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From: General Secretariat of the Council  
To: Delegations  
Subject: EUROJUST Annual Report 2015

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Delegations will find attached the EUROJUST Annual Report 2015.



# EUROJUST

## Annual Report 2015

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## Acronyms and abbreviations

CBRN-E	Chemical, biological, radiological, nuclear substances and explosives
CJEU	Court of Justice of the European Union
CMS	Case Management System
COSI	Council Standing Committee on Internal Security
EAW	European Arrest Warrant
EIO	European Investigation Order
EJN	European Judicial Network
EJTN	European Judicial Training Network
ENCS	Eurojust National Coordination System
EMPACT	European Multidisciplinary Platform against Criminal Threats
EPPO	European Public Prosecutor's Office
FTF	Foreign terrorist fighters
JIT	Joint investigation team
JSB	Joint Supervisory Body
LoR	Letter of Request
MLA	Mutual legal assistance
MOCG	Mobile organised crime group
MPJM	Maritime Piracy Judicial Monitor
MTIC	Missing Trader Intra-Community
NCBC	Non-conviction-based confiscation
NPS	New Psychoactive Substances
OAP	Operational Action Plan
OCC	On-Call Coordination
OCG	Organised crime group
OPC	Organised property crime
PIF	Protection of the financial interests of the European Union
SOCTA	Serious Organised Crime Threat Assessment
TCM	Terrorism Convictions Monitor
TE-SAT	Terrorism Situation and Trend Report
TFEU	Treaty on the Functioning of the European Union
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.

## Foreword

I am pleased to present to you the 14<sup>th</sup> Annual Report, providing insight into Eurojust's casework and strategic activities in the fight against serious cross-border crime as well as Eurojust's organisational development in light of Member States' expectations, a changing legislative framework and budgetary constraints.

The year 2015 was no exception. Eurojust's casework continues to grow each year. Member States requested Eurojust's assistance in 2 214 cases, representing an increase of 23 per cent compared to 2014. These statistics confirm that Eurojust's work is needed, recognised and valued. The growing involvement of third States in Eurojust's casework demonstrates once more the borderless nature of crime.

We also see a remarkable upward trend in the use of Eurojust's coordination meetings and coordination centres. The concept of joint investigation teams is also becoming more familiar to third States, and an increasing involvement of third States in such teams with Eurojust's support is noticeable. This streamlined and interactive cooperation fosters, in addition to operational results, the application of the principle of mutual recognition and the building of mutual trust between competent national authorities in the European Union.

On a strategic level, Eurojust observes the added value of network meetings of specialised prosecutors, such as the national correspondents for Eurojust for terrorism matters and the contact points of the JITs Experts Network. Cybercrime as an evolving crime phenomenon presents another area in which the need for a network of specialised cybercrime prosecutors was felt. The exchange of challenges and best practice, for example on evidence gathering and conflicts of jurisdiction, leads to tangible results: the building of bridges, knowledge consolidation and solid convictions.

Concurring with the priorities set out in the European Agendas on Security and on Migration and in view of the terrorist attacks and the unprecedented migration crisis, Eurojust can report for 2015 a significant increase in terrorism, cybercrime and illegal immigrant smuggling cases. Countering evolving criminal phenomena and criminal structures requires a multidisciplinary approach and strong partnerships between the Justice and Home Affairs Agencies and enhanced cooperation with third States. The appointment of Eurojust's cybercrime expert to work closely with EC3, the newly appointed Liaison Magistrate for Switzerland, and an expanding judicial contact point network in third States, are certainly steps in the right direction.

Organised crime groups finance their existence with substantial profits from their criminal activities, and the proceeds of crime are laundered and re-injected into the legal economy. Depriving criminals of the proceeds of crime is consequently an effective measure to impact criminal structures. Therefore, the focus of Eurojust in 2015 was on freezing, confiscation and asset recovery, outlining the challenges and a possible way forward through harmonisation of laws and practice.

Eurojust welcomed the findings from the independent external evaluation of Eurojust, which complement the recommendations of the Member States from the sixth round of mutual evaluations. A proactive approach was taken by the College to improve Eurojust's services, internal structures and working methods while appreciating as well the positive feedback received from those evaluation exercises.

Eurojust follows with great interest the legislative process regarding a new Eurojust Regulation and contributes to the debate on the basis of our experience. Of course, Eurojust also observed the developments concerning our partner, Europol, and a future new actor in the EU landscape of judicial and law enforcement cooperation, the European Public Prosecutor's Office. We trust that on the grounds of complementary of mandates given by the EU legislators, synergies will be achieved in practice and allow Eurojust to exploit its potential.

More, not less, is expected of Eurojust each year. However, in 2016, budget limitations will, for the first time, begin to infringe on Eurojust's work. Nonetheless, with deficits being redressed together with the EU budgetary authorities, Eurojust will be in a better position to optimise resource allocation to its operational work, prioritise within budget constraints, and secure the necessary efficiency gains to meet the increasing expectations of all stakeholders in the years to come.

Personally, I was honoured this year by my re-election as President of Eurojust by the College. Working together with my Vice-Presidents and my colleagues of the College, I am confident that Eurojust will continue to grow as a legal and judicial centre of expertise.

**Michèle CONINSX**

*President of Eurojust*

## Executive Summary

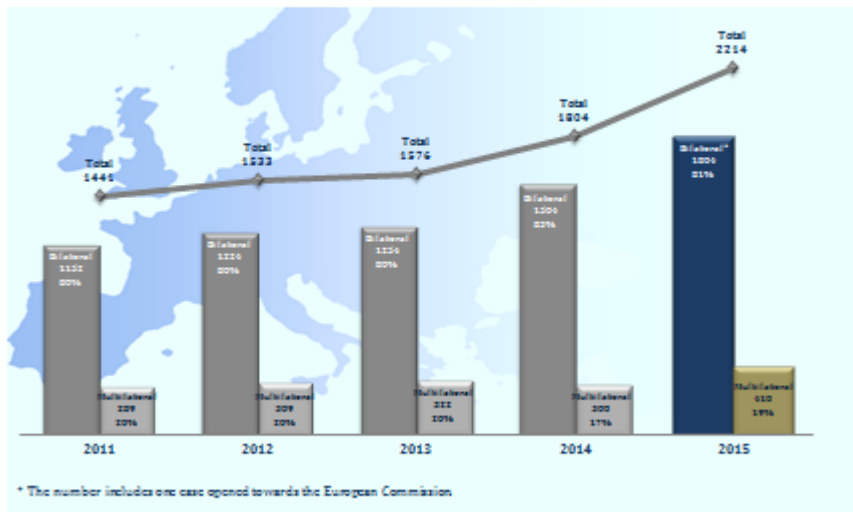
- The **number of cases** for which Eurojust's assistance was requested increased by 23 per cent, from 1 804 cases in 2014 to 2 214 in 2015. **Third States** were involved in 298 cases.
- **Casework** increased in: terrorism, cybercrime, illegal immigrant smuggling, THB, fraud, corruption and MOCGs.
- An increase in use of coordination tools: **coordination meetings** (274, a 39 per cent increase over 2014) and **coordination centres** (13). The participation of Europol (99), OLAF (5) as well as third States (67) in coordination meetings increased.
- Eurojust supported 120 **JITs**, 46 of which were new, and provided financial support to 68 JITs. The first JIT with OLAF was formed, and an increase in the involvement of third States was again noted.
- Eurojust assisted in the execution of **EAWs** on 292 occasions.
- Eurojust seconded a **judicial cybercrime expert** to EC3 and acknowledged the need to set up a **network of cybercrime prosecutors and judges**.
- Eurojust supported the **Hotspots**, formed a **thematic working group on illegal immigrant smuggling**, and signed a Letter of Understanding with EUNAVFOR MED.
- Eurojust held one **strategic seminar** on conflicts of jurisdiction and one workshop on data retention in combination with the meetings of the **Consultative Forum**.
- Eurojust's **meetings in 2015**:
  - annual strategic meeting and tactical meeting on terrorism
  - tactical meeting and *ad hoc* meeting on cybercrime
  - strategic meeting on THB
  - meeting on maritime piracy
  - meeting on judicial cooperation in major sports events
  - strategic seminar, *Application of the MLA and Extradition Agreements between the EU and the USA*
- Eurojust **published in 2015**:
  - *Terrorism Convictions Monitor*
  - *Third Foreign Terrorist Fighters* report
  - *Summary of the Second Foreign Terrorist Fighters* report
  - *CBRN-E Handbook*
  - *Prosecuting THB for the purpose of labour exploitation* report
  - *Impact of the ruling on the prosecution of NPS cases* report
  - *Procedural and legal issues in relation to MOCGs* report
  - *Maritime Piracy Judicial Monitor*, issue #2
  - *Best Practice Guide in relation to major sports events*
  - *Eurojust's casework in conflicts of jurisdiction 2009-2014* report
  - *Eurojust's experience in asset recovery* report
- Eurojust focused in 2015 on **conflicts of jurisdiction, data retention and controlled deliveries**.
- **Eurojust's budget** for 2015 was EUR 33 818 million. Budget implementation was 99.86 per cent.
- The **EY Final Report** of the *Evaluation of the Eurojust Council Decision and the activities carried out by Eurojust* was issued on 30 June and made publicly available.



