital to dismantle OCGs, pursue the financial aspects of crime, overcome issues of multiple jurisdictions, and gather admissible evidence to bring perpetrators to justice. Eurojust contributes to the implementation of the EU agendas and has stepped up its activities, particularly in fighting terrorism, cybercrime and organised crime, including IIS and THB. Operational support provided includes analysing legal issues, developing best practice, cooperating with third States and EU partners, and working closely with specialised judicial expert networks.

In 2016, the emerging threat posed by cybercrime was acknowledged by the Council in its Conclusions of 9 June 2016 setting up the EJCN. This network of specialised prosecutors and judges is tasked with countering the challenges posed by cybercrime, cyber-enabled crime and investigations in cyberspace, as well as the obstacles to effectively securing and obtaining e-evidence. In line with Council expectations, Eurojust provides support to the network in accomplishing its objectives.

*Eurojust priority crime types*



The operational priorities of Eurojust substantially mirror the Council priorities for the fight against serious and organised crime between 2014 and 2017. As a demand-driven and event-driven organisation, Eurojust's priorities also include corruption and terrorism.

Priority crime	Cases			Coordination meetings			JITs		
	2014	2015	2016	2014	2015	2016	2014	2015	2016
Terrorism	14	41	67	4	15	18	2	3	4
Cybercrime	42	62	60	15	19	13	6	11	8
IIS	32	60	65	10	20	12	9	9	11
THB	71	79	93	12	32	33	18	21	32
Fraud	560	647	654	60	76	44	32	34	35
Corruption	55	90	74	9	10	15	4	4	2
Drug trafficking	283	274	254	52	57	41	31	25	24
MOCG	128	201	199	13	21	19	13	13	12
PIF crimes	70	69	41	7	11	11	2	5	5
<b>Non-priority crime</b>									
Money laundering	220	283	295	41	55	67	24	30	35
Environmental crime	5	5	6	0	1	0	0	0	0

### 2.1.1 Terrorism

The heinous sequence of deadly terrorist attacks in Europe emphasized the need for Member States to fight terrorism in a coordinated fashion to secure successful investigations and prosecutions and foster judicial cooperation. The growing level of trust of the judicial authorities in Eurojust and a greater need for its support in terrorism cases was observed.

Last year saw an almost five-fold increase in the number of terrorism cases referred to Eurojust for assistance since 2014, and significant progress in the exchange of information on terrorist offences with Eurojust pursuant to Council Decision 2005/671/JHA. Eurojust supported 67 terrorism cases, including the Brussels terror attacks, compared to 14 in 2014, and organised 18 coordination meetings and supported four JITs, one of which was newly established. Information was transmitted to Eurojust on terrorism-related prosecutions on 133 occasions, compared to 30 in 2014, and on concluded court proceedings 275 times, compared to 180 in 2014. The exchange of terrorism-related information with Eurojust was high on the political agenda, and a timelier, systematic exchange is expected.

Eurojust continued to produce its *Terrorism Convictions Monitor* and *ad hoc* judicial analyses of landmark terrorism convictions to disseminate to practitioners best practice, diverse and complex legal questions, court findings and arguments, legislative developments at EU and national levels, as well as critical elements, such as new recruitment techniques and early indicators of radicalisation. One of the notable court decisions analysed concerned Operation CESTO, an important undertaking of the Spanish authorities targeting a recruitment and facilitation network that sent FTFs to Syria. The judicial analysis (Eurojust document with limited distribution) summarised the many legal challenges encountered, including the use of intelligence reports in criminal proceedings and the difficulties in determining the terrorist nature of a group. The analysis serves as a source of inspiration in building successful prosecution cases in the Member States.

As called upon by the Council in its 2015 Conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, Eurojust monitored terrorism convictions with a view to acknowledging whether alternatives to imprisonment and rehabilitation programmes are imposed by the courts. It fostered the exchange of national practice and lessons learned, particularly in relation to risk assessment tools used by judges and prosecutors for assessing the level of threat posed by FTFs as well as de-radicalisation programmes. In November, Eurojust provided insight into its work and findings at the LIBE Committee hearing on preventing and countering radicalisation.

In 2016, Eurojust's analysis of the criminal justice response to the FTF phenomenon focused on specific issues: (i) special and emergency powers applicable in the event of terrorist attacks; (ii) admissibility of (foreign) intelligence as evidence in criminal proceedings; (iii) de-radicalisation and alternatives to prosecution and detention; and (iv) links between terrorism and organised crime.

At the tactical meeting on *Building an effective judicial response to the FTF phenomenon* with the national correspondents for Eurojust for terrorism matters – including specialised counter-terrorism prosecutors from Switzerland, Norway, the USA, Turkey, Montenegro, Albania, Serbia and Bosnia and Herzegovina, as well as the EU Counter-Terrorism Coordinator, the head of the ECTC and the Director of the EU Intelligence and Situation Centre – operational experiences were shared, addressing subjects such as recruitment networks, cross-border links and preparatory acts for terrorism.

The fourth FTF report (classified as EU Restricted), issued in December, compiled all of Eurojust's relevant findings throughout the year, its views on the criminal justice response to the FTF phenomenon, legislative developments in the Member States and a number of recommendations for the European Union and Member States and follow-up actions for Eurojust.

Eurojust also produced a summary of the main findings of the 2015 FTF report, which was published in 2016 as a Eurojust document with limited access. Following the recommendations in the 2014 and 2015 FTF reports for an update of the EU legal framework addressing terrorism, and based on its operational experience, in April, Eurojust presented its input on the proposal for a Directive on Combating Terrorism at a shadow meeting of the LIBE Committee.

Eurojust plays a key role in facilitating judicial cooperation between Member States and third States, particularly from the Western Balkans and the MENA regions. Eurojust has established contact points in Algeria, Egypt, Iraq, Israel, Jordan, Lebanon, the Palestinian Authority, Saudi Arabia and Tunisia. On 8 June, Eurojust participated in the EU-Turkey Counter-Terrorism Dialogue, which led to a reiterated commitment to urgently step up common efforts against the threat posed by FTFs and an affirmation of Turkey's determination to work closely with Eurojust and other relevant EU agencies to counter this phenomenon.

The network of national correspondents for Eurojust for terrorism matters served as a primary point of contact for the response to the 2016 Brussels terrorist attacks. Within an hour of the attacks of 22 March, which involved coordinated suicide bombings on the metro and in Brussels Zaventem Airport, leaving 32 people dead and hundreds injured, Eurojust activated its network of national correspondents for terrorism matters to ensure that the competent judicial authorities from all Member States were available around the clock to immediately receive and process any urgent request for, or decision on, judicial cooperation. The activation of the network facilitated the provision of quick and comprehensive assistance to the Belgian investigation into this major terrorist incident by supporting and complementing the work at national level with a focus on the international dimension



of the attacks and the identification of criminal networks and connected criminal activities. Eurojust was also put on stand-by to be able to promptly respond to any requests for assistance and coordination from the competent national authorities.

The investigation in Belgium revealed a sophisticated terrorist network with links both to other Member States and to the Paris attacks, with suicide bombers being supported by several individuals, and with connections to other serious crimes and networks involving arms trafficking and forgery of documents. The person seen next to one of the suicide bombers on surveillance footage from the attack on the Brussels metro escaped minutes prior to the detonation and was identified as a known FTF in Syria. His DNA, found in several 'safe houses' and cars used by the terrorist network, led to the discovery of links with other Member States and his involvement with the Paris attackers.

The Federal Prosecutor's Office of Belgium requested urgent assistance from Eurojust to facilitate an MLA sent to another Member State. Eurojust's prompt reaction proved instrumental in identifying, within a minimum amount of time, the correct authority with which to cooperate across borders so as to immediately execute the request and speed up the exchange of information at judicial level. Eurojust's support ensured that one of the accomplices in the Brussels attacks could be located and captured. His arrest took place on 8 April, in coordination with the arrest on the same day of the 'man with the hat' seen on CCTV camera as the airport suicide bomber who fled the scene.

#### ***CBRN-E Handbook***

The *CBRN-E Handbook* is a regularly updated Eurojust product that provides EU practitioners with specialist multi-sector legal support for investigations and prosecutions related to transnational crimes involving chemical, biological, radiological, nuclear substances and explosives (CBRN-E). It contains an overview of the most relevant EU and international legislation dealing with CBRN-E, as well as supranational entities, systems and databases in the area of CBRN-E. An update was produced in 2016.

#### ***Terrorism Convictions Monitor***

The TCM is a Eurojust document with limited access, distributed to prosecutors and judges dealing with terrorist cases, and published regularly since 2008. It provides an overview of terrorism-related convictions and acquittals throughout the European Union, legal updates, and judicial analysis of relevant judgements.

The TCM is based on open source information and information on convictions for terrorist offences provided by the national authorities in the implementation of Council Decision 2005/671/JHA. The analytical chapters of the issues produced in 2016 included analysis of judgements, rendered by courts in Belgium, Denmark, France, Sweden and Switzerland, concerning FTFs and terrorist recruitment networks.

### **2.1.2 Cybercrime**

Judicial cooperation in the field of cybercrime faces many distinct challenges, mostly stemming from the inherent borderless nature of this criminal phenomenon and the significant legislative differences existing at national level.

Eurojust supported 60 cases, 13 coordination meetings and eight JITs, two of which were newly established. In addition to operational support, Eurojust's other activities in the area of cybercrime facilitated the sharing of experience and expertise among national practitioners in critical areas such as cooperation with ISPs located in the USA and encryption of data.

Eurojust was instrumental in the creation of a community of practitioners specialised in cybercrime, and welcomed the establishment of the EJCEN. The EJCEN consists of at least one national representative of the judicial authorities with appropriate expertise per Member State. The EJCEN will facilitate and enhance cooperation between competent judicial authorities by enabling the exchange of expertise, best practice and other relevant knowledge regarding the investigation and prosecution of cybercrime. The network will also foster dialogue among different actors and stakeholders that play a role in ensuring the rule of law in cyberspace. Eurojust has been tasked to provide support to and ensure cooperation with the network. In November, the EJCEN kick-off meeting at Eurojust focused on the technical, legal and practical obstacles to encryption and undercover investigations online.

Mr Branislav Boháčik, Prosecutor, General Prosecutor's Office of the Slovak Republic, stated:

*The establishment of the EJCEN is the fulfilment of a long-standing wish of practitioners. In this network, they will be able to share their experiences and expertise and work closely together with their colleagues from the EU Member States to deal with the many challenges that they face during investigations and prosecution of cybercrime and cyber-enabled crimes, such as encryption.*

Eurojust's experts participated in the meetings on electronic evidence organised by the Commission as a follow-up to the Council Conclusions of 9 June 2016 on improving criminal justice in cyberspace, which addressed three areas in which improvements are sought by practitioners: execution of MLAs, direct cooperation with ISPs, and mechanisms for establishing jurisdiction in cyberspace. Eurojust offered its insight into common challenges faced by practitioners, as well as best practice to overcome these challenges, including issues of enforcement of jurisdiction in cyberspace.

Eurojust continued to work closely with other stakeholders and institutional partners to ensure effectiveness of investigations and prosecutions in cybercrime cases. Eurojust's Seconded National Expert on Cybercrime, in particular, acted as a bridge-maker between Eurojust and Europol, facilitating the exchange of information, and supporting and coordinating cooperation with EC3. Within the framework of the EMPACT Cybercrime - Child Sexual Exploitation, Eurojust carried out an analysis of Eurojust cases of online CSE, outlining the challenges in investigations and prosecutions of CSE cases, as well as solutions and best practice.

From January through March 2016, a US Cybercrime Prosecutor was seconded to Eurojust to work with the National Desks and EC3 to establish closer operational cooperation with the US representative in cybercrime matters and increase the understanding of the US criminal law system. Both Eurojust and the US authorities welcomed this initiative, which led to very good results.

Eurojust joined a growing coalition of public and private entities supporting the project 'No More Ransom', originally set up by the Dutch authorities, EC3 and two private cyber security companies. The objective of the project is to actively help victims of ransomware by making available decryption keys found in the course of criminal investigations.

Eurojust is a member of the steering committee of the Cybercrime Project launched by the World Economic Forum in 2015 with the goal of enhancing public-private cooperation in fighting cybercrime. In the framework of this project, the 'Recommendations for Public-Private Partnership against Cybercrime' were published in 2016.

### ***Cybercrime Judicial Monitor***

In 2016, Eurojust launched the CJM. The CJM is a Eurojust document with limited access, published once per year and designed as a reporting tool to support practitioners in the investigation and prosecution of cybercrime cases. The CJM outlines relevant legislative developments in the area of cybercrime and cyber-enabled crimes. Furthermore, it provides extensive analyses of selected national court rulings in cybercrime cases, as well as a chapter on a topic of interest, elaborated on the basis of ongoing discussions or emerging trends. Two topics of interest were covered in the CJM published last year: the court rulings in the Belgian Yahoo! case and remote access to data or a computer system.