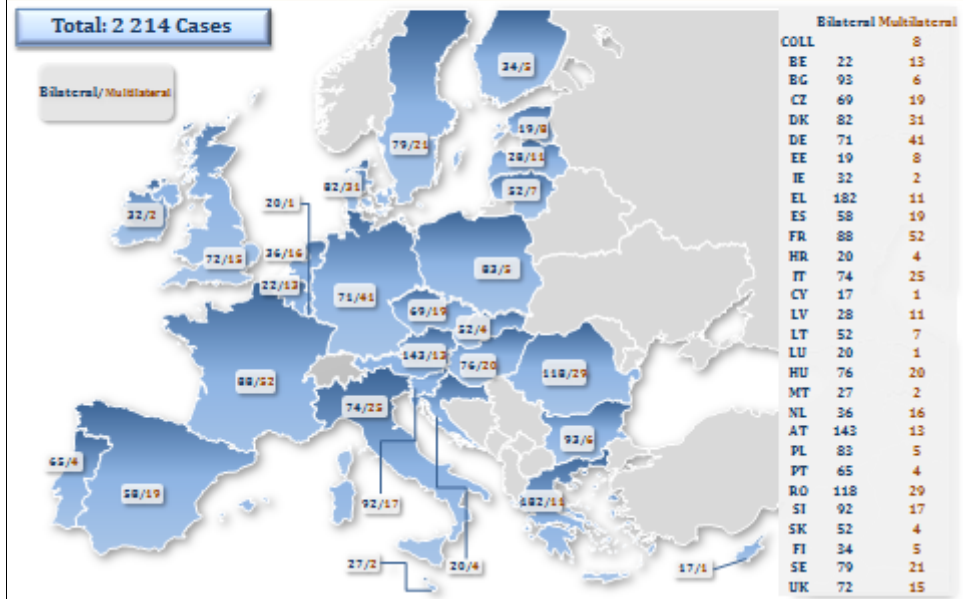
## Casework 2002 - 2015



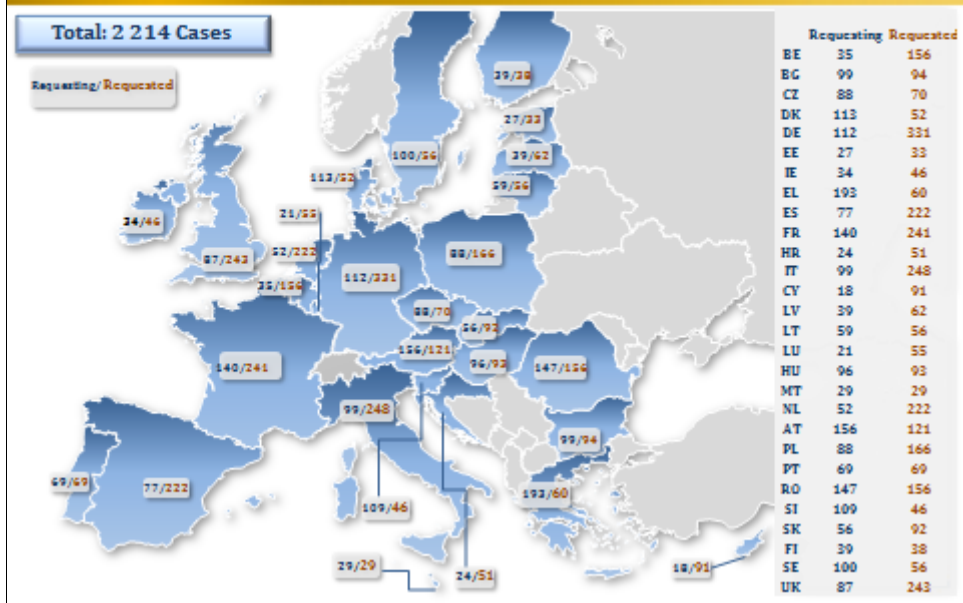
## Bilateral/multilateral cases 2011 - 2015



## Bilateral/multilateral cases per Member State



## Requesting/requested Member States



## Eurojust at a glance

**What?** Eurojust is the European Union's Judicial Cooperation Unit. As a body of the European Union established in 2002, Eurojust's goal is 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 in 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 European Commission, Eurojust may also assist in 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, judges or police officers of equivalent competence seconded by each Member State. National Members are based at Eurojust in The Hague.

Most National Members are assisted by a Deputy and/or Assistant(s). Eurojust is supported by an Administration and hosts the Secretariats of the European Judicial Network (the EJN), the Network of Experts on Joint Investigation Teams (the JITs Experts Network) and the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (the Genocide Network). In addition, Liaison Prosecutors from Norway, Switzerland and the USA are currently posted at Eurojust. The total number of people working at Eurojust in 2015, including College members, was 349.

**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.

**Coordination meetings** Coordination meetings are a unique and effective tool in judicial cooperation. They bring together judicial and law enforcement authorities from Member States and third States, and allow for informed and targeted operations in cross-border crime cases. During coordination meetings, legal and practical difficulties resulting from differences among the 30 existing legal systems in the European Union can be resolved.

**Coordination centres** Coordination centres play a highly relevant role in operations, fostering real-time support during joint action days, coordination and immediate follow-up of seizures, arrests, house/company searches, freezing orders and witness interviews.

**Joint investigation teams** Eurojust provides funding and expertise for the setting up and operational needs of JITs. A JIT is a team consisting of prosecutors, judges and law enforcement authorities. Established for a fixed period and a specific purpose by way of a written agreement between the involved States, JITs allow criminal investigations to be carried out much more effectively in one or more of the involved States.

**External relations** Eurojust's work is based on robust relationships with a number of partners. On the basis of working arrangements, particularly close cooperation exists with national authorities and EU institutions and partners: the European Commission; Europol; the European Anti-Fraud Office (OLAF); the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex); the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA); the European Police College (CEPOL); the European Judicial Training Network (the EJTN); the European Union Agency for Fundamental Rights (FRA); and the European Union Naval Force – Mediterranean (EUNAVFOR MED) and international bodies: INTERPOL, the Ibero-American Network for International Legal Cooperation (IberRed) and the United Nations Office on Drugs and Crime (UNODC). Furthermore, Eurojust has signed cooperation agreements with Liechtenstein, Switzerland, the former Yugoslav Republic of Macedonia, the USA, Norway, Iceland and Moldova.

# Chapter 1 Eurojust's tools

## 1.1 Eurojust coordination meetings

Having been held a remarkable 274 times – an increase of over 39 per cent compared to 2014 – coordination meetings firmly retain their position as Eurojust's most often used operational tool. Judicial and law enforcement authorities of the Member States, and also third States, met almost every working day during 2015 at Eurojust in The Hague to foster judicial cooperation in criminal matters.

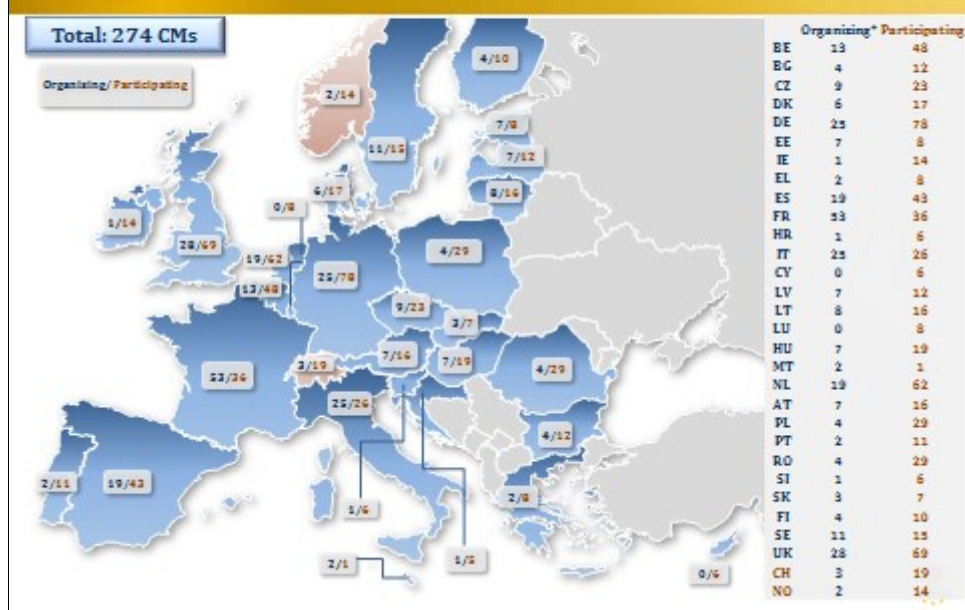
A case newly brought to Eurojust is first introduced to the College by the respective National Member, and a decision is taken whether to register the case as a Eurojust case (a so-called Level I meeting). As a second step, the concerned Eurojust National Desks meet to analyse the issues to be resolved to ensure judicial cooperation and coordination in this specific case and map out the most suitable way forward (a so-called Level II meeting). Subsequently, if required, one or more coordination meetings are organised with the participation of the representatives of the national judicial and law enforcement authorities directly involved in the case.

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

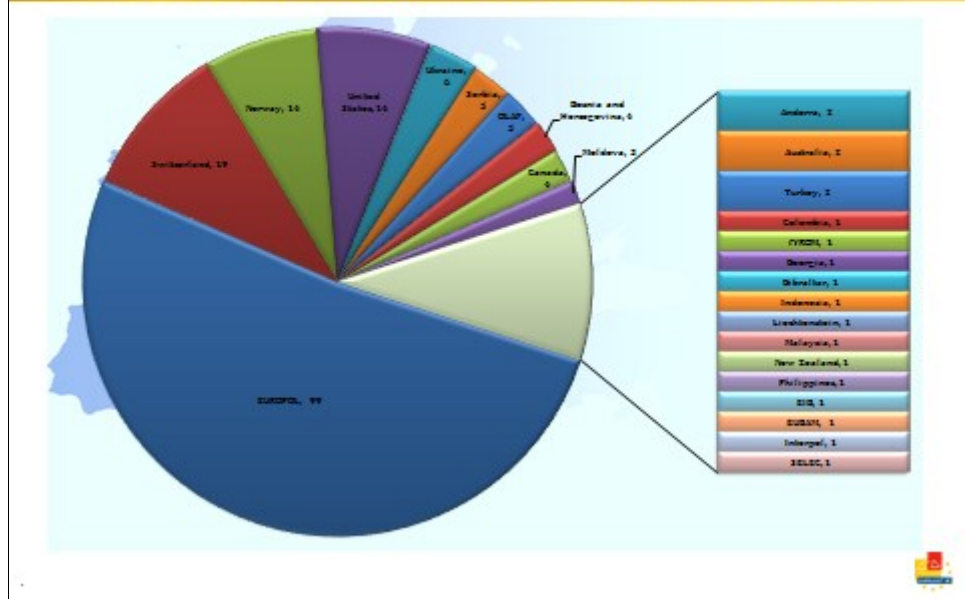
The cases dealt with during coordination meetings in 2015 covered all major areas of serious organised cross-border crime, with swindling and fraud, drug trafficking and money laundering the most frequent crime types.

Of the 274 meetings held in 2015, France (53), the UK (28), Germany and Italy (both 25) organised the greatest number of meetings. Among the Member States that participated most often were Germany (78), the UK (69) and the Netherlands (62). Switzerland (19), Norway (14) and the USA (14), all represented at Eurojust via their Liaison Magistrates, led the group of third States that participated in the coordination meetings held in 2015, a group that further includes Ukraine (6) and Serbia (5), as well as Bosnia and Herzegovina and Canada (both 4). Europol attended 99 and OLAF five coordination meetings.

## Coordination meetings



## Third States, cooperation partners and international organisations involved in CMs



## 1.2 Eurojust coordination centres

Eurojust held 13 coordination centres in 2015, representing a further increase compared to ten in 2014 and seven in 2013. This trend confirms that this operational coordination tool is both known and valued by the judicial and law enforcement authorities in the Member States in the fight against serious cross-border crime in Europe.

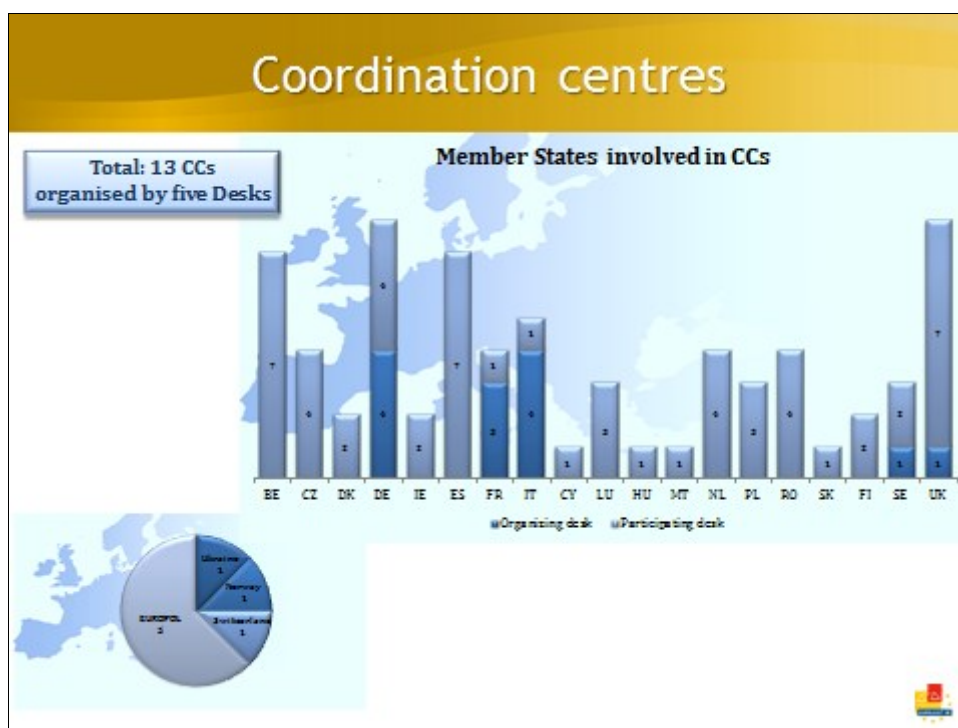
Eurojust's coordination centres facilitate the exchange of information among judicial authorities in real time and enable direct support towards the coordinated, simultaneous execution of, *inter alia*, arrest warrants, searches and seizures in different countries.

The thirteen coordination centres were organised by Germany (4), Italy (4), France (3), Sweden (1) and the UK (1). These joint action days benefited from the active participation of other Member States, States with liaison magistrates at Eurojust, such as Switzerland and Norway, third States (e.g. Ukraine on one occasion), and Europol (5).

They targeted a wide range of crime types, included swindling and fraud, cybercrime, money laundering, illegal immigrant smuggling and THB, as well as – for the first time – terrorism.

Coordination centres are particularly suited to tackling complex cases with large-scale multilateral action days. On one occasion last year, three coordination centres were set up in the same VAT fraud case. The case covered more than 200 cross-border measures. National authorities from 15 Member States and Europol participated (*see* Operation Vertigo: a closer look, below).

A coordination centre was set up in the framework of a serious tax and bookkeeping fraud case in Sweden. Among the lessons learned, the need for new guidelines on the procedures to follow in relation to issuing EAWs in Sweden for the Swedish Economic Crime Authority was identified, and the Swedish Desk at Eurojust drew up these guidelines.



### 1.3 Eurojust Case Management System

Eurojust's operational activities are supported through a tailor-made database – the CMS – that is designed to store and process case-related data, as well as to facilitate the monitoring of compliance with the rules for the processing of personal data.

To improve its functionality and operational performance, two upgraded versions of the CMS were developed and released in 2015. These upgrades simplify the process of internal configuration of new profiles using existing system functionality rather than relying on external development. This feature is important, as it provides for the possibility to manage access to the CMS for different user groups in a more flexible way, and, as such, supports implementing the connection of members of the ENCS from each Member State to the CMS, as envisaged by Article 12 of the Eurojust Council Decision.

In 2015, secure network connections with Spain and Luxembourg became operational, bringing to 13 the total number of Member States with secure network connectivity with Eurojust.

In addition, the newest version of the CMS provided an important update to allow recording the decisions of National Members on the basis of Article 19 of the rules of procedure on the processing and protection of personal data at Eurojust (Eurojust data protection rules).

In March 2015, the College of Eurojust discussed an evaluation of the first six months of effective application of a College Decision of June 2014 on the insertion of data in the CMS, the goal of which is to set common data entry standards and a uniform working method applicable to all Eurojust National Desks. Five National Desks agreed to take part in a further test run and report back to the College on lessons learned.

In 2015, the College paid particular attention to improving data insertion in the CMS and the implementation of Article 19 of the Eurojust data protection rules to ensure full compliance and implement the recommendations made by the JSB in their report following the inspection visit of January 2015. The JSB report and Eurojust's follow-up actions to the recommendations were discussed by the College at a plenary meeting in September 2015, with the participation of the JSB.

### 1.4 Eurojust and JITs

Eurojust has consolidated its central role in JITs, both in terms of support to the establishment and running of JITs and the gathering of expertise. In 2015, 120 JITs were supported by Eurojust National Members, 46 of which were newly formed. The main crime types investigated by the 46 newly formed JITs were money laundering, swindling and fraud, participation in a criminal organisation, THB, drug trafficking and cybercrime.

Pursuant to Article 13(5) of the Eurojust Council Decision, Member States shall ensure that National Members are informed of the setting up of JITs and of the results of the work of such teams. In this respect, Eurojust received 17 notifications in 2015.



Eurojust's casework confirms the increasing involvement of third States in JITs that was observed in 2014. In total, 11 JITs involving third States were supported by Eurojust, seven of which were established in 2015. An increasing number of third States are now considering JITs as an effective tool for cooperation, including, *inter alia*, Serbia, Bosnia and Herzegovina and Switzerland (see subsection 2.3.3).

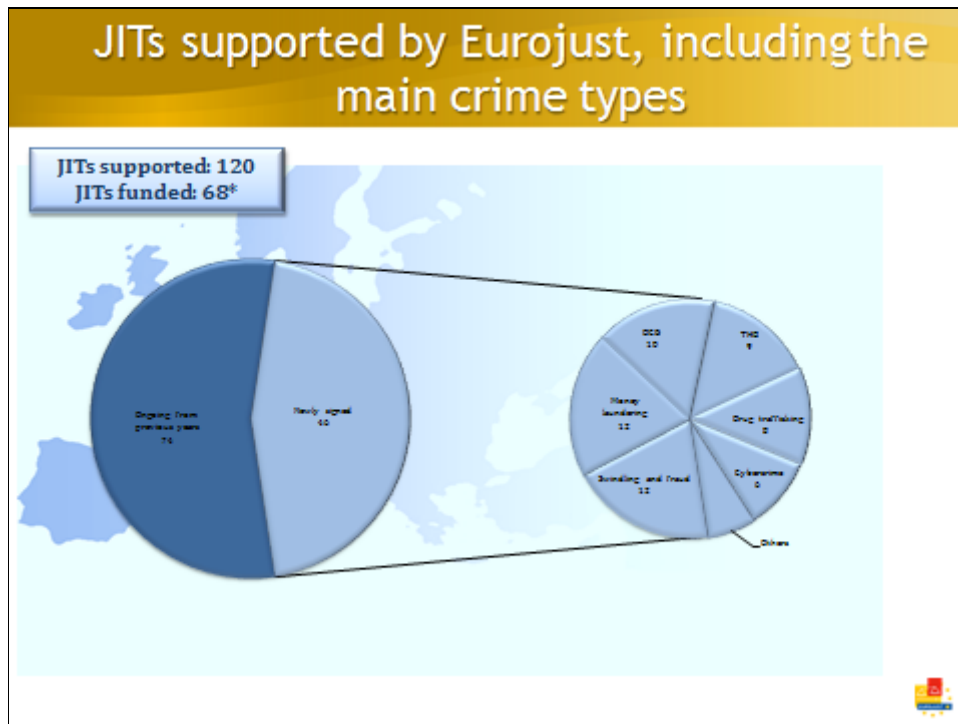
To draw lessons learned, Eurojust – together with the JITs Experts Network and its Secretariat (see Section 5.2 below) – continued to promote and facilitate the evaluation of JITs, via the use of the JITs evaluation form. This form, initially released in 2014, was made available on Eurojust's website in 2015, together with practical advice to conduct the evaluation. Dedicated evaluation meetings were held at Eurojust or in the Member States with the support of Eurojust.

The outcome of these evaluations confirms the extensive use of JITs by practitioners as an efficient and effective tool to coordinate cross-border investigations and prosecutions. In a significant number of cases, JITs are established between more than two States – which are not necessarily neighbouring States – and support the investigation of a wide range of crime types. The flexibility of the tool, particularly to support informal communication and exchange of information and evidence, is widely acknowledged by competent national authorities. When a JIT is used, the participation of the seconded members – operating outside their State of origin – is seen as beneficial to the efficiency of the investigation. In a vast majority of cases, JITs also appear to facilitate a common approach to communication with the media on the outcome of the investigation.

Among the challenges identified, the differences in timeframes of domestic proceedings – for legal or practical reasons – can impede the functioning of a JIT, for example, if one of the partners must leave the JIT before the cooperation needs of others have been fulfilled.

In terms of best practice, since JITs often coexist with MLA, particularly towards States that do not join the JIT, practitioners report that the existence of a JIT provides an advantage in the timely execution of the request to the requested States, as well as the sharing between JIT partners of evidence collected via MLA.

Since experience with JITs is increasing, an evaluation of the tools developed in the first years of implementation of JITs (JITs Manual, model agreement, JIT Operational Action Plan) was considered useful to verify if they still fully respond to practitioners' needs. This evaluation formed the main topic of the annual meeting of JITs experts, which took place at Eurojust on 11 and 12 June 2015. Conclusions of the meeting give clear guidance to modernise the JIT tools and enhance their accessibility for practitioners. Experts agreed that the existing version of the JIT model agreement is still sufficiently adequate and flexible, concluding that an extensive revision is not a priority. The experts did agree that the JITs Manual should be comprehensively updated to incorporate lessons learned. The JIT Operational Action Plan, which is not often used in practice, should be replaced by more informal planning arrangements, e.g. conclusions of coordination meetings.



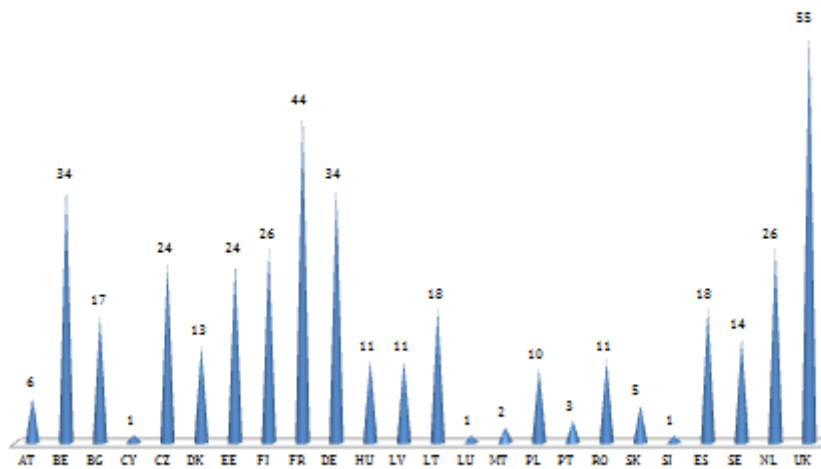
### *Eurojust JIT funding*

Eurojust has continued providing financial support to JITs. In 2015, the key role of Eurojust in supporting JIT operations by its funding programme was confirmed by the receipt of 144 applications for funding (some requests relating to the same JIT, for operations spread over subsequent action periods). Financial support was provided for 68 JITs (through one or several grants), 36 of which were supported for the first time in 2015. The Eurojust budget allocated to JITs funding in 2015 was EUR 500 000.