### **2.1.3 Illegal immigrant smuggling**

Member States continued to face severe challenges arising from the sharp rise in IIS and looked to EU institutions and agencies to identify and implement new and more effective avenues for tackling this unprecedented humanitarian emergency. Eurojust renewed its efforts towards strengthening Member States' ability to dismantle and prosecute the OCGs behind the smuggling and trafficking networks.

Eurojust registered 65 cases, a slight increase compared to 2015, at the peak of the humanitarian crisis, held 12 coordination meetings, and supported 11 JITs, five of which were newly established. One JIT involved a third State (Serbia). The use of JITs in IIS cases and the involvement of third States in JITs were themes of the annual meeting of JIT experts (*see* sections 1.4 and 6.2).

Eurojust supports frontline Member States facing significant migratory pressure at their external borders. The activities carried out in the Hotspot locations are primarily focused on identification, registration and screening of migrants. Eurojust is not physically present in the Hotspots, but has established dedicated judicial contact points in Greece and Italy to support the Hotspots and to channel relevant information and cases to Eurojust's National Desks for judicial follow-up and coordination at EU level.

The Thematic Group on Illegal Immigrant Smuggling, set up in 2015, provides assistance to practitioners dealing with cross-border IIS. Eurojust prepared analyses of national jurisprudence on IIS and related offences in Spain, Italy and France, identifying legal and practical challenges in investigation and prosecution, and best practice. Eurojust is collecting information and developing tools for practitioners on the applicable national legislation on IIS and related offences in Member States, including strengths and shortcomings of such laws, with a view to assisting practitioners in designing effective prosecutorial strategies. Eurojust also supported the Commission in the evaluation of EU law on facilitation of irregular migration, the so-called 'Facilitators package', by providing input from a prosecutorial perspective.

In February, Eurojust held a tactical meeting, *Judicial challenges arising from illegal immigrant smuggling*. Participants provided an overview of operational cooperation among European partners in the fight against IIS, and the experience of contact points and liaison magistrates posted in other Member States, as well as in the Hotspots in Italy and Greece. Focus was on information sharing, collection and admissibility of evidence and other practical issues affecting judicial cooperation. They

also discussed issues concerning translation and interpretation, which cause severe difficulties for the national authorities, e.g. in identifying certified and trustworthy translators and interpreters for rare spoken languages and dialects used by the migrants and OCGs, including the high costs and large volume of evidence. In one example discussed during the meeting, a prosecutor was unable to use evidence (telephone intercepts) from another Member State, as translation would have entailed huge costs, funds for which were not available. The lack of funds for translating a pre-trial custody order totalling over 350 pages was also a factor in a complex IIS case registered at Eurojust. The translation was essential for opening investigations in their jurisdictions. As a result, not all Member States opened investigations. An outcome report of the meeting was published as EU document 9456/16.

In April, Eurojust gathered judicial and law enforcement practitioners from France, the UK, Belgium and the Netherlands for an operational meeting on IIS in the North Sea region. Participants emphasized the need to improve information sharing, to facilitate financial investigations focused on seizing the considerable profits generated by smuggling activities, to increase attention on the use of counterfeit and forged official documents, and to enhance cross-border surveillance operations to better map smuggling offences and build stronger prosecution cases.

Eurojust continued to work towards increasing operational cooperation with third States and other institutional partners, and participated in the Commission's contact group of EU agencies on migrant smuggling.

A high-level EUNAVFOR MED delegation visited Eurojust in July, discussed its activities with the College, exchanged views on judicial aspects and the quality of information sharing, and further explored ways to strengthen their mutual relationship in the framework of the Letter of Understanding signed in October 2015. Regular meetings took place with Europol to discuss involvement in high-priority cases and progress with JOT MARE. Eurojust participated in the activities under EMPACT FII (Facilitated Illegal Immigration).

#### **Jurisdiction in illegal immigrant smuggling case**

In August 2015, an abandoned truck was found close to a motorway in Austria, near the Hungarian border. The bodies of 71 migrants were discovered inside. This incident immediately triggered investigations in Hungary and Austria. Four suspects of Bulgarian nationality and one Afghan suspect, all belonging to an OCG involved in IIS, were identified and arrested in Hungary days later. Alleged facilitators of the crimes were later arrested in Germany and cases were also brought against suspects in Bulgaria and Serbia.

To ensure speedy judicial cooperation among the affected countries, the Hungarian authorities requested Eurojust's support. A coordination meeting preceded by an operational meeting at Europol were organised within 48 hours of the request. At the Eurojust coordination meeting, the existence of more than 10 ongoing investigations in Germany concerning migrant transports planned, organised and carried out by the same OCG became clear, underlining the need for cooperation and exchange of information. A JIT between Hungary, Austria and Germany was considered; however, the participants agreed that cooperation based on MLA requests was more suitable. Austria had already sent several MLA requests to Hungary and issued EAWs to both Hungary and Bulgaria.

In the aftermath of the coordination meeting, Eurojust monitored and facilitated the execution of Hungarian MLA requests sent to Serbia, the Slovak Republic and Italy to collect case-related

information and evidence. A legal obstacle related to data retention occurred when a Hungarian MLA request for telecom data was sent to the Slovak Republic. Due to the invalidation of the Data Retention Directive by the CJEU in 2015, no data retention legislation was in force in the Slovak Republic at the time of the incident. After new Slovak legislation with a retention period of six months entered into force in January 2016, the national authorities, with the assistance of Eurojust, were able to safeguard timely execution of the request.

To avoid the possible conflicts of jurisdiction that could arise if several parallel investigations were being conducted and arrest warrants had been issued, Eurojust ensured that an effective case strategy was agreed. Due to the widespread activities of the OCG, a division of tasks was necessary to secure successful prosecutions. As the investigations showed that the alleged murders and human smuggling had taken place on Hungarian territory, a transfer of proceedings from Austria was discussed, as concentrating the proceedings on one Member State would enhance the effectivity and solidity of the case against the members of the OCG. The parallel investigation continued until November 2015, when the transfer of the Austrian proceedings took place, and the Hungarian authorities agreed to prosecute all aspects. For this purpose, evidence gathered in Austria, including expert opinions, autopsies and DNA tests, were submitted for use in the Hungarian proceedings. At the same time, Austria transferred the proceedings in another linked case to the Hungarian authorities. The German authorities were to prosecute the facilitators arrested in Germany. To assist in distinguishing between the drivers and the organisers within the OCG, the Hungarian authorities provided their German counterparts with the legal provisions on the basis of which the Hungarian criminal charges were brought. By the end of 2016, both the Hungarian and the German proceedings were at the pre-trial stage.

#### 2.1.4 THB

Eurojust's support to national investigations and prosecutions of human trafficking increased. Eurojust registered 93 cases and held 33 coordination meetings. For the first time, two Latin American countries, Colombia and Paraguay, were involved as requested countries in cases. A significant increase was noted in the use of JITs: 32 JITs were active in THB-related cases (21 in 2015), 19 of which were newly established in 2016.

Eurojust coupled its operational support with strategic activities to enhance the effectiveness of international judicial cooperation and to bolster its partnership with other EU institutions and agencies for the purpose of streamlining actions and optimising resources in the fight against THB.

In June, the EU Anti-Trafficking Coordinator visited Eurojust to discuss the impact of national laws that criminalise the end-consumers, users of services or activities resulting from the exploitation of trafficked victims, as per Article 18 of Anti-trafficking Directive 2011/36/EU. She also presented to the College the findings of the Commission's report on progress made in the area of THB and the *Study on case law relating to THB for labour exploitation*, which was published in October 2015.

Eurojust provided its input to the EU post-2016 *Strategy on Trafficking in Human Beings*, which follows the *EU Strategy towards the eradication of trafficking in human beings 2012-2016*. Eurojust identified the following priorities: enhancing judicial cooperation in cross-border THB cases, including cooperation with third States; exploring the links between THB and IIS; and addressing the characteristics of THB cases involving child victims.

Eurojust supported the project *TeamWork! Strengthening multidisciplinary cooperation against trafficking for labour exploitation*, and moderated the workshop *Prosecuting THB for labour exploitation*. As a result, a manual for experts on multidisciplinary cooperation against THB for labour exploitation was produced, which calls for utilisation of the support that Eurojust can offer to prosecutors dealing with cross-border THB cases.

Eurojust also contributed to the report that followed the JHA Agencies Network expert workshop, organised by FRA in April, on victims of serious and organised crime, *How can JHA agencies improve the impact of their work relating to victims of serious and organised crime?*. Eurojust stressed the importance of safeguarding not only the victims of THB but also their families in their country of origin, as well as raising prosecutors' awareness about victims.

### **2.1.5 Fraud**

Fraud cases represent the largest number of registered cases (654), which included coordination meetings (44), coordination centres (5) and JITs (35, nine of which were newly established). Eurojust supported national authorities by providing its expertise, particularly in the areas of combating VAT fraud and tax crime, as well as safeguarding IPR.

VAT fraud cases (so-called 'carousel fraud') are particularly complex, involving fraudulent traders who import and export goods free of VAT through various Member States. At each stage of this fraudulent trade, VAT is added (sometimes up to 25 per cent), with the companies involved in the carousel then disappearing. The final exporter claims a government VAT refund and then also disappears.

Cooperation with stakeholders and institutional partners continued. In July, Eurojust and the European Union Intellectual Property Office (EUIPO), formerly known as the Office for Harmonization in the Internal Market (OHIM), signed a Memorandum of Understanding (MoU) to expand the existing fruitful collaboration to support European prosecutors working with cases concerning violations of IPR. The MoU enables the further development of specific cooperation projects, such as joint seminars, training and intelligence to support prosecutors. In addition, the MoU reinforces the capacities of the European Intellectual Property Prosecutors Network (EIPPN).

In October, Eurojust, in cooperation with the Slovak EU Presidency, held a tactical meeting, *Judicial Cooperation in Tax Crime Matters*, with high-level prosecutors specialised in fighting fraud from the Member States, Switzerland and the USA (see section 4.2).

Eurojust participated in the European Parliament public hearing, *Anti-money laundering and tax evasion: Who assures compliance with the rules and enforces them?*, held in November.

Eurojust became a member of the Stakeholders Advisory Board of the Intellectual Property Crime Coordinated Coalition, which was established at Europol in July 2016 with the goal of bringing together stakeholders from the public and private sectors and creating synergies between the actions undertaken by different entities involved in the fight against intellectual property crime.

### **2.1.6 Corruption**

Corruption undermines confidence in the public and private sectors. Eurojust is committed to supporting the Member States' prosecutorial and judicial authorities in their efforts to fight corruption, and dealt with 74 cases involving corruption, held 15 coordination meetings and supported two JITs, one of which was newly established.

To inform potential operational partners of Eurojust's work in the field of corruption, Eurojust hosted visits of representatives from the Corruption Hunters' Network as well as two Ukrainian authorities, the National Bureau, a state law enforcement agency, which is responsible for investigation of corruption offences of senior government officials under its competence, and the Special Anti-Corruption Prosecutor's Office, responsible for conducting prosecution of cases investigated by the National Bureau.

Eurojust has been participating as an observer in the Camden Asset Recovery Inter-Agency Network (CARIN) and in the Asset Recovery Offices Platform (ARO) since 2004 and 2008, respectively.

### **Corruption case strategy agreed in a level II meeting**

A Spanish investigation into corruption and associated money laundering in international trade operations was initiated in 2013, following an MLA request from Luxembourg that indicated that part of the criminal activity in that Member State could have been directed from Spain. The illegal practices involved public institutions in Angola, and public and private companies in Spain. The offences were allegedly committed by executives of a Spanish public company commissioned to provide vehicles, uniforms and other supplies to the Angolan National Police. In October 2014, the investigating judge in Luxembourg formally closed the case and handed it over to the Spanish authorities as a spontaneous exchange of information under Article 7 of the 2000 MLA Convention.

The investigations in Luxembourg and Spain had revealed that the Angolan authorities paid more than EUR 150 million to the Spanish company through a bank account in China. However, the Spanish company in question only delivered police supplies to Angola valued at approximately EUR 50 million. The remaining EUR 100 million was allegedly misappropriated by persons in Angola and Spain. The suspects created a network of bank accounts and shell companies in Angola, Europe and Asia to hide the final destination of the stolen money, following a classic money laundering pattern in successive stages: placement, layering and integration.

To collect witness statements and information on bank accounts used in Angola, the Spanish authorities sent an MLA request to Angola in February 2015, based on the 2003 UN Convention against Corruption. As banks and individuals in various European countries were also allegedly involved in the criminal offences, the Spanish authorities approached Eurojust in June 2015, initially seeking information on the state of execution of MLA requests previously issued to Luxembourg, Belgium and Switzerland under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Spanish National Desk held a **level II meeting** with the Belgian National Desk and the Swiss Liaison Prosecutor to agree on a cooperation strategy. As a result, Eurojust facilitated the prompt execution of several MLA requests to Switzerland and Belgium to obtain information on bank accounts held by suspects and urgently freeze the accounts.