Since 2014, JIT funding can also cover costs incurred by third States. Consistent with the trend observed in Eurojust's casework, 13 applications were received from JITs involving both EU and third States in 2015.

A new interactive application form was introduced in 2015, with features allowing for easier submission of applications, such as drop-down lists, calculation functionalities, and built-in control of ceilings. The scope of funded actions was extended to cover costs incurred as a follow-up to the JIT, should such costs be directly linked to the JIT activities, such as a follow-up meeting organised to examine the evidence collected by the JIT, translation costs of evidence collected by the team, or translation of a verdict passed in one of the States involved. In addition, the College of Eurojust approved a project that includes the development of online tools for the submission of funding applications and a database to process JIT-related data.

## JIT funding per Member State, December 2009 - December 2015



### Case illustration

A French investigation revealed organised VAT fraud in the sale of second-hand cars, as well as money laundering. The offences were committed by a group of French individuals operating in Spain. The cars were being sold from German suppliers to French retailers through a number of fictitious intermediary transactions within French, Spanish, Romanian, Italian and Portuguese companies, based on forged invoices, to avoid paying VAT.

The case was brought to Eurojust by the French authorities, after which a coordination meeting was held to discuss the state of play of the investigations and optimise cooperation between the authorities involved. Eurojust served as an intermediary in facilitating the execution of multiple MLA requests between France and Spain, which was crucial as proceedings in Spain were pending. Analysis of the information exchanged between the participants revealed some legal obstacles, particularly a potential *ne bis in idem* issue, due to an overlapping of targets in France and Spain. To avoid a conflict of jurisdiction at a later stage of the proceedings, coordination regarding future charges and the scope of the national proceedings was necessary. In light of these obstacles, France and Spain signed a JIT agreement in June 2014 to facilitate cooperation and exchange evidence.

As a result of intense investigations and increased cooperation between the JIT participants, joint actions against the network were carried out by law enforcement authorities in Spain and France in January 2015, supported by a coordination centre at Eurojust. Twenty-nine suspects were arrested in Spain, and two in France. Numerous documents were seized during the searches, revealing an estimated EUR 20 million in laundered funds.

Encouraged by the first successful action, Eurojust's support was further requested in the extension of the JIT, which served to simplify the exchange of evidence in preparation of the forthcoming court proceedings. During a coordination meeting, the JIT members agreed to a transfer of proceedings from Spain to France for the offences of money laundering and participation in a criminal organisation. Spain was to focus on the tax fraud offences. In support of the French proceedings, participants agreed that French investigators could travel to Spain to examine the evidence collected in the Spanish investigation. The French authorities agreed to assist their Spanish counterparts by organising a videoconference to interview two people indicted and detained in France.

The national authorities achieved important results in the pre-trial phase of their proceedings by effectively using these judicial cooperation tools: coordination meetings, a coordination centre and a JIT.

## Timeline: events of the year

### **2 March The Hague**

Ms Maria Schnebli is seconded to Eurojust as first Liaison Prosecutor for Switzerland

### **16-17 April The Hague**

Strategic meeting on *Trafficking in Human Beings*

### **21 April The Hague**

Ms Michèle Coninx is re-elected President of Eurojust by the College

### **22-23 April The Hague**

18<sup>th</sup> meeting of the Genocide Network

### **20 May The Hague**

Maritime piracy meeting

### **4-5 June The Hague**

Strategic seminar on *Conflicts of jurisdiction* and Consultative Forum under the Latvian EU Presidency

### **5 June The Hague**

Ms Věra Jourová, Commissioner for Justice, Consumers & Gender Equality, visits Eurojust

### **11-12 June The Hague**

11<sup>th</sup> annual meeting of JITs national experts

### **17-18 June The Hague**

Meeting on *Judicial cooperation in major sports events*

### **24-25 June The Hague**

Strategic and tactical meeting on *Terrorism*

### **29-30 June Riga**

44<sup>th</sup> plenary meeting of the EJM

### **1 July The Hague**

Mr Lodewijk Van Zwieten, Eurojust Expert on Cybercrime to EC3, takes up duties

### **1 July The Hague**

Tactical meeting on *Cybercrime: territoriality in cyberspace and admissibility of evidence*

### **15 September The Hague**

The Honorable Loretta Lynch, US Attorney General, visits Eurojust

### **23 September The Hague**

Meeting with Ambassadors of European Union's Member States and third States

### **1 October Rome**

Signing of Letter of Understanding with EUNAVFOR MED

### **8-9 October The Hague**

EU-US seminar on *The application of Mutual Legal Assistance and Extradition Agreements between the EU and USA*

### **21-22 October The Hague**

19<sup>th</sup> meeting of the Genocide Network

### **18-19 November Luxembourg**

45<sup>th</sup> plenary meeting of the EJM

### **25 November The Hague**

Meeting on *Cybercrime: Towards a Judicial Cybercrime Network*

### **10-11 December The Hague**

Workshop on *Data retention* and Consultative Forum under the Luxembourg EU Presidency

## Chapter 2 Eurojust's casework

### EMPACT

Eurojust attended 42 EMPACT meetings and actively contributed to the activities carried out in 2015 within the framework of the Operational Action Plans (OAPs) in all EMPACT crime priority areas: facilitation of illegal immigration; THB; counterfeit goods; excise and MTIC fraud; heroin, synthetic drugs and cocaine; illicit firearms trafficking; OPC; and cybercrime. In the context of the 2015 OAPs, Eurojust participated in several CEPOL courses, at which it delivered presentations about its work in a number of crime areas, such as drug trafficking (cocaine and heroin). In addition, Eurojust actively participated in the development, preparation and drafting of the OAPs for 2016.

In line with the common position on Eurojust's participation in OAPs adopted by the College in 2013, Eurojust contributed, as a (co-)leader or participant, to 49 actions undertaken to increase coordinated investigations and prosecutions within the OAPs. Such actions consisted of either contributing information to intelligence situation reporting, identifying high-value targets or OCGs, or supporting investigations and prosecutions. Eurojust also supported OAP activities to increase the number of financial investigations in several EMPACT priorities.

Eurojust participated in the OAP actions to create or raise awareness, particularly through the identification of training needs for judges and prosecutors in EMPACT priority areas such as cybercrime. Eurojust supported the activities to identify the judicial points of contact in relevant third States in EMPACT priorities.

Eurojust was the activity leader within the OAPs implemented in the field of heroin, synthetic drugs and cocaine and was co-leader in the actions designed to identify and address legal loopholes in the priority area of OPC.

Finally, Eurojust was associated with the operational activities carried out within the sub-projects ETUTU (to identify Nigerian trafficked victims and obtain intelligence from them) and Chinese THB (designed to target Chinese criminality linked to human trafficking) carried out within the EMPACT crime priority area THB.

### European Agenda on Security

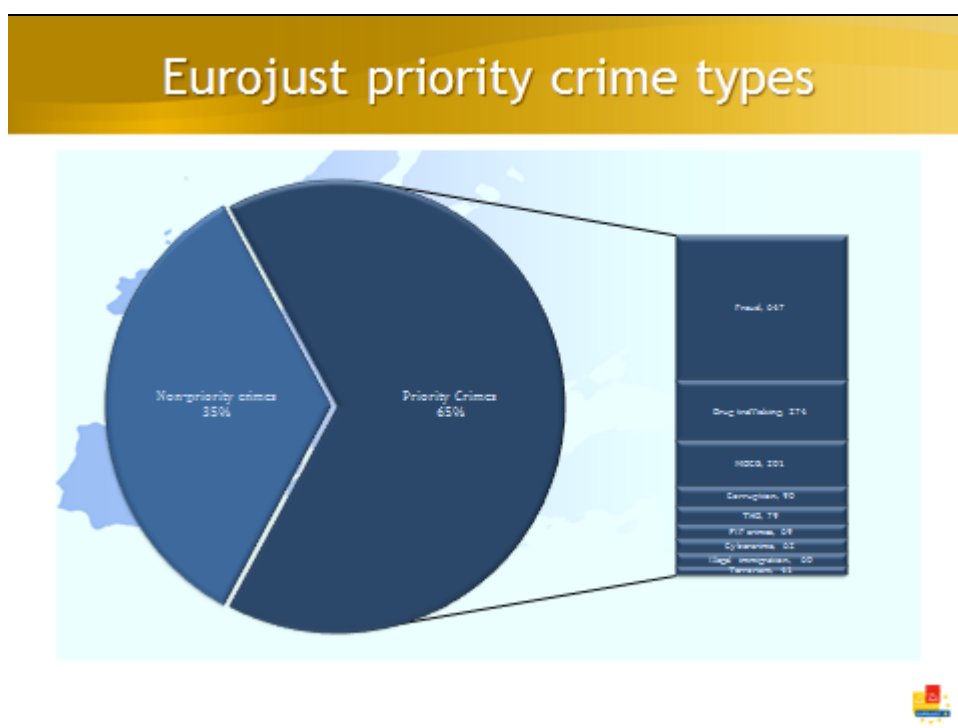
The European Agenda on Security prioritises for 2015-2020 terrorism, cybercrime and organised crime as interlinked areas with a strong cross-border dimension in which coordinated EU action, including at judicial level, is needed.

The European Agenda on Security sets out the pillars for EU action, including better information exchange and increased operational cooperation. The role of Eurojust is particularly emphasized in four areas of activity: (i) assisting the Member States in complex MLA requests with countries outside the European Union, especially through the network of Eurojust contact points; (ii) being fully involved in the activities of the European Counter Terrorism Centre (ECTC) at Europol to improve coordination of investigations and prosecutions; (iii) offering more expertise and assistance to the national authorities when conducting financial investigations; and (iv) continuing to facilitate the exchange of best practice and identifying the challenges faced in the collection and use of e-evidence in investigations and prosecutions of Internet-facilitated crimes.

## European Agenda on Migration

The European Agenda on Migration complements the European Agenda on Security by setting out the European Commission’s plans for both legislative and non-legislative actions in the area of migration. The European Agenda on Migration and the EU Action Plan against Migrant Smuggling identify the fight against illegal immigrant smuggling as an EU priority and seek to transform illegal immigrant smuggling networks from ‘low-risk, high-return’ operations into ‘high-risk, low-return’ operations.

A key role is foreseen for Eurojust, together with Europol, in assisting the Member States in dismantling the smuggling and trafficking networks. In addition, Eurojust was requested to set up a thematic group on migrant smuggling, strengthen cooperation between prosecutors and enhance MLA, support JITs in the area of migrant smuggling, participate in Hotspots, contribute to the work of Joint Operational Team (JOT) Mare and facilitate the exchange of best practice and challenges in the collection and use of e-evidence in migrant smuggling cases.



## 2.1 Eurojust casework in priority crime areas

The operational priorities of Eurojust substantially mirror those of the European Union in the fight against serious and organised crime, as provided by the Council of the EU. As a demand-driven organisation, Eurojust's priorities also include certain crime types that were not set as priorities in the EU policy cycle, namely corruption and terrorism.

### *Overall statistics*

Priority crime	Cases 2014	Cases 2015	Coordination meetings 2014	Coordination meetings 2015	JITs 2014	JITs 2015
Terrorism	14	41	4	15	2	3
Cybercrime	42	62	15	19	6	11
Illegal immigrant smuggling	32	60	10	20	9	9
THB	71	79	12	32	18	21
Fraud	560	647	60	76	32	34
Corruption	55	90	9	10	4	4
Drug trafficking	283	274	52	57	31	25
MOCGs	128	201	13	21	13	13

### 2.1.1 Terrorism

The year 2015 was marked by an increase in the number of terrorist attacks planned or carried out on European soil and an acknowledgement of the global threat posed by FTFs. Eurojust's operational and strategic activities in the field of counter-terrorism reflected the need to strengthen Member States' ability to fight terrorism in a common, effective and coordinated manner.

The figures collected from casework in 2015 confirm that Member States increasingly rely on Eurojust's support to address and resolve issues of judicial cooperation in complex terrorism cases. The number of cases registered in 2015 (41) is almost triple the amount from 2014. Eurojust organised 15 coordination meetings involving terrorism-related offences, almost four times the number from 2014, and three JITs were active. In addition, Eurojust organised its first coordination centre on a terrorism case. Most terrorism cases opened at Eurojust were from Belgium, France and Italy. Belgium, France and the UK were most often requested.

A significant increase was recorded in the information on prosecutions and convictions for terrorist offences shared with Eurojust pursuant to Council Decision 2005/671/JHA. Information on prosecutions for terrorist offences was shared with Eurojust 104 times, compared to 30 in 2014. Similarly, the number of concluded terrorism-related court proceedings reported to Eurojust increased to 217, from 180 in 2014.



The information exchanged with Eurojust includes links to other relevant cases, MLA requests and their execution. Increased information sharing on a regular basis and in a timely and systematic manner facilitates Eurojust's work in providing an overview of challenges and best practice related to prosecutions and convictions for terrorist offences and enriches Eurojust's analysis of the judicial responses to terrorism, shared with the Member States via the *Terrorism Convictions Monitor*. In addition, and as a follow-up to the Council Conclusions on the criminal justice response to radicalisation leading to terrorism, Eurojust would be in a position to monitor the use of alternatives to prosecution and detention and thus contribute to the development of criminal policy with regard to FTFs.

The network of national correspondents for Eurojust for terrorism matters serves as a primary point of contact to facilitate judicial cooperation, and ensures that information related to terrorism prosecutions and convictions is shared with Eurojust. The network of national correspondents, active since 2005, consists of at least one representative appointed by each Member State, as well as contact points nominated by Norway, the USA and, since September 2015, Switzerland.

The third Eurojust report, *Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response* (classified as EU Restricted), was produced in November 2015. The report was submitted at the JHA Council meeting of 3-4 December 2015 with recommendations to address challenges in investigations and prosecutions and to make full use of Eurojust's coordination tools in complex cross-border cases involving FTFs. The report develops the findings and recommendations contained in the two previous Eurojust reports on FTFs, dated November 2013 and November 2014, by integrating the contributions from practitioners received in response to the follow-up Eurojust questionnaire on the judicial response to FTFs sent in March 2015 to all national correspondents for Eurojust for terrorism matters as well as the Eurojust Liaison Magistrates from Norway, Switzerland and the USA. Earlier in 2015, a summary of the main findings of the second Eurojust report on FTFs of November 2014 was published as a Eurojust document with limited access.

Last year, Eurojust was actively involved in many of the discussions and initiatives held at EU level to identify possible ways to strengthen the judicial response to terrorism. In different *fora*, the President of Eurojust highlighted the need for an EU-wide common and comprehensive approach, integrating a wide range of multidisciplinary policies, mechanisms and tools to enhance the efficiency of national responses to the FTF phenomenon.

Within the framework of the JHA Agencies Network, the Agencies informed each other about their tools/measures in place against FTF. Eurojust reports regularly to the EU Counter-Terrorism Coordinator on the implementation of Eurojust's actions in the fight against terrorism. In 2015, Eurojust for the first time was associated with a Europol focal point related to counter-terrorism, FP Travellers.

Eurojust has continued to prioritise the strengthening of cooperation with third States to increase its assistance to national authorities in their investigations and prosecutions. The level of operational cooperation with third States in terrorism cases facilitated by Eurojust increased considerably in 2015. For example, the number of terrorism cases (10) involving third States more than tripled compared to last year.

Eurojust is actively working towards enhancing cooperation with countries in the Middle Eastern and North African (MENA) region. The enlargement of Eurojust's contact point network in this region is important to facilitate its work in fighting terrorism and organised crime. On 21 July 2015, Eurojust invited countries in the MENA region to appoint Eurojust contact points, including a specific Eurojust contact point for counter-terrorism matters. Following these invitation letters, contact points for Eurojust have been nominated in Lebanon, Jordan, Saudi Arabia and the Palestine Authority, in addition to those already appointed in Egypt, Israel and Tunisia.

### ***Tactical meeting on terrorism***

On 24-25 June, Eurojust held a third tactical meeting on FTFs, *Towards a common judicial response to foreign fighters*. Attending the meeting were the national correspondents for Eurojust for terrorism matters, representatives of the national judicial and law enforcement authorities of the Member States, Albania, Bosnia and Herzegovina, Montenegro, Norway, Serbia, Switzerland, Turkey and the USA, as well as representatives of the Office of the EU Counter-Terrorism Coordinator, Europol, INTERPOL and Frontex.

The meeting gave the practitioners insight into specific phenomena, terrorist organisations, *modi operandi* and procedural or judicial cooperation issues, and provided a forum to exchange experience and best practice among practitioners investigating and prosecuting FTF cases within and outside Europe.

Topics addressed were the EU criminal justice response to FTFs, enhanced judicial cooperation with third States, and challenges and lessons from FTF prosecutions. The adequacy of the legal framework, gathering and admissibility of e-evidence, financial investigations, instruments for judicial cooperation, criminal justice responses to radicalisation, judicial approaches to returnees and the exchange of information were discussed. Presentations on FTF prosecutions in Member States and third States provided national perspectives. Three workshops dealt with the same case, and the results were presented and discussed during the plenary session and integrated in the third Eurojust report, *Foreign Terrorist Fighters: Eurojust's views on the phenomenon and the criminal justice response*, issued in November 2015.

### ***Strategic meeting on terrorism***

On 25 June, the 11<sup>th</sup> annual strategic meeting of the national correspondents for Eurojust for terrorism matters was held. The European Commission presented the priorities identified in the European Agenda on Security and highlighted the importance of the involvement of Eurojust in initiatives at EU level in countering terrorism and addressing radicalisation. The presentation was followed by a panel discussion on developments in the national and EU legal framework on combating terrorism and an update on Eurojust counter-terrorism deliverables developed for practitioner use. These deliverables are the *TCM*, the *CBRN-E Handbook*, the *MPJM* and the *Memorandum on Terrorist Financing*. Eurojust also analysed in depth a Belgian judicial decision involving an FTF recruitment network. The analysis, considered by practitioners to be very useful and inspiring, was separately published as a Eurojust document with limited access and shared with the national correspondents for Eurojust for terrorism matters.

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

The *CBRN-E Handbook* 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. The *Handbook* is regularly updated. Its fourth version was produced in June 2015.

### ***Memorandum on Terrorist Financing***

Eurojust's *Memorandum on Terrorist Financing* is a Eurojust document with limited access that contains an overview of the legal instruments and standards adopted at international and EU levels to counter terrorist financing, providing a summary of their provisions. The *Memorandum* also presents Eurojust's casework in dealing with terrorist financing and highlights Eurojust's involvement in judicial cooperation in countering terrorist financing. The *Memorandum* was first issued in 2006 and is updated every three years, with the last update taking place in June 2014.

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

The *TCM* is a Eurojust document with limited access, distributed particularly to prosecutors and judges dealing with terrorism cases and published regularly since 2008. It provides a regular overview of terrorism-related convictions and acquittals throughout the European Union, legal updates, as well as 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 2015 included analysis of judgements rendered by courts in Germany, the Netherlands, Norway and the UK concerning FTFs. In addition, the *TCM* includes a summary of the main points of the European Agenda on Security, as well as the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Political Declaration and Action Plan.

### **Case illustration**

Since 2007, a terrorist organisation named Rawti Shax or Didi Nwe (the 'new course' or 'towards the mountain') was under investigation in several European countries, including Italy, Switzerland and Germany. The organisation represents an evolution of Ansar Al Islam, which is listed by the UN as a terrorist organisation affiliated with Al-Qaeda, and whose leader was detained in Norway for making repeated death threats against Norwegian politicians. The primary objective of Rawti Shax is to violently overthrow the current Iraqi Kurdish government and replace it with a caliphate governed by Sharia law. The Italian investigation found evidence that Rawti Shax is rooted in Europe, with cells communicating and operating via the Internet, and with a structure active especially in Germany, Switzerland, the UK, Finland, Italy, Greece, Sweden, Norway, Iraq, Iran and Syria. As the group evolved, it became active in providing logistical and financial support to recruiting FTFs to be sent to Syria and Iraq, also with the intention of training them for the future conflict in Kurdistan.

Eurojust supported the international judicial cooperation activities in this case from 2011 onwards. To facilitate the exchange of information among the competent authorities and the execution of MLA requests, two coordination meetings were organised by Eurojust. During the coordination meetings, the structure and operations of this terrorist organisation were progressively revealed and the Member States involved discussed the most efficient common judicial strategy and response.

Over several months in 2015, an extensive amount of information from the Italian investigation was analysed by Eurojust to identify the most important aspects for the Member States involved, with a view to organising a common action day. One of the coordination meetings was used for the preparation of the joint action, to discuss issues regarding the execution of the requested judicial measures, including the identification of the competent authorities, and the formulation of EAWs, extradition procedures, etc. To ensure timely execution of various MLA requests, the legal and technical requirements of such requests were reviewed.

During the common action day in November 2015, a coordination centre was set up at Eurojust. A total of 13 suspected leaders and several members of Rawti Shax were arrested in Italy, Norway and the UK. Ten arrested persons were charged with international terrorism according to Italian law. In addition, the Italian, German, Finnish, Norwegian, Swiss and UK authorities conducted searches of 26 premises and seized items, including electronic devices and documents. Some suspects could not be located, as they were believed to have travelled to the Middle East (Syria and Iraq) to join jihadist organisations (namely ISIS and al-Nusra) as FTFs.