As the case progressed and more evidence was gathered, Spain issued MLA requests to France, Italy, Portugal and the UK in October 2015. To determine the remaining cooperation needs, Eurojust provided an analysis of the money laundering pattern applied and the suspects involved, as well as an overview of the state of execution of the requests.

Eurojust assisted the Spanish authorities when a supplementary MLA request to Angola was issued, asking the Angolan authorities to serve indictments against four suspects. To enhance the execution of

the initial and supplementary MLA requests, the Portuguese National Desk recommended the assistance of the Angolan prosecutor who is a contact point for international judicial cooperation for the Community of Portuguese Language Countries (CPLP). This action led to successful cooperation with the Angolan authorities, and, by October 2016, the MLA requests had been executed.

As a result of successful investigations and international judicial cooperation through Eurojust, proceedings were initiated against some of the suspects in Spain in 2016.

### **2.1.7 Drug trafficking**

Eurojust handled a significant number of drug trafficking cases (254), which included coordination meetings (41), coordination centre (one), and JITs (24, 13 of which were newly established). Eurojust, in close cooperation with institutional partners, worked towards strengthening Member States' ability to effectively address emerging threats in the area of new psychoactive substances (NPS), as well as controlled deliveries.

In November, Eurojust and the EMCDDA published a report entitled *New psychoactive substances in Europe: legislation and prosecution – current challenges and solutions*. The report is intended to assist national authorities faced with the rapid evolution of the European market for NPS, which has challenged them to find suitable and efficient control mechanisms. The report combines Eurojust's operational experience in drug-related cross-border prosecutions and analysis of the 10 July 2014 CJEU ruling on medicinal products (Joined Cases C-358/13 and C-181/14) with the EMCDDA's drug monitoring and analytical capacities.

Eurojust provides advice to the national authorities on converting the information collected during a controlled delivery into evidence, and facilitates the exchange of information and documents following MLA requests. In October 2015, the College held a thematic discussion on legal requirements and operational issues concerning controlled deliveries (*see Eurojust Annual Report 2014*, p. 60). Eurojust continued liaising with the Council of Europe and Europol to identify possible synergies, and shared its report, *Legal and Operational Issues Identified by Eurojust in Controlled Deliveries* within the related EMPACT projects. Eurojust is contributing to the drafting of a handbook on controlled deliveries, an initiative led by the Pompidou Group (Council of Europe), which is expected to be published in 2017.

### **2.1.8 Organised property crime committed by MOCGs**

The category of OPC committed by mobile organised crime groups (MOCGs) covers a wide array of offences, such as motor vehicle crime, metal theft, pickpocketing, robbery and serial burglaries. Eurojust supported 199 cases, 19 coordination meetings and 12 JITs, four of which were newly established. Eurojust held two coordination centres that dealt with motor vehicle crime.

A three-year programme, jointly developed by Eurojust and Spain within the framework of an operational action within the EMPACT project on OPC, ended with a seminar in June organised by Eurojust, attended by experts in investigations and prosecutions of OPC, including representatives from national judicial and law enforcement authorities of the Member States, Norway and Iceland, the Commission, CEPOL and Europol. The seminar's goals were to raise awareness among law enforcement officers, prosecutors and judges about the unique aspects of investigating and prosecuting OPC and MOCGs, to exchange views on possible legal loopholes and practical difficulties, and to identify best practice.

The final report, issued in December, summarised the discussions and findings, as well as conclusions of the three-year programme. The report found that, while no significant legal loopholes appear to



affect OPC investigations and prosecutions, national authorities should revise their current practices and strategies, particularly concerning resources and methods used in complex investigations of other serious organised crimes (e.g. forensic evidence (DNA) or special investigative techniques (e.g. interception of communications)), and increase the level of international cooperation, including with Eurojust and the EJN.

### **2.1.9 PIF crimes**

Eurojust's operational support in cases dealing with offences that directly or indirectly affect or may affect the EU's financial interests (PIF crimes) remained at the same levels as in 2015, with 11 coordination meetings and five JITs, one of which was newly established, although the number of PIF cases registered in 2016 decreased from 69 to 41. In Eurojust statistics, VAT fraud is treated as a separate category.

## **2.2 Eurojust casework on mafia-type criminal organisations**

Since 2012, more than 145 Eurojust cases dealt with Italian mafia-type OCGs, such as Cosa Nostra, Camorra and 'Ndrangheta. The casework at Eurojust confirms the transnational dimension of the Italian mafia-type OCGs, which over the years have consolidated their global partnerships with other criminal groups worldwide, active particularly in the areas of drug trafficking and money laundering. In addition to laundering in foreign countries the proceeds of illicit activities carried out in Italy, these OCGs have massively infiltrated the legitimate economy of many Member States, such as Spain (particularly favoured by the Italian Camorra), the Netherlands, Romania, France, Germany and the UK, including through the presence in these Member States of dangerous Italian fugitives along with their networks of associates and facilitators. Such infiltrations are typically carried out directly by associates of the OCG or via its frontmen through real estate investments and participation in public or private contracts, particularly in the field of construction, public utilities and waste disposal.

Under Italian criminal legislation, 'participation in a criminal organisation' is a stand-alone offence, punishable by long-term prison sentences under Articles 416 and 416*bis* of the Italian Criminal Code, as required by Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime. Not all Member States, however, have adopted similar provisions incriminating 'participation in a criminal organisation' as a distinct offence. When they have done so, the extent of the application of and penalties attached to such offences vary greatly, and so do the possibility and requirements for applying special investigative techniques such as wiretappings.

Experience shows that the existence of different legal definitions and the lack of an equivalent to Article 416*bis* of the Italian Criminal Code cause major legal and operational obstacles to effective judicial cooperation.

Eurojust has supported successful operations by identifying judicial challenges and suggesting solutions, including enhancing the use of JITs, taking into account the different legal frameworks and prosecutorial approaches towards Italian OCGs existing at national level. The Italian authorities, with the support of the Italian Desk at Eurojust, have informed their counterparts in the Member States affected of the concrete threat posed by Italian mafia-type OCGs operating in their territory, as well as assisted in the identification and collection of evidence concerning the pre-requisite crime (frequently money laundering), and discussed and agreed on coordinated operational means to dismantle these groups, using special investigative techniques such as wiretappings, and, more recently, JITs. Several

cases registered by the Italian National Desk are ongoing. An example of a case successfully supported by Eurojust demonstrates the challenges.

An Italian investigation into a Camorra-affiliated OCG involved trading all sorts of counterfeited commodities (e.g. electric generators, chainsaws, drill hammers and clothing). The illicit products were produced in China, and counterfeit labels of well-known companies were attached in Italy. The goods were distributed all over the world via the Port of Naples. In addition, the electrical appliances and tools traded by the OCG did not comply with EU safety standards. The criminal activity was highly profitable (e.g. the price of an electric generator, produced in China for EUR 35, sold for EUR 400, while a legitimate brand would cost EUR 1 250). The OCG was based in the vicinity of Naples, but its illicit operations stretched through more than twenty countries in Europe, as well Australia and Iceland.

Eurojust's coordination efforts helped the Italian and other national authorities to reconstruct the OCG and to reach a common understanding of how it operated at national level. A joint operational strategy and coordinated actions were agreed. The strategy was centred on opening and conducting national investigations of money laundering, in parallel with the original investigations for participation in a mafia-type OCG, conducted in Italy. Eurojust supported the parallel national investigations and the execution of more than 30 Italian MLA requests. The successful conclusion of the operations, coordinated via Eurojust, with the analytical support of Europol, culminated in simultaneous actions conducted in seven Member States (CZ, DE, ES, FR, IT, SE, UK), resulting in the arrest of 67 individuals, the search of 143 warehouses and the seizure of more than 800 tonnes of counterfeit materials and the recovery of assets exceeding EUR 11 million.

Eurojust took note of the European Parliament's Resolution of 25 October 2016 on the fight against corruption and follow-up of the CRIM resolution calling for the Commission to submit a report assessing the transposition of Council Framework Decision 2008/841/JHA on the fight against organised crime.

# Operation Avalanche: a closer look

## *Key threats*

A German investigation into an OCG called Avalanche involved in malware, phishing and spam activities commenced in 2012, after a wave of encryption ransomware infected a substantial number of computer systems, blocking users' access. The investigation exposed the existence of a highly sophisticated technical infrastructure that was used to infect millions of private and business computer systems with malware (e.g. banking Trojans and ransomware), enabling the criminals operating the network to harvest bank and e-mail passwords.

With this information, the criminals were able to perform bank transfers from the victims' accounts. The proceeds were then redirected to the criminals through an infrastructure specifically created to secure the proceeds of the criminal activity. In addition to launching and managing mass global malware attacks, the Avalanche network was used for money mule recruiting campaigns. The Avalanche infrastructure was set up in a way that was highly resilient against takedowns and law enforcement action (through so-called 'double fast-flux' technology).

## *Eurojust and Europol*

The need for broad international cooperation arose in 2015. The German prosecution and law enforcement authorities approached Eurojust and Europol for support. While at this point in time certain actions against parts of the network had taken place, wide-ranging cooperation had not been established, nor had the perpetrators been identified.

Several operational and coordination meetings, which brought together a large number of Member States and third States, including the USA and Azerbaijan, were held at Europol and Eurojust, with both agencies cooperating closely. Prior to the final coordination meeting, a **level II meeting**, attended exceptionally by German and US prosecutors and law enforcement officers, was held at Eurojust, with a limited group of countries that would not be present during the following coordination meeting. The operational and coordination meetings served to plan a global joint action day and to clarify legal issues and concepts related to this form of cybercriminality.

## *Impact*

The Avalanche infrastructure had been used since 2009, causing an estimated EUR 6 million in damages in concentrated cyberattacks on online banking systems in Germany alone. In addition, the monetary losses associated with malware attacks conducted over the Avalanche network were estimated to be in the hundreds of millions of euros worldwide, although exact calculations were difficult due to the large number of malware families managed through the platform. Initially, an action day was foreseen for 2015. This action day was postponed to late 2016 to allow for an identification of the perpetrators, through close cooperation with the US authorities.

<p><b>Eurojust</b> supported the work of the involved judicial authorities by mapping out the legal requirements to effectuate the necessary interventions, as well as facilitating the drafting and timely execution of letters of request.</p>	<p><b>EC3</b> supported the investigation by facilitating secure information exchange, providing in-depth analysis and advanced digital forensic support, and fostering cooperation between law enforcement and private partners.</p>
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While initial sovereignty concerns were raised by the fact that servers subject to takedown were located in various jurisdictions, discussions among the relevant authorities resolved the matter. Similarly, concerns were raised that, under various participating countries' legislation, the seizure of so-called unborn domains was not possible. Eurojust's Seconded National Expert on Cybercrime was able to inform the national authorities that in this case the problem would not arise, as the status of the domains in question would change from unborn to born by the time the actions took place. His advisory role towards the National Desks and national authorities continued throughout the investigation. Additionally, he provided contact details of judicial authorities in countries outside of Eurojust's contact network.

### **Private sector**

Cooperation with several non-profit and private sector partners was initiated to allow for the analysis of over 130 TB of captured data and identification of the server structure of the botnet, leading to the shutdown of servers and the collapse of the entire criminal network. The partners included the German *Fraunhofer-Institut für Kommunikation, Informationsverarbeitung und Ergonomie*, the Shadowserver Foundation, Registrar of Last Resort and the Internet Corporation for Assigned Names and Numbers (ICANN). Other partners, such as INTERPOL and the Ibero-American Network for International Legal Cooperation (IberRed), also played an important role, particularly in preparation of the joint action day. IberRed served as a liaison to Spanish-speaking countries, mainly in South America.

### **Results**

On the action day in November 2016, Europol hosted a command post, in which Eurojust participated and provided immediate support to the judicial authorities involved in the action day. At the command post, the German prosecutor and police officers worked together with representatives of the involved countries and private industry partners to ensure the success of such a large-scale operation. This global effort to take down the network involved the crucial support of prosecutors and investigators from 29 countries.

As a first result, five individuals were arrested, 37 premises were searched, and 39 servers were seized. Victims of malware infections were identified in over 180 countries. In addition, 221 servers were put offline through abuse notifications sent to the hosting providers. Over 800 000 domains associated with the criminal infrastructure were sinkholed, and dedicated webpages were created for the public to assist in removing the malware from their computers and to prevent further illegal access.

### **Lessons learned**

To help the involved countries with their investigations, close cooperation between Eurojust and Europol in organising joint meetings saved both time and money.