In view of the ongoing surrender procedures of three individuals from the UK and the extradition requests to Norway, the assistance of Eurojust will continue in 2016. As one of the suspects arrested in Norway is a Norwegian citizen, who thus will not be subject to extradition, this suspect will be tried in Norway (under the *aut dedere aut iudicare* principle). To safeguard successful proceedings against this and other suspects, further judicial cooperation is envisaged.

## 2.1.2 Cybercrime

Cybercrime by its nature is borderless. Electronic evidence of such crimes may be difficult to collect, due to the volatility of data, and may require specific expertise. Judicial cooperation is essential to ensure timely preservation of electronic evidence, which ensures its admissibility in judicial proceedings. International judicial cooperation may be hampered by significant differences in domestic legal frameworks (e.g. regarding the criminalisation of conduct or the absence of data retention legislation) and conflicts of jurisdiction.

Against this background, Eurojust focused more on countering cybercrime with a view to strengthening judicial cooperation in this field, particularly by: facilitating the swift handling of MLA requests – a crucial factor to balance the volatility of data and fill gaps arising from the application of different domestic data retention rules; and allowing the early involvement of the judiciary in cybercrime operations, to ensure that the data are collected in compliance with applicable rules during the investigation phase and as a result may be tendered as admissible e-evidence in subsequent judicial proceedings.

Eurojust's increased focus on cybercrime is reflected in the casework and strategic activities carried out in 2015.

All major statistical indicators – number of registered cases (62), coordination meetings (19), coordination centre (1) and JITs (11, six of which were newly established) – show growth in Eurojust's operational involvement in this crime area compared to previous years. Romania was the most often requesting Member State, followed by Greece, Germany and Cyprus. The UK, Spain and Germany were the most often requested Member States.

Eurojust also worked towards enhancing cooperation with Europol in combating cybercrime both at strategic and operational levels. Eurojust continued to actively support the European Cybercrime Centre (EC3) hosted by Europol. To this end, in July 2015, Eurojust appointed a Seconded National Expert on Cybercrime to act as Eurojust's representative for EC3 operational matters. His duties include supporting and coordinating cooperation with EC3 on behalf of Eurojust and, *inter alia*, facilitating the exchange of information, helping to ensure the admissibility of evidence in judicial proceedings, and promoting the early involvement of Eurojust to increase the effectiveness of prosecutions and, where appropriate, confiscation of assets in cybercrime cases.

The Eurojust expert on cybercrime's presence at EC3 also contributed to an intensified presence in the Focal Points Twins, Terminal and Cyborg. Under the EMPACT 2015 OAP Cyber Attacks, Eurojust and Europol drafted a joint paper on common legislative challenges in combating cybercrime, predominantly from a law enforcement and prosecution viewpoint. It identifies six main areas: loss of data; loss of location; legal frameworks; public-private partnerships; international cooperation; and the rapidly developing threat landscape. The paper serves as a starting point for further discussions with relevant stakeholders about possible approaches to address these challenges, including a further alignment of legal and practical instruments concerning MLA and the exchange of information and e-evidence for the purpose of investigations and prosecutions of cybercrime cases.

During her visit to The Hague in September, the Honorable Ms Loretta Lynch, US Attorney General, announced the seconding to Eurojust of a US Cybercrime Prosecutor.

In addition to providing operational support to national investigations and prosecutions and EC3, Eurojust continued to support the Illegal Trade on Online Marketplaces (ITOM) Project, the closing conference of which was held in November 2015. It also continued to support the Training of Trainers and Certification Programme (TOT), which organised the first training for prosecutors and investigative judges designed to improve the effectiveness and understanding of the investigative and prosecutorial phases of cybercrime cases.

### ***Meetings on cybercrime***

On 1 July, Eurojust hosted a tactical meeting on territoriality in cyberspace and the admissibility of evidence in cybercrime-related judicial proceedings. The tactical meeting gathered experts from all Member States, Norway, the USA, as well as the private sector (including from banking and Internet security firms), who reflected on several topical issues in this crime area and the assistance that can be provided by Eurojust. Participants discussed the need to: speed up international judicial cooperation, particularly the timely exchange of MLA requests given the volatility of electronic data; improve cooperation between judicial authorities and the private sector (such as Internet Service Providers); and ensure the early involvement of judicial authorities to, *inter alia*, safeguard the admissibility as evidence of the data gathered by the private sector.

At the meeting, a call for a more swift and effective sharing of experience, best practice and lessons learned was made. In this regard, the practitioners assessed the proposal of the establishment of a network of cybercrime prosecutors and judges.

Consequently, in November 2015, Eurojust hosted a meeting, *Towards a Judicial Cybercrime Network*, gathering judicial experts in the field of cybercrime from all Member States, as well as from Norway, Switzerland, the USA, EC3 and the Council of Europe. The participants agreed on the need to set up a judicial cybercrime network, supported by Eurojust, as a platform for discussion of judicial obstacles, the identification and dissemination of best practice, and the sharing of case law.

In addition, they discussed the MLA process between the USA and the Member States, and were informed about the projects initiated and supported by the Council of Europe Cybercrime Convention Committee. Representatives of the Ministry of Security and Justice of the Netherlands provided an overview of priorities of their incoming Presidency of the EU, among which is the fight against cybercrime (with a focus on issues of jurisdiction).

### ***Case illustration***

A large-scale OCG, members of which were mainly from Nigeria and Cameroon, was responsible for carrying out internet phishing fraud estimated at EUR 6 million. This criminal network used the 'man in the middle' method, diverting funds from legitimate to illegitimate destinations by accessing passwords and personal data to acquire ownership of victims' e-mail accounts so as to obtain money from them and/or their customers.

Perpetrators and victims were identified in at least 16 locations worldwide. The judicial authorities in Italy, Spain and Poland turned to Eurojust for support. Three coordination meetings were held to clarify the details of existing domestic investigations and exchange information. Parallel proceedings taking place in Italy and Spain revealed that individuals under investigation were part of hierarchically structured cells with fluid and flexible interactions between the networks. In view of these close connections, challenges to the domestic prosecuting authorities were identified in relation to potential *ne bis in idem* issues. A possible overlap of targets was highlighted, meaning that the same suspects could be subject to multiple criminal proceedings instituted in different jurisdictions.

As the case progressed, a third and final coordination meeting was held to evaluate the state of execution of MLA requests issued by Italy to the relevant countries and to exchange new information. Similar criminal activity in individual Member States was observed and a further overlap of targets was identified, which helped the prosecuting authorities to define their case strategy.

As a result, with a view to undertaking simultaneous coercive measures, the parties agreed to participate in an action day with the support of a Eurojust coordination centre. While the Spanish authorities could have taken action quickly, such early measures in Spain could possibly have jeopardised the less advanced but broader Italian investigation. A discussion of the legal requirements in the different jurisdictions was necessary to understand the restrictions of the proceedings in the respective States and to determine the most favourable schedule for the action day. Considerable efforts were made to adjust the different phases of the investigations for this purpose.

The action day took place in June 2015, led by Italian, Spanish and Polish judicial and police authorities. Facilitated by the coordination centre at Eurojust, the action day yielded excellent operational results. A total of 49 suspects were arrested and 58 searches carried out. Through close judicial cooperation and coordination between the involved States, cybercriminals can be brought to justice in any jurisdiction.

### 2.1.3 Illegal immigrant smuggling

Europe was faced with an unprecedented crisis arising from the sharp increase in illegal immigrant smuggling and the heinous sequence of related deadly incidents that occurred in the Mediterranean area, European coasts and mainland.

Eurojust itself faced an increased demand for judicial coordination in this field due to the recurring and widespread character of the offences committed in Member States. The number of cases of illegal immigrant smuggling (60) and coordination meetings (20) almost doubled compared to 2014. The most requesting Member States were Greece, France and Austria. Germany was the most requested, followed by France and Hungary.

In line with the EU Action Plan against Migrant Smuggling, Eurojust worked closely with Europol, Frontex and EASO to gather information on smugglers' *modi operandi*, to support national authorities in tracing money, and to assist in investigations. To this end, Eurojust stepped up its cooperation with Europol Focal Point Checkpoint and JOT Mare. This intensification of cooperation was achieved by holding – in addition to *ad hoc* meetings on individual operational cases – quarterly meetings to discuss means and methods (e.g. an upgraded process of information exchange about ongoing cases) to improve their cooperation and ability to support national authorities in their fight against illegal immigrant smuggling.

A Letter of Understanding on Cooperation between Eurojust and the EU military operation in the Southern Central Mediterranean (EUNAVFOR MED) was signed on 1 October. EUNAVFOR MED was launched on 22 June 2015 with the objective of undertaking systematic efforts to identify, seize, capture and destroy vessels and assets used by smugglers. This Letter of Understanding establishes a framework for enhanced cooperation and dialogue in the fight against illegal immigrant smuggling. It affirms both parties' commitment to exchange strategic information of a non-operational nature, best practice, expertise and experience in the field of illegal immigrant smuggling.

At institutional level, the College of Eurojust appointed a Contact Point for Illegal Immigrant Smuggling in April 2015 to represent Eurojust within the Contact Group of EU Agencies on Migrant Smuggling set up by the European Commission in 2015 in line with the EU Action Plan against Migrant Smuggling.

The Hotspot approach, put forth by the European Commission as part of the European Agenda on Migration, has as its principal objective the coordination of EU assistance to frontline Member States facing a specific and disproportionate migratory pressure at their external borders. Eurojust supported the Hotspots in Italy and Greece – two of the Member States most affected by migratory flows in 2015. National prosecutors in Italy and Greece have been appointed as Eurojust contact points to support the Hotspot locations and to channel relevant information and cases to Eurojust's National Desks for judicial follow-up and coordination at EU level.

The President of Eurojust paid a visit to the Hotspots in Italy (October 2015) and Greece (December 2015), and met with Italian and Greek judiciary and naval representatives, as well as EUNAVFOR MED and Frontex, to discuss the fight against illegal immigrant smuggling and the need for enhanced judicial cooperation.



In September, the College of Eurojust set up the Thematic Group on Illegal Immigrant Smuggling, the timeframe of which (2015-2020) coincides with the timeframe of the EU Action Plan against Migrant Smuggling. The goals of the Thematic Group are, *inter alia*, to: (i) enhance support to prosecution offices affected by illegal immigrant smuggling, (ii) identify and analyse challenges in the investigation and prosecution of this crime type as well as best practice in relation thereto, and (iii) improve the use of existing international and EU legal instruments in this context.

In addition, Eurojust continued to support other strategic *fora* and projects designed to enhance international cooperation in the field of illegal immigrant smuggling by, for example, participating in the International Organization for Migration (IOM) regional project, *Strengthening the fight against trafficking in persons and migrant smuggling in the Western Balkans*, to present best practice in conducting cross-border activities at two workshops, in FYROM and in Montenegro. The objective of this project, which is financed by the IOM Development Fund and the Italian government, is to strengthen the capacity and cross-border cooperation of the stakeholders from the Western Balkans region in fighting cross-border offences such as THB and illegal immigrant smuggling.

### **Case illustration**

An investigation was launched into an OCG suspected of facilitating the illegal entry of Albanian nationals into the European Union using rented transport vehicles registered in the Czech Republic. The OCG, operating since late 2013, transported illegal immigrants to the UK via two routes: either from Turkey or Greece to Belgium and then on to the UK in vehicles driven by Czech and Slovak drivers, or from Bulgaria or Serbia to the Czech Republic, and then via Germany to the UK via ferry or train. Over 100 illegal immigrants were brought into the European Union over this period.

Eurojust and the Member States involved in this case attended several operational meetings at Europol in 2014 for 'Operation Tantaluf'. The need for judicial cooperation brought the case to Eurojust in December 2014. Eurojust organised four coordination meetings, providing a forum for the Belgian, Czech, German, French and UK authorities to discuss the judicial aspects of the case. Close cooperation with Europol continued, and their analysts attended the coordination meetings at Eurojust.

Belgium was chosen as best placed to act as the prosecuting jurisdiction. This decision was influenced by the fact that a city in Belgium appeared to be the hub of the illegal immigrant smuggling operation. Eurojust was instrumental in the formation of a JIT between Belgium, the Czech Republic, the UK and Germany. Eurojust's financial support allowed this case to progress more rapidly and covered the costs of crucial resources needed for such a large-scale operation, notably for interpretation and translation services, travel expenses and technical equipment. The exchange of evidence between all participating countries was straightforward, and the Belgian authorities were able to obtain information following an MLA request to the French authorities regarding drivers who had been stopped in France.

Investigation into this case revealed that in 13 smuggling incidents, this OCG generated a profit of over EUR 500 000 at the expense of the victimisation of more than 100 vulnerable people. A common action day took place in November 2015, supported by a Eurojust coordination centre. Eight suspects were arrested, 24 were interviewed as either witnesses or suspects, and 10 house searches were carried out. During the joint action day, six EAWs were executed.

#### 2.1.4 THB

The operational support provided by Eurojust to national investigations and prosecutions of human trafficking increased to 79 cases. The number of coordination meetings (32) almost tripled. One coordination centre was held. The most requesting Member State was the UK, followed by Bulgaria, Romania and Slovenia. The most requested Member State was Romania, followed by the Netherlands and Hungary.

The number of JITs related to THB cases increased to 21, with nine JITs newly established in 2015. Among these new JITs was one between France and – for the first time – Bosnia and Herzegovina, supported with Eurojust JIT financing.

In the context of Eurojust’s Strategic Project on THB, a second strategic meeting on THB took place.

##### ***Strategic meeting on THB***

On 16 and 17 April, Eurojust held a strategic meeting on THB. The meeting brought together judges, prosecutors and law enforcement authorities from the Member States, Norway, Switzerland, Japan and the USA. The meeting was also attended by representatives of the European Commission, Europol, FRA, UNODC, the University of Cambridge, Western Union and Facebook.

Ms Myria Vassiliadou, the EU Anti-Trafficking Coordinator, stressed the importance of a comprehensive approach to fighting THB given the ever-evolving and cross-border nature of this crime. The representatives of both Western Union and Facebook presented the problems they face and highlighted possible avenues of cooperation with law enforcement and judicial authorities in countering THB. The participants discussed the main challenges faced in the investigation and prosecution of THB and identified best practice in relation thereto. Specifically, the following subjects were addressed: (i) difficulties encountered by national authorities in judicial cooperation related to the hearing and protection of victims/witnesses in THB cases; (ii) challenges in prosecuting THB cases for the purpose of labour exploitation; and (iii) judicial cooperation issues related to the use of JITs, gathering and admissibility of e-evidence, use of special investigative techniques, and financial investigations in THB cases. In addition, the value of Eurojust’s involvement in THB cases was underlined, and other areas in which Eurojust could assist Member States were identified. The outcome report of the strategic meeting is available on Eurojust’s website.

In December 2015, Eurojust published a report, *Prosecuting THB for the purpose of labour exploitation*. The findings of the report are based on the analysis of, *inter alia*, 32 judgements from 11 countries and cases of human trafficking for labour exploitation registered at Eurojust. The report intends to serve as a source of information for practitioners involved in the investigation and prosecution of THB for labour exploitation by identifying possible indicators of labour exploitation and assessing the interpretation thereof in national case law. The report also provides a brief overview of THB for labour exploitation cases handled at Eurojust, on the basis of which some of the challenges faced by the involved countries are described. Best practice in judicial cooperation as well as the possible assistance of Eurojust are emphasized, namely through facilitating the prompt exchange of information, organising coordination meetings and centres, assisting in the setting up of JITs and funding thereof, and assisting in the execution of LoRs.

Eurojust renewed its focus on the effectiveness of JITs in THB cases, and continued to actively support several workshops organised within the framework of the project *Use of Joint Investigation Teams to fight trafficking of human beings in the Western Balkans at the local level*. The project is carried out in partnership with the Office of the State Prosecutor General and the Ministry of the Interior of the Republic of Slovenia and the Prosecutor's Office and the Ministry of the Interior of the Republic of Bulgaria, and is funded by the European Commission's Prevention of and Fight Against Crime Programme.

Eurojust continued to actively participate in the meetings of the THB Contact Points in JHA Agencies, which are chaired by the European Commission. The meetings bring together representatives of relevant EU agencies for the purpose of streamlining actions and optimising resources in the fight against THB.

Eurojust participated in the Ninth Anti-Trafficking Day organised by the EU Anti-Trafficking Coordinator. Tackling demand, promoting financial investigations and enhancing cross-border cooperation were highlighted as key factors in a promising strategy to counter THB.

### **Case illustrations**

Two cases that highlight the use of JITs in THB cases were brought to Eurojust in 2013. The cases concerned the trafficking of women from low-income backgrounds in Hungary and the Slovak Republic to the UK for the purpose of sexual exploitation, either in prostitution or through sham marriages, and were led by the same UK prosecution office.

The first case concerned the activities of a Hungarian OCG, mainly based in the UK, which was responsible for the trafficking of at least 250 women into and within the UK for the purpose of prostitution. The urgency of the case and the well-being of the women involved were reinforced when a victim came forward to the UK authorities, providing a statement of the abuses committed against her.

In the second case, Slovak nationals were involved in recruiting women in their home country for sham marriages in the UK, thus providing Pakistani men with the means to remain in the UK as husbands of EU citizens. Some of the women believed they had been brought to the country for legitimate work. At least one woman was raped by the man to whom she was sold.

In both cases, a JIT was established between the UK and the respective Member State, with the participation of Eurojust and Europol. The investigations profited from the JIT framework, which allows for the effective sharing of relevant information and evidence gathered for the purpose of prosecution without the need for formal MLA requests. In addition, in these THB cases, the JIT was vital in synchronising efforts between the two jurisdictions, ensuring the dismantling of the OCG and enabling the authorities in both the UK and the requested States to reach out to the victims and provide them with support without encountering obstacles caused by possible jurisdictional and procedural differences between the Member States. Eurojust also provided JIT funding in support of the investigations, which covered the costs of valuable resources needed for these large-scale operations. For example, in relation to the investigation into the Hungarian OCG, the UK police were able to travel to Hungary to assist witnesses giving evidence via video link.

As a result of the coordinated efforts against the Hungarian OCG, 11 people were arrested. In 2015, the accused were convicted of conspiracy to traffic into the UK, conspiracy to control prostitution and rape. All perpetrators received custodial sentences ranging from 20 months to 14 years.

Two sets of trials were held against the Slovak OCG. In December 2013, custodial sentences between 16 months and 10 years were rendered against four accused. However, enquiries into further offences in the UK and the Slovak Republic continued, and another trial was held in August 2015, which resulted in the conviction of six persons, three of whom had been convicted for the trafficking in 2013. The custodial sentences ranged from 12 months to six and one-half years. In January 2016, four of the convicted men were made subject to 'anti-slavery orders' with regard to future conduct, including in the Slovak Republic; these were amongst the first of these orders made under the UK's Modern Slavery Act of 2015 and the first to have an extra-territorial aspect.

### 2.1.5 Fraud

With 647 cases registered in 2015, an increase of more than 80 cases compared to 2014, fraud continued to represent the largest number of cases in Eurojust's casework. The scope of Eurojust's assistance in national efforts to counter this form of criminality is evident when looking at the number of coordination meetings (76), coordination centres (9) and JITs (34, 12 of which were newly established). Each of these operational tools was most often used in swindling and fraud-related cases.

Hungary, Greece, Austria and Romania were the most requesting Member States. The UK, Germany and Poland were the most requested Member States.

Eurojust participated in several strategic activities to identify operational obstacles and best practice in matters relating to financial crime and disseminated relevant information and expertise inside Eurojust and among practitioners.

Eurojust played an active role in advancing judicial cooperation in critical areas, such as excise fraud and food fraud, by sharing its work and experience. Eurojust also supports the EMPACT activities in the field of excise and MTIC fraud, and presented its work at a meeting on food fraud organised by the Food Chain Evaluation Consortium in Brussels.

Eurojust and the Office for Harmonization in the Internal Market (OHIM) strengthened their cooperation to support the activities of national authorities in the fight against infringements to intellectual property rights. To this end, they finalised the negotiations on a Memorandum of Understanding, co-chaired the *Cooperation Workshop Establishing a European Intellectual Property Prosecutors Network*, and co-chaired with OHIM and Europol the Knowledge and Awareness Building Conference, *Cosmetics and Luxury Goods*.

### ***Case illustration***

In February 2014, French authorities requested the support of Eurojust in a case concerning an OCG involved in the illegal trading and trafficking of horsemeat, deemed potentially unfit for human consumption. Due to falsification, suppression or modification of official health documentation by the OCG, including individual passports containing medical records for each travelling animal, the horsemeat fraudulently entered the European food chain. Four hundred horse passports with anomalies were detected in France alone. French authorities estimated that some 4 700 horses unfit for human consumption were slaughtered and introduced into the legal food chain between 2010 and 2013. These activities were in contravention of EU legislation, according to which the provenance of all meat must be accounted for and traceable.

The activities of the main suspect, a Belgian national operating from Belgium, had triggered investigations in Belgium in November 2012 and in France in July 2013. These inquiries revealed links to the activities of the OCG in other Member States, including Ireland, the Netherlands and the UK.

A JIT funded by Eurojust was signed by Belgium and France in May 2014. At the first coordination meeting in January 2015, the participants saw the need to set up a common action day. The authorities agreed on additional, tailor-made MLA requests to ensure the execution of specific coercive measures during the action day. Given the time pressure and the unique aspects of the case, the MLA requests were to be transmitted through Eurojust. The meeting resulted in a common strategy to optimise the chances of making the anticipated arrests and of gathering as much evidence as possible, and further assisted in the effective freezing of bank accounts and seizure of assets.

Coordination by Eurojust prior to the common action day was considered crucial, and therefore a second coordination meeting was held in March 2015. As a result of the meeting and the information exchanged, the German authorities agreed to open parallel investigations to facilitate cooperation and the JIT was extended to the UK. Amendments to MLA requests from France and Belgium were discussed to ensure their timely execution. As no investigation had been opened in the Netherlands, meeting participants agreed that France would issue three EAWs regarding targets possibly located in the Netherlands.