This operation showed that only when public and private entities collaborate as a team can a large and sophisticated criminal network be taken down. Cybercrime truly is a global phenomenon and requires

cooperation between authorities, which is sometimes most efficiently established by tapping into regional networks of practitioners.

A business model lies behind every successful cybercrime venture. By targeting the business model of the Avalanche network and devising ways of interfering with the perpetrators and the technical infrastructure, as well as identifying and supporting the victims, one of the most sophisticated cybercrime networks of the past years was effectively shut down. The operations yielded valuable insights into the cybercriminal business model. At the same time, the trust built among the cooperating public and private entities will prove to be an invaluable asset in the future fight against cybercrime. Since the action day, the approach in the case has been regarded as best practice amongst cybercrime investigators and prosecutors.

The lead prosecutor, Mr Frank Lange, said:

*Having trustworthy and quick international cooperation, beyond the traditional means of legal assistance, was essential to Avalanche's success. Eurojust and EC3 played an important role in establishing the atmosphere for cooperation between judicial participants and police. The organisation of coordination meetings at Eurojust and operational meetings at Europol, as well as their further support by forwarding information and letters of request to the correct recipients, laid the groundwork for a truly multinational approach. We are really grateful.*

## Chapter 3 Eurojust's partners

### 3.1 Cooperation with Europol

Cooperation was strengthened through the work of the Eurojust-Europol Steering Committees on Operational Matters and on Strategic Matters, at which a number of topics were discussed, including Eurojust's support to Europol Focal Points and Joint Action Days 2016, the CARIN questionnaire on non-conviction-based forfeiture, data retention projects, JIT funding and the exchange programme. The Joint Annual Report 2015 was submitted to the Council and Commission on 19 May.

Eurojust is exploring the steps for creating a bridge between Eurojust and the Europol Centres. At the Eurojust-Europol high-level meeting, support was given to post Eurojust representatives to the ECTC and EMSC, following the good example set by Eurojust's Seconded National Expert on Cybercrime posted at EC3.

Information about scheduled operational meetings at Europol and coordination meetings at Eurojust continued to be exchanged on a regular basis. Europol attended 87 coordination meetings.

Eurojust contributed to the activities carried out within the framework of the OAPs in all EMPACT crime priority areas and the Focal Points. Eurojust participated, as leader, co-leader and participant, in actions undertaken to increase coordinated investigations and prosecutions within the OAPs and to identify judicial challenges and best practice. The College decided to rationalise the role and assignments of its Contact Points to the Focal Points, aligning them to the new structure adopted at Europol and to Eurojust's operational and strategic priorities.

Eurojust gained formal association to APATE (fraud) and HYDRA (Islamic religiously inspired terrorism), bringing to 25 the total number of Europol's files supported by Eurojust.

Eurojust contributed to the strategic products, the *Serious Organised Crime Threat Assessment* (SOCTA), due to be released in 2017, and the section entitled Convictions and Penalties plus the relevant statistical annex of the *Terrorism Situation and Trend Report* (TE-SAT).

Following an initiative of the Dutch Chair of the Europol Management Board, a joint meeting of the Management Board and the College of Eurojust was held in December to discuss common reflections on cooperation, to promote a better understanding of Eurojust's and Europol's respective mandates, and to enhance complementarity to better serve the national authorities.

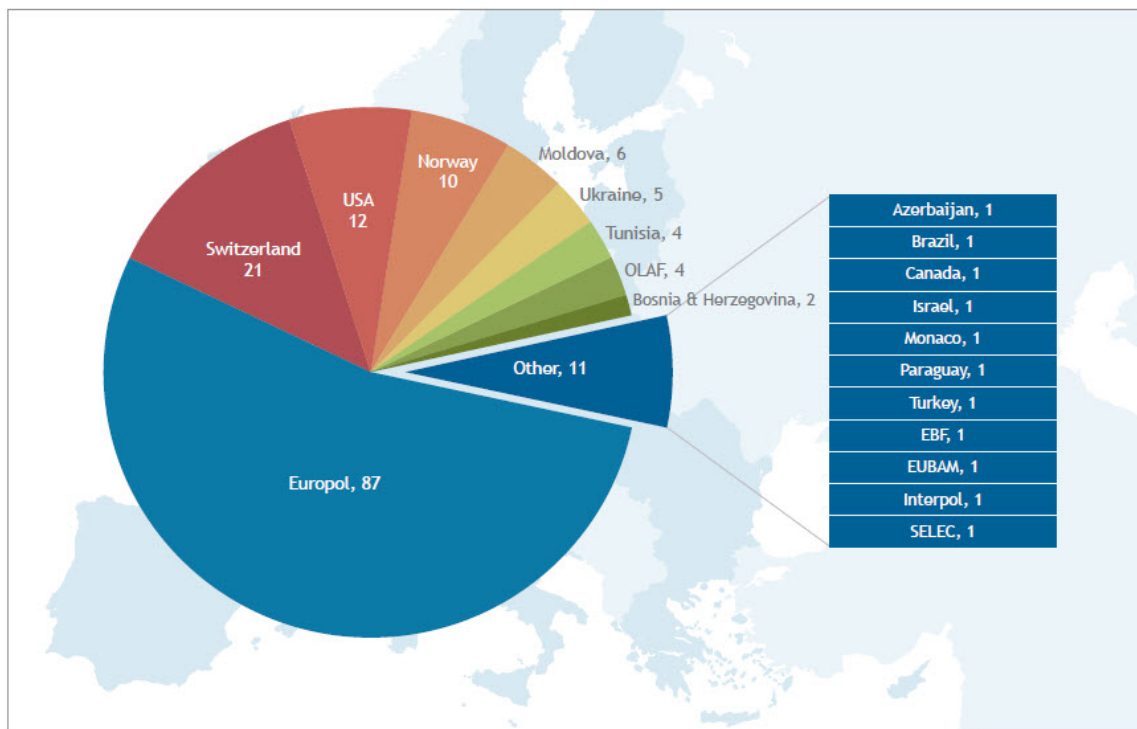
### 3.2 Cooperation with OLAF

Eurojust and OLAF's joint efforts to counter fraud, corruption and other crimes affecting the financial interests of the European Union continued and highlighted the need for an effective multi-agency approach to cross-border cases, particularly through information exchange and mutual involvement.

OLAF officials worked with Eurojust on four cases and participated in four coordination meetings. Cooperation was ensured through the Eurojust and OLAF liaison team, by, amongst others, the regular exchange of case summaries and a joint training on practical cooperation, using cases to demonstrate

to practitioners how cooperation and best practice between OLAF and Eurojust help to protect the financial interests of the European Union.

*Third States, cooperation partners and international organisations involved in coordination meetings*



### 3.3 Eurojust’s relations with third States and organisations

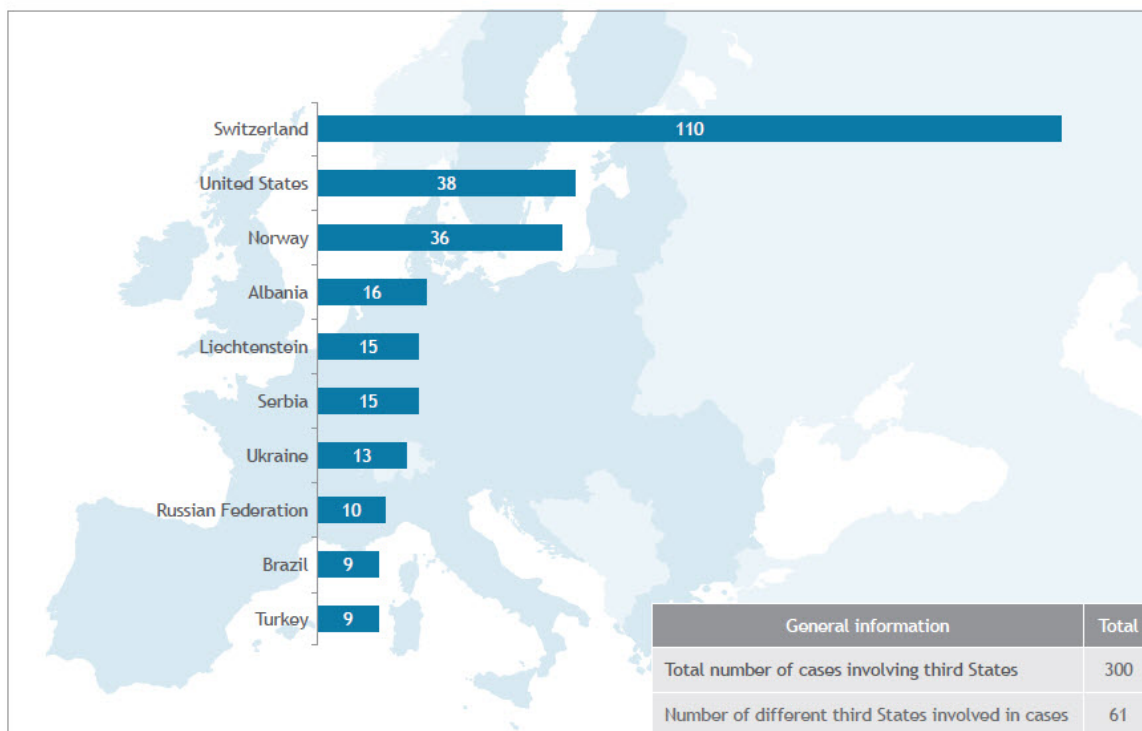
#### *Cooperation agreements*

Eurojust has seven cooperation agreements in force, following the entry into force of the cooperation agreement with the Republic of Moldova on 21 October. Cooperation agreements were signed with Montenegro on 3 May and with Ukraine on 27 June, still to enter into force, and formal negotiations were launched to conclude a cooperation agreement with Albania. Contacts were maintained with Bosnia and Herzegovina, Brazil, Georgia, Israel, Mexico, Serbia, Tunisia and Turkey to explore possibilities for enhancing cooperation. In addition, the practical implementation of the provisions of cooperation agreements in force was assessed. In this context, regular consultation meetings were held with Switzerland and Norway.

#### *Eurojust’s casework involving third States*

Eurojust provided assistance in 300 cases in which 61 different third States were involved, mainly dealing with fraud and money laundering. Third States were represented at 50 coordination meetings, with Switzerland, the USA and Norway as most frequent participants. Switzerland and Norway were also involved in coordination centres. Third States were involved in 14 JITs supported by Eurojust (see section 1.4).

### Top ten third States in Eurojust casework



### Cooperation with Ukraine and Moldova in art theft case

Italian prosecution authorities commenced an investigation into a robbery that took place at a museum in Verona, Italy, in November 2015. Seventeen valuable paintings had been stolen, including works by Rubens, Tintoretto and Pisanello. The alleged perpetrators were members of an OCG composed of Italian, Ukrainian and Moldovan nationals. A case was opened at Eurojust to facilitate locating the stolen masterpieces, arresting the perpetrators and ultimately seizing and returning the artworks safely to Italy.

At the beginning of 2016, Italy issued two MLA requests to Moldova. In March, twelve persons were arrested, seven in Italy and five in Moldova. Nonetheless, two suspects of Moldovan origin remained at large, assumed to be located in Odessa, Ukraine, and in possession of all seventeen stolen paintings. A coordination meeting was organised at Eurojust in April to check whether related proceedings were ongoing in other countries, as well as to prevent any conflicts of jurisdiction or *ne bis in idem* issues.

Eurojust's support was essential in reaching a common understanding among the national authorities, resulting in an agreement to exchange information on recent operational activities and ensuring the execution of an Italian MLA request through a contact point in Ukraine. This contact point played an important role in building trust and a common understanding among the involved parties. Additionally, Eurojust facilitated the opening of a parallel investigation in Ukraine, as well as establishing an informal working group composed of investigators from the involved countries, who were to consult one another with a view to coordinating their actions under Article 15(5) of the 2000 UN Convention against Transnational Organized Crime. The outcome of the coordination meeting ensured a speedy resolution to the case.

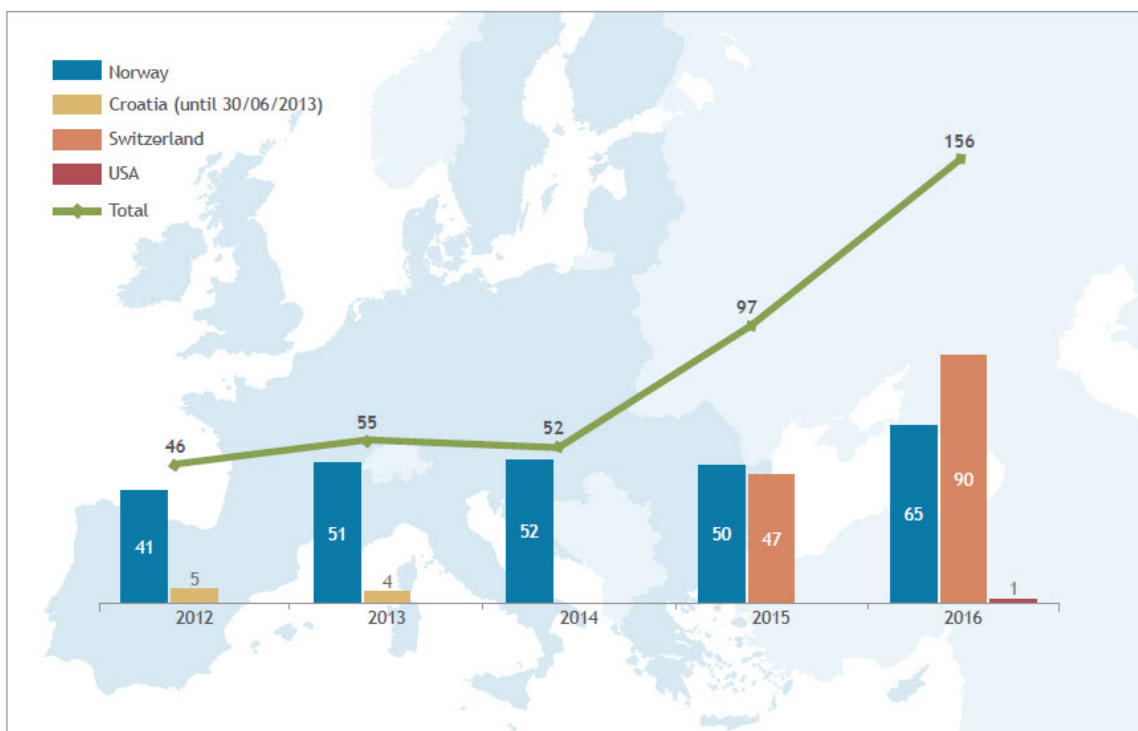
A few days after the coordination meeting, the judicial cooperation efforts led to the successful recovery of the stolen masterpieces in Odessa. The two Moldovan suspects were arrested in May 2016.



### ***Liaison Prosecutors at Eurojust***

The legal basis for the secondment of a Liaison Prosecutor is a cooperation agreement. Eurojust has three seconded Liaison Prosecutors, from Norway, the USA and Switzerland. The Liaison Prosecutor for Switzerland registered 90 cases, mainly dealing with swindling and fraud, money laundering and crimes against life, limb or personal freedom, and organised five and participated in 21 coordination meetings and two coordination centres. The Liaison Prosecutor for Norway registered 65 cases, mainly dealing with drug trafficking, THB, crimes against life, limb or personal freedom and fraud, and participated in 10 coordination meetings and one coordination centre. The Liaison Prosecutor for the USA registered one case on maritime piracy and participated in 12 coordination meetings. Their presence at Eurojust and their involvement in cases has been considered beneficial, as they can accelerate and facilitate judicial cooperation between competent authorities of Member States and third States.

*Cases by Liaison Prosecutors 2012 - 2016*



### ***Eurojust contact points in third States***

Eurojust continued to extend its worldwide network of judicial contact points in third States by adding contact points from Colombia and Libya. At present, 41 third States have Eurojust contact points. These contact points, through Eurojust, facilitate cooperation between competent authorities of the Member States and third States.

### ***Cooperation with ICC***

Eurojust and the Office of the Prosecutor of the ICC signed a Letter of Understanding on Cooperation in 2007. In 2016, Eurojust and the ICC explored the links between core crimes (as defined in the Rome Statute of the ICC), terrorism and other crimes. In June, Eurojust invited ICC representatives to meet the national correspondents for Eurojust for terrorism matters and counter-terrorism experts from

Norway, Switzerland and the USA to present the work of the ICC in Libya concerning the links found between core crimes and terrorism. The ICC expressed its willingness to assist in facilitating MLA and the exchange of information when such links are detected. Eurojust created the possibility for national judicial authorities to establish direct contacts with ICC investigators to effectively prosecute core crimes and terrorist-related offences. In July, the Director of Investigations presented the ICC activities to the College and views were exchanged on enhancing cooperation.

### **Spotlight on the Liaison Prosecutor for Switzerland**

‘I was appointed the first Swiss Liaison Prosecutor at Eurojust in March 2015. Certainly, from a Swiss perspective, to have a Liaison Prosecutor stationed here at Eurojust on a permanent basis has been a quantum leap. Switzerland already had a long-standing working relationship with Eurojust before the cooperation agreement between Eurojust and Switzerland entered into force in 2011. As a federal prosecutor with the Office of the Attorney General of Switzerland, I had been the operational contact point to Eurojust since 2002. As Liaison Prosecutor, I am now seconded to Eurojust on a permanent basis, provided with a fully equipped office.

While I have been familiar with Eurojust over the years, things have changed fundamentally since I started working as a Liaison Prosecutor. The main difference is that, as Liaison Prosecutor, I can open my own cases at Eurojust and directly approach the National Desks whose support and cooperation is requested by the Swiss prosecutor in his or her investigation. Liaison Prosecutors can attend the operational *tour de table* of the College plenary meeting, as well as organise level II meetings and coordination meetings, the latter with the fortunate support provided by the Eurojust Administration. I regularly participate in coordination meetings organised by National Desks at Eurojust, either to accompany the Swiss prosecutors and investigators who participate or to represent them when they cannot travel to The Hague.

Since I have been at Eurojust, one of my tasks has been to organise and facilitate the active participation and involvement of Swiss national experts in key areas, such as the fight against terrorism and cybercrime, for which Eurojust provides very valuable platforms with its tactical meetings and expert networks.

While Eurojust was not widely known in Switzerland before I started my work here, by now prosecutors are familiar with Eurojust and have started to avail themselves of its potential. As a prosecutor said during one of the roadshows that I do regularly in Switzerland, “new horizons have opened up”. This trend is clearly reflected in the statistics. I opened 47 cases in 2015 and 90 cases in 2016, and the numbers keep going up. Swiss prosecutors approach me with cases regarding crimes all across the Swiss Penal Code, and my “clients” include the 26 cantonal prosecutors’ offices across the three language regions of my country as well as the Office of the Attorney General. Some cases are easy to solve, while others are highly complex, involve other countries and go on for years. As they become more familiar with working with Eurojust, Swiss prosecutors gradually venture into areas quite unknown to them, such as JITs. We currently have two cases with active JITs with Swiss participation, and three others are in the pipeline. For Switzerland, this change is very important, and would not happen without the support offered by Eurojust.

As we all know, cooperation is a two-way street, and in that sense I am convinced – and the reactions of my colleagues at the National Desks in our daily work confirm this feeling – that my presence here also provides added value for them. Switzerland as a financial centre is a much sought-after partner,

particularly in economic crime, money laundering and corruption cases. Our legal system is quite complicated, and we have the additional challenge of three different languages. Being able to discuss and resolve pending issues with my colleagues on a regular basis has proven very useful, and in this way I am able to help our prosecutors at home, providing them with support and advice in their daily work.'

Maria Schnebli quoted in *Aktuelle Juristische Praxis AJP/PIA* 8/2016, p. 105.

### **Swiss case of armed robbery of jewellery**

Since 2013, a hierarchically structured Lithuanian OCG committed more than 10 armed robberies of jewellery in Switzerland. The perpetrators threatened victims with weapons and used physical violence, resulting in permanent brain damage to at least one of the victims. An analysis of DNA secured during the Swiss investigations linked the offenders to robberies committed in numerous other European countries, including Belgium, the Czech Republic, Denmark, Spain, France, Germany, Italy, the Netherlands, Austria, Finland and Norway. The stolen valuables were sold on eBay using computers with Lithuanian IP addresses.

The investigations in Switzerland led to several arrests, facilitated by the Lithuanian authorities on the basis of MLA. Nevertheless, the activities of the OCG continued, as the low-level offenders or 'soldiers' were quickly replaced by others and the top level of the OCG had not been tackled. At this stage of the case, Eurojust was approached by the Swiss authorities to support further judicial cooperation. A coordination meeting was held in December 2015. In addition to facilitating the execution of pending and planned MLA requests towards Lithuania, the meeting helped to find a common strategy to dismantle the entire OCG by focussing on the leaders.

While cooperation on the basis of MLA with Lithuania worked well, the participating countries requested the Lithuanian authorities to initiate an investigation, as the perpetrators were of Lithuanian nationality and as information gathered in Lithuania would benefit the investigations across Europe. However, a lack of sufficient information, to be provided by the countries affected by the robberies, and lack of available evidence in Lithuania, prevented the Lithuanian authorities from opening an investigation at that time.

One of the challenges in Switzerland was the existence of multiple investigations into the activities of the OCG in the various Swiss cantons. Subsequent to the first coordination meeting, which opened the dialogue among all affected countries, Eurojust supported the Swiss and Lithuanian authorities in provisionally narrowing down the cooperation, to first address the specific challenges affecting Switzerland and Lithuania.

A bilateral coordination meeting was held in Switzerland in June 2016, which brought together all Swiss cantonal prosecutors, the Swiss Federal Prosecution Office and the Lithuanian authorities. During this meeting, specific cooperation needs were identified, and an understanding was reached that prosecutions preferably should take place in both Lithuania and Switzerland, as the suspects arrested in Switzerland were mostly low-level perpetrators.

The Swiss cantonal prosecution offices agreed on the prosecution of the robberies, while the organisational aspect was to be prosecuted by the Swiss Federal Prosecutor. The coordination meeting

enhanced mutual trust between the Lithuanian and Swiss authorities and facilitated the establishment of direct contacts between the counterparts.

In view of the positive cooperation results in 2016, the coordination efforts are planned to continue at the multilateral level in 2017.

### **Eurojust and training**

Eurojust's thematic meetings are attended by practitioners and allow for the sharing of experience and best practice. These meetings can be considered practical training. More specifically, Eurojust supports training in judicial cooperation in criminal matters on the basis of an MoU signed with the EJTN.

In the framework of the EJTN Exchange Programme, 16 prosecutors/judges from 9 Member States (BE, BG, ES, IT, HU, AT, PL, PT, SI) participated in long-term trainee periods (three or four months) at the Eurojust National Desks, supporting their operational work. Eurojust also organised a one-week study visit in April, which was attended by 27 prosecutors/judges from 17 Member States.

In addition, members of the Eurojust National Desks actively participated in four EJTN seminars within the framework of the Criminal Justice Project I, *International Judicial Cooperation in Criminal Matters in Practice: EAW and MLA simulations*. The Eurojust representatives at these seminars supervise the work of the practitioners and provide insight into the role of Eurojust.

In accordance with the MoU with CEPOL and in the context of the 2015 OAPs (EMPACT), Eurojust supported training courses in different areas, such as: financial investigations and excise fraud, cocaine and heroin smuggling, FTF, counterfeiting of goods and IPR, THB and IIS.

Jointly with CEPOL, the EJTN and the JITs Network Secretariat, Eurojust continued to participate in the course *Joint Investigation Teams*.

Further, in the frame of the EU-funded IPA 2014 project, *International Cooperation in Criminal Justice: the Prosecutors' Network of the Western Balkans*, Eurojust provided training and hosted a one-week study visit for practitioners from the Western Balkans in July.

### **Roadshows and marketing seminars**

Eurojust organised, in cooperation with the respective national authorities, *marketing seminars* in Lithuania (May), Bulgaria (June) and Ireland (July) and one *roadshow* in Spain to promote the tasks, work and added value of Eurojust in operational matters and the recognition of Eurojust as the centre of judicial and legal expertise in the European Union. These seminars are attended by prosecutors, judges and/or law enforcement authorities.

## Chapter 4 Challenges and best practice

Through its operational and strategic work, Eurojust contributes to the identification of challenges and best practice in different areas of judicial cooperation in criminal matters. In 2016, Eurojust specifically addressed legal and practical difficulties in the field of interception of telecommunications, challenges in tax fraud cases and the EAW.

### 4.1 Interception of telecommunications

In November, a College thematic discussion was held to exchange experience of judicial and practical challenges in the field of interception of telecommunications. The three main topics addressed were: traditional interception of telecommunications, bugging of cars, and using Trojan horse-like viruses on mobile devices.

**Traditional interception of telecommunications** The different legal standards in national legislation are still a significant challenge in the effective use of interception of telecommunications, particularly in light of the admissibility of evidence. While Article 4(1) of the 2000 MLA Convention allows the requesting country to expressly indicate formalities and procedures that should be complied with, several examples were cited in which a compromise solution had been found to accommodate the legal frameworks and practical possibilities of both countries. In light of the principle of mutual recognition, practitioners recommend that requesting authorities should only require formalities or procedures when they are considered fundamental under national law. When Member States have different procedural rules to protect the same legal principle, e.g. proportionality, the Member State requesting the interception should recognise the procedural framework of the Member State carrying out the interception.

Additional problems arise when the subject of an interception unexpectedly crosses the border into another Member State. The legal regime of ex-post authorisations varies considerably from one country to another, and may result in material obtained via interception being inadmissible as evidence if ex-post authorisation is not granted.

Eurojust can assist the national authorities with urgent requests for interception, with translations, with facilitating contacts with the relevant national authorities, and with requests for interception to third States.

**Bugging of cars** In so-called ‘secret room surveillance’, for example in the context of bugging of a car to intercept conversations taking place inside, significant judicial challenges arise when the car crosses the border into the territory of another Member State. Unlike traditional interception of telecommunications, which is explicitly regulated by Article 20 of the 2000 MLA Convention, no specific legal instrument exists for bugging a car in a cross-border context. The extent to which Article 20 could be applied by analogy, and the necessity of obtaining consent from the countries through which the car travelled, were discussed.

**Trojan horse-like viruses** The use of Trojan horse-like viruses to intercept activity on mobile devices raises proportionality concerns in view of the highly intrusive nature of this type of interception.

## 4.2 Challenges in tax fraud cases

*Operation Vertigo* (see Eurojust Annual Report 2015, pp. 54-55) demonstrated Eurojust's added value in coordinating a judicial response, the use of coordination centres and the importance of the early involvement of Eurojust.

In October, a tactical meeting on judicial cooperation in tax crime matters addressed the legal obstacles, best practice and solutions in investigation and prosecution of cross-border tax crime, the role of JITs in tax crime cases, and freezing and confiscation of the proceeds of tax crime.

**JITs** The benefits of JITs to respond to the challenges identified in cross-border tax crime cases were underlined, as JITs allow the expeditious collection of financial evidence, as well as the coordination of MLA cooperation and common strategy towards States outside the JIT. Due to the close cooperation and coordination established between involved national authorities, the JIT framework can also provide a platform to anticipate jurisdictional issues and admissibility requirements. The possibilities to include asset freezing/recovery in the objectives of the JIT and the appointment of asset recovery experts as JIT members were highlighted.

**Freezing and confiscation** The main legal obstacles encountered in the freezing and confiscation of the proceeds of tax crime are that: (i) freezing and seizing orders may be refused and not executed when the freezing certificate issued by the requesting Member State is incomplete or inaccurate, and (ii) the amounts reflected in the certificate may not correspond to the freezing order. Additional problems arise from the need to precisely indicate the location of the property or evidence, as required by Framework Decision 2003/577/JHA on freezing orders. Furthermore, the application of the dual criminality test ulties in enforcing (the recognition of) foreign freezing orders may cause diffic in tax crime cases.

In this regard, some Member States interpret the principle of dual criminality *in concreto*, meaning that the deed described in the letter of request/freezing order must fulfil all criteria of punishability under the law of the requested State. Conversely, interpreting the principle of dual criminality *in abstracto* is sufficient for some Member States to enforce coercive measures that can subsequently lead to a penalty. The distinguishing criterion to assess whether the requirement of dual criminality is fulfilled is to ascertain whether the requested State is or is not required to apply its jurisdiction to conduct criminal proceedings in the course of providing international judicial cooperation.

## 4.3 European Arrest Warrant

Eurojust facilitates the application of the EAW. In 2016, 315 cases concerning the improvement of the execution of EAWs were registered at Eurojust, amounting to 14 per cent of all cases. Greece made the greatest number of requests (65), followed by Poland (37) and the UK (23). The most often requested Member States were Italy (37), Germany (34) and Romania (34).

Eurojust was confronted with an increasing number of cases in which judicial authorities experienced difficulties with the execution of EAWs due to allegedly inadequate prison conditions in the issuing Member State. Both before and after the CJEU's landmark judgement, *Aranyosi and Căldăraru* (Joined Cases C-404/15 and C-659/15 PPU), Eurojust has been assisting national authorities in different ways. Eurojust is planning a thematic discussion in the College in early 2017.

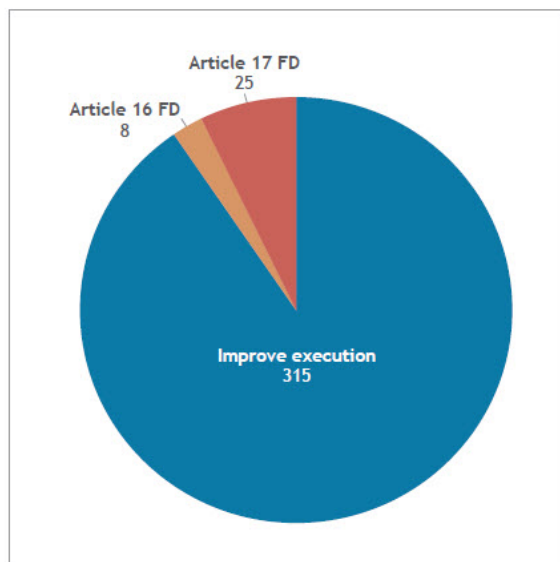
With regard to conflicting EAWs, Article 16 of the Framework Decision on the EAW (FD EAW) provides that Eurojust may be requested by the executing judicial authorities to provide advice on the

place of surrender of a person who is the subject of EAWs issued by two or more Member States. Eight such cases were opened at Eurojust following requests made by judicial authorities from Belgium, the Netherlands, Austria, Portugal and the UK.

With regard to breaches of time limits in the execution of EAWs, Article 17(7) of the FD EAW provides that, in exceptional circumstances, if a Member State cannot observe the time limits stated in Article 17, it shall inform Eurojust and give the reasons for the delay. Twenty-five breaches of time limits were registered, three of which required further action. As in previous years, notifications of time breaches were concentrated in a few Member States (Bulgaria, Czech Republic, Ireland, Romania, Slovakia, Sweden and the UK). The fact that a majority of Member States have not notified Eurojust of any breach can be explained in two ways: either time breaches only occurred in the notifying Member States or some Member States did not comply with their notification duty.

Eurojust produced a report on *Eurojust's casework in the field of the EAW* covering the period 2014-2016. This report is a follow-up to the previous report (published as Council doc. 10269/14) and will be published in 2017. Like its predecessor, it addresses the role of Eurojust in this field, both at operational and strategic levels, and it provides an overview of the practical and legal issues identified in the application of the EAW.

*EAW cases*



## Eurojust opinions on concurrent EAWs

A first case concerned a Belgian national involved in drug-related crimes in the Netherlands and Germany. The Belgian prosecuting authorities received two EAWs concerning this person within a period of three months. In the first EAW, the German authorities requested the surrender of this person for the purpose of prosecution for his alleged role in the running of a cannabis cultivation facility in Germany. The second EAW was issued by the Dutch authorities for the purpose of execution of a custodial sentence, which had been imposed by a Dutch court in 2013 for participation in a criminal organisation responsible for cultivating cannabis in the Netherlands.

A second case concerned a person of Portuguese and Cape Verdean nationality who was serving a custodial sentence in France at the time that one Dutch and two Luxembourgish EAWs were issued for this person for different criminal offences. While in the Netherlands, the requested person was suspected of armed robbery and the possession of a firearm, the Luxembourgish authorities sought to prosecute the requested person for a large number of offences, including participation in a criminal organisation, attempted murder and extortion involving threats and violence.

In both cases, the support of Eurojust was requested to facilitate a solution to the competing EAWs. The National Desks that had received the EAWs sought the cooperation of the National Desks that had issued the warrants. **Level II meetings** were organised to consider which request was to be given priority, and resulted in an agreement among the National Desks involved to request a Eurojust opinion on concurrent EAWs, which formally assesses the competing EAWs and provides advice on the prioritisation of the requests. These opinions are based on the applicable legal framework and the *Eurojust Guidelines for Deciding on Competing EAWs* (see Eurojust Annual Report 2004, pp. 82–86). As a result of Eurojust's coordination efforts, an agreement among the national authorities was reached to execute the EAWs as put forward in the Eurojust opinions.

In the Belgian case, a Belgian court confirmed that both EAWs towards Belgium could be executed, but did not give priority to either of the warrants. The Belgian prosecuting authorities decided to execute the requests in accordance with the agreement reached at Eurojust. As the purpose of the German EAW was to prosecute the requested person, priority was given to this warrant over the Dutch request.

In the French case, all EAWs were issued for the purpose of prosecution. According to the Eurojust opinion, the requested person was to be surrendered first to the Netherlands, due to, among other things, the more advanced stage of the Dutch criminal investigation. However, to avoid jeopardising the Luxembourgish investigations, the requested person was to be temporarily surrendered to Luxembourg for a short period of time, allowing for a formal decision on the indictment in Luxembourg. The Eurojust opinion further invited the Dutch and Luxembourgish authorities to consult each other directly regarding a subsequent surrender of the requested person from the Netherlands to Luxembourg after the Dutch courts had reached their final verdict.



### Joint recommendation on conflicts of jurisdiction

In a swindling case, cars rented in Italy and Spain were exported to Belgium, Germany, France and Switzerland, equipped with falsified Bulgarian and Italian registration documents. An Italian investigation was launched in 2013, after complaints from several Italian car renting companies that reported a loss of approximately EUR 2 million. Similar complaints were also made in Belgium and Spain, and investigations were opened. A French investigation into the same OCG was initiated following a routine search at the French-Spanish border, during which non-licensed vehicles were found inside a truck.

Both France and Italy opened a case. Coordination meetings were held to identify any parallel investigations, to exchange information and to agree on a case strategy to avoid possible conflicts of jurisdiction. While the Belgian investigation was closed in 2014, parallel investigations continued in Spain, France and Italy. Eurojust was asked to examine whether these parallel investigations could indeed lead to conflicts of jurisdiction and a potential *ne bis in idem* situation. Certain stolen vehicles and several suspects were common to the three investigations and the offences had been committed during the same period of time.

Analysis of the facts and the *modus operandi* showed that the majority of the criminal offences occurred in Italy. The main suspects were supposedly located in Italy and most of them were of Italian nationality. The Italian authorities also held significant evidence in the case. A joint recommendation was drawn up, which the National Members of Spain and Italy issued to their authorities, to accept that Italy was in a better position to handle the proceedings in the present case, to take appropriate steps for a swift transfer of the respective proceedings, and to accept the proceedings transferred by Spain. The French authorities supported a transfer of the proceedings to Italy.

The Spanish and Italian national authorities accepted the joint recommendation and the concerned National Desks at Eurojust facilitated the exchange of information on the procedure for transfer of proceedings between both jurisdictions. The Italian authorities considered the recommendation as useful guidance on the application and interpretation of the legal provisions on conflicts of jurisdiction and transfer of proceedings, in view of recently implemented legislation.

# Focus of the Year

## GUIDELINES FOR DECIDING 'WHICH JURISDICTION SHOULD PROSECUTE?' *Revised 2016*

### **PART I: BACKGROUND**

The increase in cross-border crime has led over the years to more cases in which multiple Member States have, under their domestic legislation, jurisdiction to prosecute and to take such cases to trial.

In accordance with its mandate, ever since its establishment, Eurojust has been addressing the question of which jurisdiction is best placed to prosecute in cross-border cases in which a prosecution might be or has been launched in two or more jurisdictions. To prevent and support the settling of conflicts of jurisdiction that could result in an infringement of the principle of *ne bis in idem*, and to ensure that the most effective practices with regard to criminal proceedings are in place in the European Union (EU), in 2003 Eurojust published the *Guidelines for deciding 'Which jurisdiction should prosecute?'*. The *Guidelines* suggest factors to be taken into consideration in multi-jurisdictional cases. Since their adoption, they have been of assistance to the competent national authorities for determining which jurisdiction is best placed to prosecute in cross-border cases. The *Guidelines* also assist Eurojust, which may advise the competent national authorities on this matter. In addition, since their publication, the *Guidelines* have been used by some Member States as a reference point when developing their own legislation or guidelines.

Taking into account the developments in the EU Area of Freedom, Security and Justice, the operational experience acquired by Eurojust over more than a decade and the needs of the practitioners as expressed on a number of occasions, Eurojust is hereby issuing a revised version of its *Guidelines*.

As the vast majority of Member States have not set criteria for deciding the best place to prosecute in relation to cross-border conflicts of jurisdiction and as no 'horizontal' EU legal instrument exists in this respect, the *Guidelines* are meant to be a flexible tool to guide and remind the competent authorities of the factors to be considered. They provide a shared starting point on the basis of which a decision can be reached. The *Guidelines* do not constitute binding rules and are without prejudice to applicable national, EU and international law.

'Judicial authorities' in these *Guidelines* are intended to refer to judges, prosecutors or any other authorities competent in accordance with national law.

### ***EU legal framework***

The *Guidelines* take into account the relevant EU legal framework, particularly:

- Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings is currently the only EU instrument devoted to this matter. It foresees a mechanism for direct consultations between competent authorities to achieve an effective solution and avoid any adverse consequences arising from parallel proceedings. Reference to some relevant factors to be considered by the competent authorities, including those in the Eurojust *Guidelines* of 2003, is made in the preamble (recital 9).
- Other legal instruments in the area of criminal matters, particularly texts related to specific crime types, such as Framework Decision 2002/475/JHA of 13 June 2002 on combating

terrorism (Article 9) and Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (Article 7), include provisions referring to the factors to be taken into account with the aim of centralising proceedings in a single Member State when more than one Member State can validly prosecute on the basis of the same facts.

- Provisions related to Eurojust's assistance in facilitating cooperation and coordination between national authorities include:
  - Article 85(1)(c) of the Treaty on the Functioning of the EU;
  - Articles 6, 7 (Eurojust's recommendations and non-binding opinions) and 13(7) (Member States' obligation to inform Eurojust in cases where conflicts of jurisdiction have arisen or are likely to arise) of Council Decision 2002/187/JHA setting up Eurojust, as amended by Council Decision 2009/426/JHA;
  - Article 12 and recitals 4, 9, 10 and 14 of Framework Decision 2009/948/JHA; and
  - Article 7 of Framework Decision 2008/841/JHA.

## **PART II: PRACTICAL GUIDELINES**

### ***Key principles***

- ✓ '*Ne bis in idem*' is a basic principle of criminal law regulated at national, EU and international levels, according to which a defendant should not be prosecuted more than once for the same criminal conduct, regardless of whether the first prosecution led to conviction or acquittal. Within the EU Area of Freedom, Security and Justice, the main legal sources for this principle are Articles 54 to 58 of the Convention Implementing the Schengen Agreement (CISA) and Article 50 of the Charter of Fundamental Rights of the EU, to be interpreted in light of the relevant case law of the Court of Justice of the EU. (For an overview of the case law of the Court of Justice regarding the *ne bis in idem* principle, see the Eurojust document, *The principle of ne bis in idem in criminal matters in the case-law of the Court of Justice of the European Union*.)

These *Guidelines* fully adhere to and endorse the principle of *ne bis in idem*.

- ✓ In line with Framework Decision 2009/948/JHA (recital 12), these *Guidelines* fully support the idea that, within a common EU Area of Freedom, Security and Justice, the principle of mandatory prosecution, governing the law of criminal procedure in several Member States, should be considered fulfilled when any Member State ensures the criminal prosecution of a particular criminal offence.
- ✓ Each case is unique, and, consequently, any decision made on which jurisdiction is best placed to prosecute should be based on the facts and merits of each individual case. All the factors that are thought to be relevant should be considered in the best interest of justice.
- ✓ When reaching a decision, judicial authorities should balance carefully and fairly all the factors both for and against commencing a prosecution in each jurisdiction.
- ✓ Judicial authorities shall identify each jurisdiction in which a prosecution is not only possible but also in which success in bringing the case to prosecution is a realistic prospect.
- ✓ As part of their discussions on resolving these cases, judicial authorities should explore all the possibilities provided by current international conventions and EU instruments to, for example, obtain evidence cross-border, transfer proceedings or surrender persons.
- ✓ The decision must always be fair, independent and objective, and must be made by taking into consideration the European Convention on Human Rights and the Charter of Fundamental Rights of the EU, ensuring that procedural guarantees of any defendant or potential defendant are protected.

## **What to do?**

- ✓ As soon as parallel proceedings are detected, the competent authorities of the Member States involved should get in contact with each other. Within its mandate, the European Judicial Network (EJN) can assist the competent authorities, *e.g.* by facilitating communication and identifying and obtaining the details of the competent authorities to be contacted.
- ✓ As a next step, the competent authorities involved should start cooperating and coordinating their actions to avoid waste of resources, duplication of work or risk of breaching the *ne bis in idem* principle. In most cases, dialogue, mutual trust and coordination between competent authorities succeed in finding a solution.
- ✓ When parallel proceedings are coordinated, competent authorities should consider dealing with all the prosecutions in one jurisdiction, provided doing so is practicable, taking into account the effect that prosecuting some defendants in one jurisdiction might have on any prosecution in a second or third jurisdiction. Every effort should be made to prevent one prosecution from undermining another.
- ✓ The decision on where to prosecute should be reached as early as possible in the investigation or prosecution process and in full consultation with all the relevant authorities in each jurisdiction.
- ✓ Eurojust is in a privileged position to offer assistance to the concerned authorities in their efforts to cooperate and find solutions, at any time in all of the previous steps, and even to identify cases pending in Member States in which such conflicts could arise (*see below*).

## **Main factors**

A number of factors should be considered when making a decision on which jurisdiction should prosecute. All of them can affect the final decision. The priority and weight that should be given to each factor will be different in each case.

Some of the factors that should be considered are:

### ➤ *Territoriality*

A preliminary presumption should be made that, if possible, a prosecution should take place in the jurisdiction in which the majority – or the most important part – of the criminality occurred or in which the majority – or the most important part – of the loss was sustained. Hence, both the quantitative ('the majority') and the qualitative ('the most important part') dimensions should be duly considered.

### ➤ *Location of suspect(s)/accused person(s)*

A number of elements can be considered in connection with this factor, such as:

- the place in which the suspect/accused person was found;
- the nationality or usual place of residence of the suspect/accused person;
- the possible strong personal connections with one Member State or other significant interests of the suspect/accused person;
- the possibility of securing the surrender or extradition of the suspect/accused person to another jurisdiction; and
- the possibility of transferring the proceedings to the jurisdiction in which the suspect/accused person is located.

In situations in which several co-defendants can be identified, not only is their number relevant, but also their respective roles in the commission of the crime and their respective locations. Again, both the quantitative and the qualitative dimensions count.

The evaluation of these elements should also take into account all the applicable EU legal instruments, notably those relating to the principle of mutual recognition. Their application can

affect the assessment of this factor and consequently the final decision on where to prosecute. For instance, the application of the Framework Decision on mutual recognition of judgements imposing custodial sentences (2008/909/JHA), in combination with the Framework Decision on the European Arrest Warrant (2002/584/JHA), may render the location of the suspect/accused person a criterion of secondary importance, because at a later stage, the sentenced person can be transferred to another Member State to serve the custodial sentence.

➤ *Availability and admissibility of evidence*

Judicial authorities can only pursue cases using reliable, credible and admissible evidence. The location and availability of evidence in the proper form as well as its admissibility and acceptance by the court should be considered. The quantity and quality of the evidence in the concerned Member States should also be taken into account, although the legal framework introduced by the European Investigation Order (Directive 2014/41/EU) can be expected to facilitate the gathering of evidence across borders.

➤ *Obtaining evidence from witnesses, experts and victims*

Judicial authorities will have to consider the possibility of obtaining evidence from witnesses, experts and victims, including, if necessary, the availability for them to travel to another jurisdiction to give that evidence. The possibility of receiving their evidence in written form or by other means, such as remotely by telephone or video-conference, should also be taken into account.

➤ *Protection of witnesses*

Judicial authorities should always seek to ensure that witnesses or those who are assisting the prosecution process are not endangered. When making a decision on the jurisdiction for prosecution, factors for consideration may include, for example, the possibility of one jurisdiction being able to offer a witness protection programme, while another jurisdiction has no such possibility.

➤ *Interests of victims*

In accordance with Directive 2012/29/EU on victims' rights, judicial authorities must take into account the significant interests of victims, including their protection, and whether they would be prejudiced if any prosecution were to take place in one jurisdiction rather than another. Such consideration would include the possibility of victims claiming compensation.

➤ *Stage of proceedings*

The stage of development of the criminal proceedings in the concerned Member States should be considered. When an investigation is already at an advanced stage in one jurisdiction, transferring the case to another jurisdiction might not be appropriate.

➤ *Length of proceedings*

While time should not be the determining factor in deciding which jurisdiction should prosecute, when other factors are balanced, then judicial authorities should consider the length of time that proceedings will take to be concluded in a particular jurisdiction (*'justice delayed is justice denied'*).

➤ *Legal requirements*

The existing legal framework, including obligations and requirements that are imposed in each jurisdiction, should be considered as well as all the possible effects of a decision to prosecute in one jurisdiction rather than in another and the potential outcome in each jurisdiction. However, judicial authorities should not decide to prosecute in one jurisdiction rather than another simply to avoid complying with the legal obligations that apply in one jurisdiction but not in another.

➤ *Sentencing powers*

While it should be ensured that the potential penalties available reflect the seriousness of the

criminal conduct that is subject to prosecution, judicial authorities should not seek to prosecute in one jurisdiction simply because the potential penalties available are higher than in another jurisdiction. Likewise, the relative sentencing powers of courts in the different jurisdictions should not be a determining factor in deciding in which jurisdiction a case should be prosecuted.

➤ *Proceeds of crime*

The applicable EU and international legal instruments and, notably, the EU mutual recognition instruments on freezing and confiscation, should be taken into account when evaluating the powers available to restrain, recover, seize and confiscate the proceeds of crime. However, judicial authorities should not decide to prosecute in one jurisdiction rather than another only because such prosecution would result in a more effective recovery of the proceeds of crime.

➤ *Costs and resources*

While judicial authorities should be mindful of costs and resources, the costs of prosecuting a case, or its impact on the resources of a prosecution office, should not be a factor in deciding whether a case should be prosecuted in one jurisdiction rather than in another, unless all other factors are equally balanced.

➤ *Member States' priorities*

Judicial authorities should not refuse to accept a case for prosecution in their jurisdiction because it is not considered a priority in their Member State.

***Eurojust's support***

- ✓ The assistance of Eurojust may be requested, at any moment, by any of the judicial authorities involved.
- ✓ Within its mandate, and preferably from an early stage, Eurojust can help facilitate preliminary contacts and consultations between competent authorities, coordinate their actions, encourage and expedite the exchange of information to gain a complete picture of the cases, ensure a smooth application of judicial cooperation instruments, clarify links between different parts of criminal networks and facilitate the subsequent decisions on which jurisdiction should prosecute. In cases in which Eurojust was not yet involved and the competent authorities could not reach a consensus on any effective solution in the context of the direct consultations provided by Framework Decision 2009/948/JHA, the matter shall, where appropriate, be referred to Eurojust by any involved competent authority.
- ✓ Eurojust can detect parallel proceedings early and proactively provide its support to national authorities, thanks to the information on cases in which conflicts of jurisdiction have arisen or are likely to arise, received from Member States in compliance with the Eurojust Council Decision.
- ✓ At coordination meetings organised by Eurojust, the competent authorities of the Member States involved are able to meet and discuss the issues at stake, with the support of the National Members. In addition, joint investigation teams (JITs) may be a useful tool to prevent and resolve conflicts of jurisdiction as, in the framework of a JIT, the competent authorities may also agree on which jurisdiction should prosecute and for which offences.
- ✓ Moreover, acting through its National Members (individually or jointly) or as a College, Eurojust can issue recommendations and non-binding opinions asking the competent authorities to accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts.

# Chapter 5 Administration

## 5.1 Support for operational and strategic work

Eurojust's Administration supported the College in its operational work and when functioning as a Management Board. In 2016, the College held 26 operational meetings and 7 Management Board meetings. In addition, the College held two Planning Events to discuss organisational developments and strategic planning.

The *Eurojust Operations Manual*, approved in November by the College, provides guidelines for the Administration's assistance to National Desks when dealing with cases, a milestone in the consolidation of a common and inclusive approach to management of casework across the organisation.

**Operational topics** National authorities asked Eurojust to gather information or provide legal advice on the following topics:

- Judgements of the CJEU interpreting the legal terms 'judicial authority' and 'judicial decision' in the context of the FD EAW;
- the recognition of 'parental child abduction' from one Member State to another as an offence;
- Articles 18 and 19 of the FD EAW, relating to 'temporary transfer' and 'hearing of the person';
- foreign terrorist fighters;
- the interception of conversations through Trojan horse-like viruses activated remotely in smartphones; and
- procedural law applicable to urgent situations (e.g. states of emergency).

**Thematic discussions** The College exchanged expertise and best practice in areas of special operational interest for Eurojust: evaluative reporting in forensic science and interception of telecommunications.

## 5.2 Reorganisation of the Administration

A new organisational structure for the Administration, following a proposal of the Administrative Director *ad interim* and adoption by the College, will be implemented as of January 2017. The key principle underlying the reorganisation is the optimal use of resources and the creation of synergies to support the operational needs of Eurojust. A new Operations Unit, resulting from the merger of the Case Analysis Unit and parts of the Legal Service Unit, acts as a one-stop shop for National Desks and the College. The Operations Unit will apply a multi-disciplinary approach to delivering its support services to operational work. To strengthen Eurojust's corporate governance and communication abilities and enhance Eurojust's profile towards stakeholders, a Corporate Communications Office, an Institutional Affairs Office and a Planning, Programming and Reporting Office will be set up.

### 5.3 Staff and budget

**Staff** At the end of 2016, Eurojust had 347 post-holders, including 72 National Members, Deputies and Assistants, 196 Temporary Agents, 31 Contract Agents, 21 Seconded National Experts, 8 interims and 19 interns.

Eurojust met its obligations regarding the 5 per cent post reductions for the decentralised agencies. In parallel to this reduction of administrative resources, Eurojust was granted three new operational posts by the budgetary authorities as ‘deliberate top-ups’ to the targets stipulated in the Multi-annual Financial Framework to support increasing demands related to the work in counter-terrorism, cybercrime and IIS.

**Budget** Eurojust’s budget for 2016 was EUR 43 539 737, included the ring-fenced amount of EUR 6 980 000 for the new premises project. This budget was 7 per cent lower than originally requested by Eurojust. Due to this constraint, and to ensure delivery of our demand-driven operational work and ability to meet our legal obligations, Eurojust’s 2016 Work Programme was modified to further prioritise the agency’s activities. Some IT developments were postponed and several meetings were cancelled, such as the meeting with the national correspondents for Eurojust and the meeting with Eurojust contact points in third States, ensuring full budgetary deployment for casework and coordination meetings. Recruitments were delayed, resulting in a vacancy rate of 3.45 per cent. To some degree, the postponement of the delivery of the new building alleviated the budgetary pressure towards the end of the financial year, and a budget execution rate of 99.89 per cent was achieved.

**Consolidated Annual Activity Report** As provided for in Article 47 of the Eurojust Financial Regulation, the *Consolidated Annual Activity Report* (CAAR) is prepared by the Administrative Director to report on the agency’s achievements during the year. The CAAR details the achieved level of implementation of the Eurojust Annual Work Programme objectives, based on identified Key Performance Indicators, as well as on the human and financial resources allocated and the internal controls applied. The CAAR is submitted to the budgetary authorities annually by 1 July, and can be found on Eurojust’s website.

### 5.4 Organisational developments

As a follow-up to the evaluation of Eurojust and its activities in accordance to Article 41a of the Eurojust Council Decision and in line with the action plan for the implementation of the recommendations adopted by the College in 2015, a working group was set up to review and streamline internal working structures and set priorities. In 2016, the College took decisions including: (i) increased services and resources from the Administration to support operational work; (ii) concrete steps towards a common and harmonised insertion, processing and deletion of data in the CMS; and (iii) a limited number of policy work projects in the areas of crime priorities and judicial cooperation instruments.

The Administration continued to assist the College in monitoring and analysing the impact of the legislative developments regarding the draft Regulations on Eurojust and on the establishment of the EPPO. The Council reached a general approach on the draft Eurojust Regulation in February 2015, excluding the provisions linked to the EPPO. In 2016, Eurojust shared its views with the Commission, the Council and the European Parliament regarding its cooperation with the future EPPO on the basis



of its expertise and practical experience in judicial cooperation in criminal matters, as well as its concerns regarding the possible impact on its resources.

## 5.5 New premises

The construction of the new premises for Eurojust proceeded as planned in 2016, and the programme remained on schedule. By 1 April, the highest point of construction was reached, marking the start of the final construction phase for delivery of the building by the contractor to the Host State and Eurojust between December 2016 and the end of Q1 2017. Eurojust expects to move into its new accommodation towards the end of Q2 2017, pending delivery in accordance with the Eurojust programme of requirements.

### ***Public access to documents***

The number of requests for public access to Eurojust documents decreased in 2016, with a total of 15 requests compared to 18 in 2015. In addition, Eurojust received three consultation requests in accordance with Article 4(4) of Regulation 1049/2001, as a third-party author of the requested document. No confirmatory applications were received in 2016.

Eurojust continued to update the [Public Register](#) of documents accessible via the Eurojust website. The growing list of documents made directly available to the public is designed to facilitate citizens' access to documents held by Eurojust without the need to make a formal access to documents request, and to increase transparency and the availability of information about Eurojust's activities.

# Chapter 6 Eurojust and practitioner networks

## Introduction

The Secretariats of the European Judicial Network (EJN), the Network of National Experts on Joint Investigation Teams (JITs Network) and the Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network) are hosted by Eurojust, drawing on its resources. Its members are part of the Eurojust staff. The Secretariats offer services to the Networks and facilitate cooperation with the College and National Desks in their common fields of action. Eurojust also provides legal, administrative and financial support to the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (Consultative Forum).

### 6.1 EJN

The European Judicial Network, established in 1998, is a network of national contact points appointed by the Member States to facilitate judicial cooperation in criminal matters. The EJN contact points assist practitioners on a daily basis with legal and practical advice and with establishing direct contacts between competent national authorities. Its Secretariat was set up in 2003.

**Meetings** The EJN plenary meetings took place in Amsterdam and Bratislava. Topics discussed were THB/labour exploitation, financial investigations, e-evidence, cooperation and synergies with the European Network on Victims' Rights (ENVR) and the EJC. Three meetings were held at Eurojust: the regular meeting, the Tool Correspondents meeting and the National Correspondents meeting.

EJN regional meetings were held in Germany, the Netherlands, Austria, Portugal and Romania. EJN national meetings were held in Latvia, Poland, Romania and the UK. These meetings enabled the EJN contact points and local authorities to discuss international judicial cooperation in different areas, including relations between the EJN and Eurojust. Representatives from the Eurojust National Desks attended these meetings.

**Cooperation with Eurojust** The EJN and Eurojust continued to implement their action plans on the Sixth Round of Mutual Evaluations in the Member States. As part of the EJN plenary meeting under the Dutch Presidency, EJN contact points met with their colleagues at the Eurojust National Desks in bilateral workshops to discuss how to ensure the best possible support to practitioners by strengthening synergies between the EJN and Eurojust. In many cases, good cooperation was confirmed. The importance of close and regular contacts and consultations between the EJN contact points and Eurojust National Desks was emphasized. As a general outcome, the joint paper will be reviewed.

**EJN website** Several sections of the website have been updated. A new version of the Compendium was released. This tool supports the drafting of all types of requests for judicial cooperation, based either on mutual recognition instruments or MLA. New versions were created for the section in the Judicial Library on status of implementation of the legal instruments. In addition, the EJN Secretariat developed a new online reporting tool for the activities of the EJN contact points, ready for use as of January 2017.

The EJN continued to develop its relations with other judicial networks and third States. Their contact details are available for the EJN contact points in a new section of the EJN website called 'Cooperation with third countries and judicial networks'.

**Training** The EJN Secretariat organised the seventh language training course for the EJN contact points, in collaboration with the EJTN. During one week, the contact points were able to improve their language skills and also had the opportunity to inform other participants about the functioning of the EJN and its website.

### Joint Paper Eurojust-EJN

The Joint Paper, *Assistance in International Cooperation in Criminal Matters for Practitioners, EJN and Eurojust, 'What can we do for you?',* is available in all official EU languages and is published on the EJN and Eurojust websites. It informs practitioners of the services and assistance that can be provided by the EJN and Eurojust to ensure that the EJN and Eurojust deal with cases within their mandates, use time and resources effectively and avoid duplication of work.

## 6.2 JITs Network

The JITs Network is a network of national judicial and law enforcement contact points established in 2005 to stimulate the use of JITs and foster the exchange of information and best practice. Its Secretariat was set up in 2011. Since 2013, the Secretariat manages the grants programme established by Eurojust to provide financial support to JIT activities (*see* section 1.4).

**Annual meeting** The 12th annual meeting of JITs National Experts took place in June, with a specific focus on challenges and opportunities offered by JITs in IIS cases. Over two days, experts and practitioners from across Europe, as well as other relevant agencies and stakeholders, discussed concrete steps to enhance the use of JITs in IIS. The [Conclusions](#) of the meeting are available on Eurojust's website.

**Projects** The JITs Network revised two useful documents for practitioners, which are also available on Eurojust's website: the **JITs manual**, which was thoroughly enhanced to serve as a JITs practical guide, including a section on 'frequently asked questions', and the **JITs model agreement**, which was revised with the objective of simplifying the existing model and incorporating several amendments derived from the analysis of existing agreements. It has been endorsed by the Council of Ministers by way of a Resolution.

The JITs Network continued to collect information on JIT national legislation (new summaries published for DK, HU, IT, LV, PL, PT, FI and UK) and practice (20 new JIT evaluations initiated). This information is made available in the JITs restricted area, a web platform to which EU practitioners can request access.

**Training** In addition to the course *Joint Investigation Teams* (*see* chapter 3), and the conclusions of the annual meeting, the JITs Network and its Secretariat contributed to a JIT training specifically targeting challenges in IIS cases. This event was organised in cooperation with CEPOL, the EJTN and the Police Cooperation Convention for Southeast Europe Secretariat (PCC-SEE), and during three days gathered

25 participants from Member and third States affected by this type of organised criminal activity to enhance the use of JITs in this area.

### 6.3 Genocide Network

The [Genocide Network](#) was established in 2002 to ensure close cooperation between the national authorities in investigating and prosecuting genocide, crimes against humanity and war crimes by exchanging operational information, best practice and experience. It is a network of practitioners – investigators, prosecutors and MLA officers. Its Secretariat was set up in July 2011.

**Meetings** Two plenary meetings took place at Eurojust and focused on the practical challenges of the case against leaders of the Democratic Forces for the Liberation of Rwanda (FDLR) in Germany and on the crimes related to the looting and destruction of cultural heritage sites in Syria and Iraq. The conclusions of both annual meetings are available on [Eurojust's website](#). In addition, one *ad hoc* meeting was held to discuss and advance national investigations in relation to the ongoing armed conflict in Syria, taking into account the substantial influx of Syrian refugees into EU territory, among them victims, witnesses and perpetrators of atrocities. Reports of the meetings were published as Council docs. 10169/16 and 13409/16.

[First EU Day against Impunity](#) was organised on 23 May by the Dutch Presidency, the Genocide Network, Eurojust and the European Commission. The annual's event goal is to raise awareness of the most heinous crimes, to promote national investigations and prosecutions, to address the position and participation of victims in criminal proceedings and to reinvigorate the EU-wide commitment to fight impunity for these crimes. The outcome was published as Council doc. 10233/16.

**Trainings** In October, the Genocide Network implemented a training programme on investigating and prosecuting conflict-related sexual violence, in cooperation with experts from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the UN Team on the Rule of Law. The Genocide Network continued its cooperation with the EJTN in implementing training programme for judges and prosecutors and began cooperating with CEPOL to develop a training programme focused on investigative aspects of core international crimes.

**Projects** Several factual data collections and evaluations were conducted in 2016. The most comprehensive questionnaire assessed the current application of Council Decision 2003/335/JHA on the setting up of specialised units at national level to investigate and prosecute core international crimes. The rationale of having such units lies in having specialised knowledge to handle complex legal and practical challenges, retaining expertise, best practice and lessons learned within the same unit. The work also encompassed issues relating to the protection and participation of victims in the judicial process. The outcome was published as Council doc. 10234/16.

## 6.4 Consultative Forum

The Consultative Forum was established in 2010 to reinforce judicial cooperation and mutual trust among the Member States, and to provide input from the judiciary to the EU institutions for the development of the EU Area of Freedom, Security and Justice.

**Joint meeting** Following reflection on future format and content, 2016 was the first year the organising EU Presidencies called for a joint meeting. The Board of Prosecutors General of the Netherlands and the Office of the Prosecutor General of the Slovak Republic jointly convened the 11th meeting of the Consultative Forum in June, which focused on the latest developments in cybercrime, terrorism and IIS, as well as cooperation with key third States in the fight against serious and organised crime.

**EJCN** The Consultative Forum discussed the outcome of the strategic seminar, *Keys to Cyberspace*, concerning frequent challenges encountered by prosecutors in the investigation and prosecution of cybercrime, focusing on cooperation with service providers and encryption. They welcomed the initiative of the Dutch EU Presidency to establish the EJCN as a way to foster contacts among cybercrime judicial practitioners in the Member States and increase the efficiency of investigations and prosecutions of cybercrime cases.

**Judicial response to terrorism and IIS** Representatives from concerned Member States shared their experience regarding reinforcing the judicial response to terrorist threats and recent terrorist attacks in France and Belgium. Insight was provided regarding the challenges faced and lessons learned in investigating and prosecuting IIS cases, particularly in relation to asserting jurisdiction on the high seas, and the added value of considering such crime type as a serious organised crime. The need to strengthen and streamline international judicial cooperation through enhanced contacts among practitioners and the sharing of legislation and best practice, as well as fostering investigations by, for example, using special investigative techniques and JITs if appropriate, was underlined.

**Cooperation with key third States** Views were exchanged on the legal and practical challenges encountered and possible ways to enhance cooperation with judicial authorities from third States with regard to execution of MLA requests, information exchange and evidence gathering. Eurojust provided insight into its ongoing activities in the field of external relations, highlighting the added value of cooperation agreements, the liaison prosecutors posted at Eurojust and its network of judicial contact points in third States facilitating judicial cooperation.

The conclusions of the meeting are available on Eurojust's website.