In April 2015, a common action day involving police and judicial authorities from France, Belgium, Germany, Ireland, Luxembourg, the Netherlands and the UK, supported by a coordination centre at Eurojust, led to 26 arrests and the seizure of EUR 99 000 in cash. Searches of commercial and private premises, as well as vehicles, were carried out and more than 800 horse passports were seized, together with medication, dozens of microchips and computer equipment.

### ***Case illustration***

A large-scale operation carried out by the Italian authorities revealed a sophisticated OCG involved in carousel fraud of excise duties regarding the importation of oil products to Italy. This fraud resulted in losses to Italy of more than EUR 15 million. The oil was purchased in Germany and mixed with additives to disguise the real nature of the product and supposedly sent to Malta and Greece, where no similar tax was imposed due to the creation of false transportation documents that indicated a different buyer than the genuine buyer. The oil travelled free of tax, after which it was stockpiled and then sold on the black market in Italy through a network of buyers.

Aware of the cross-border nature and potential impact of the ongoing excise fraud, the Italian authorities recognised that successful investigation and prosecution required a coordinated and multidisciplinary approach, and therefore requested the support of Eurojust. The need to facilitate the execution of Italian MLA requests to the UK, Malta, Romania, the Czech Republic, Germany and Greece was immediate, as was support in the coordination of judicial activities. A coordination meeting was held in March 2014, which allowed for the fine-tuning of various investigative activities and an assessment of the progress made and any obstacles encountered in the execution of the MLA requests. The meeting also served to identify parallel investigations to avoid *ne bis in idem* and allow a transfer of proceedings, if necessary.

At the beginning of 2015, new MLA requests were issued by Italy with a view to initiating a joint action day in the participating States. During the action day in March 2015, the representatives of the national authorities of Italy, the UK, Romania, Germany, Malta and the Czech Republic, as well as Europol, worked closely together through Eurojust's coordination centre. As a result, eight suspects were arrested, 61 searches and seizures were carried out and 43 freezing orders were executed, covering 21 properties valued at EUR 1 654 000, company shares with a value of EUR 757 000, along with large quantities of jewellery, bank deposits and life insurance estimated at EUR 458 000.

The coordination centre played a vital role in producing these positive results, as analytical and operational assistance was given in real time and any challenges presented by the legal systems in the Member States were overcome through the immediate sharing of information. The results of the coordination centre were significant for Eurojust in the fight against carousel fraud, not only for the positive operational results of the coordinated action day across the Member States, but also because the criminals were deprived of their assets, compensating Italy for the economic losses suffered due to the illegal activities of this OCG.

#### **2.1.6 Corruption**

Eurojust casework concerning corruption also significantly increased, with 90 cases registered in 2015, compared to 55 in 2014. The requests for operational support remained at the same level as in 2014, with 10 coordination meetings.

Greece, Romania and Croatia were the most requesting Member States. Germany, Cyprus and Italy were the most requested Member States.

Eurojust continued to participate in the discussions of the Asset Recovery Offices (ARO) Platform, as well as the Camden Asset Recovery Inter-Agency Network (CARIN), in which it participates as an observer.

### ***Case illustration***

In 2009, the Finnish National Bureau of Investigation launched a pre-trial investigation into a case of alleged aggravated bribery committed in Finland, Slovenia and Croatia in connection with the conclusion of contracts between a Finnish company specialising in the production of armoured vehicles and the Ministries of Defence of Slovenia and Croatia. The Finnish authorities suspected that representatives of the Finnish company were paying bribes to high-level government officials in Slovenia and Croatia, and further suspected that the money was transferred by an Austrian national via Austria to the respective officials.

To facilitate cooperation, Eurojust's support was requested concerning the Croatian and Slovenian investigations. Eurojust contributed to the building of trust between the authorities involved, and direct contact between the authorities was established as the cases progressed. However, the facilitating role of the National Desks in communication among the national authorities was the decisive factor in the fruitful cooperation. Until the Croatian National Desk was set up at Eurojust in 2013, the Croatian liaison prosecutor assisted Eurojust in communication with the Croatian authorities.

In 2010, JIT agreements were set up in both cases and were signed by Finland, Austria, Slovenia and Croatia. Several coordination meetings were held at Eurojust, enabling the participants to exchange information and agree on how to use the information gathered as evidence. As the cases approached the trial stage, the coordination meetings provided the participants with a forum to directly exchange evidence to be used in the judicial proceedings. At the meeting in February 2013, the participants reached agreement on the location of the prosecutions and decided on the participation of Finnish authorities in witness interviews in Austria.

Trials were held in Slovenia and Finland from 2013 onwards. The Finnish National Desk dealt with numerous requests from the Slovenian authorities to respond to the arguments of the defence regarding, among other things, the legality of coercive measures, such as house searches, carried out in Finland. Due to a legislative change in Finnish criminal law, the adherence of the applicable provisions to the fair trial standards of the European Court of Human Rights was challenged. As trial hearings were ongoing, the rapid support of Eurojust in rebutting the arguments was crucial.

The trial in Slovenia first resulted in a conviction. However, in 2015, the accused was eventually acquitted by the Slovenian Constitutional Court. In Finland, the appeals proceedings were ongoing in 2015. No charges were brought in Croatia.

### 2.1.7 Drug trafficking

Drug trafficking continued to be the second most often encountered crime type in Eurojust's casework, with 274 cases registered in 2015, and 57 coordination meetings held.

Denmark was the most requesting Member State, followed by Romania, France and Germany. The Netherlands was the most requested Member State, followed by Spain and Germany.

In addition, one coordination centre was set up and 25 JITs dealt with drug trafficking-related offences, eight of which were established in 2015.

In January 2015, Eurojust published its *Implementation Report of the Action Plan on Drug Trafficking* and its addenda. It was officially presented before the UN Commission on Narcotic Drugs in March 2015, during a side event on 'judicial cooperation in drugs trafficking cases', co-organised by the European Commission and Eurojust. The report outlines the progress achieved by Eurojust in the areas identified for improvement in cross-border judicial cooperation in the context of the strategic project, *Enhancing the work of Eurojust in drug trafficking cases*, and includes three issues in focus on: (i) controlled deliveries, (ii) precursors and NPS and (iii) cooperation with third States. The addenda benefited from the contributions received from the prosecutors participating in the 2014 strategic meeting at Eurojust. Following the successful completion of Phase I of the strategic project, the College of Eurojust decided to extend it to Phase II (2015-2016).

The College of Eurojust held a thematic discussion on controlled deliveries in October 2015, exchanging experience on complications encountered by judicial authorities in controlled deliveries, the role of Eurojust and improving Eurojust's capacity in future casework.

In addition, Eurojust actively participated in two meetings on controlled deliveries, organised by the Pompidou Group (Council of Europe) in June and November 2015, during which Eurojust contributed to the initiation of a project with the objective of drafting a handbook on controlled deliveries.

In June 2015, Eurojust contributed to the second edition of the EMCDDA's *EU Drug Markets Report* by providing statistical data, best practice and solutions, a case study and lessons learned concerning judicial cooperation in drug trafficking cases. Eurojust also provided input for the progress in the implementation of the EU Action Plan on Drugs 2013-2016.

Concerning NPS, Eurojust analysed the impact of the 10 July 2014 CJEU ruling on medicinal products (Joined Cases C-358/13 and C-181/14). The ruling excludes the use of medicine laws as an alternative legal basis to support the prosecution of NPS in situations in which the substance cannot be classified as a psychoactive drug under applicable narcotics legislation. Eurojust gathered best practice and solutions regarding the legal and practical obstacles arising from the CJEU ruling by analysing, *inter alia*, the supported NPS cases and the replies to a Eurojust questionnaire sent to the Member States mostly likely to be affected by it, namely Germany, Spain, Finland, France and the Netherlands. The Eurojust report, *Court of Justice of the European Union ruling on New Psychoactive Substances – Impact of the ruling on the prosecution of NPS cases* was finalised in December 2015 and will be published in early 2016. The report's preliminary results were presented at the EMCDDA Legal Correspondents meeting. The results were also presented at the 4th Law Enforcement Experts meeting on NPS, which was organised jointly by Europol, EMCDDA and the Ministry of Interior of Poland in the context of the EMPACT priority on Synthetic Drugs.



### **Case illustrations**

An **Italian case** concerning trafficking of NPS from Italy to the Netherlands was brought to Eurojust, primarily to facilitate the execution of an Italian MLA request to gather information on companies involved in the criminal activities and to carry out searches of several premises.

Due to the characterisation of the substances, the Dutch authorities could not execute the MLA request. While first thought to be mephedrone, criminalised under both Dutch and Italian law, technical analysis of the substances later proved the substances to be a derivative sub-product of mephedrone that fell outside the Dutch Opium Act. As an alternative legal basis, the Dutch authorities subsequently referred to the Medicines Act. However, following the CJEU ruling of 10 July 2014, the Medicines Act was only applicable for this purpose if the trafficked substance could be considered a medicinal product. The substance in question did not fall within the CJEU's definition of a medicinal product, and, as a consequence, the MLA request could not be executed on the basis of the Medicines Act. Other legal bases were explored, but as viable alternatives were not found, the MLA request could not be executed for lack of double criminality. The parallel investigation in the Netherlands was subsequently closed.

The **Belgian authorities** faced a similar challenge in an investigation into trafficking in GBL, a precursor used as a drug or further modified into the drug GHB. While GBL is not criminalised under Belgian law, the investigation was initiated on the basis of a suspicion that the substance was used for criminal ends. The investigation revealed links to the Netherlands and Poland. To facilitate judicial cooperation, the Belgian authorities approached Eurojust for support and a coordination meeting was held. The Dutch and Polish national authorities were willing to cooperate and exchange information with their Belgian counterparts, but faced the legal obstacle that GBL was not included on the list of controlled substances and, thus, was not illegal. Investigations could not be initiated until such time as additional information showed that the trade in this substance was linked to criminal activity, such as the modification of GBL into GHB. The execution of any MLA requests related to GBL met with the same legal obstacle. The case was ongoing in 2015.

An alternative legal basis for judicial proceedings and cooperation was also considered in a **Finnish case** of trafficking of NPS from China via Spain to Finland. The suspects were Finnish nationals who trafficked MDPV and alpha-PVP, two substances that were classified as narcotics in Finland, but not in Spain. A Finnish MLA request triggered the opening of an investigation in Spain.

The difference in classification of the substances, and the fact that Finnish nationals acted from Spain, raised jurisdictional issues and necessitated judicial cooperation between Finnish and Spanish authorities. Two coordination meetings were held at Eurojust, and a JIT was set up. The JIT resulted in arrests and execution of several Finnish EAWs in Spain, after which the Finnish and Spanish authorities agreed to transfer proceedings to Finland.

As the trafficked substances were not classified as drugs in Spain, an alternative legal basis for prosecution was found in Article 359 of the Spanish Penal Code on offences against public health. As the harmful substances that fall under this legal provision are not listed, a Spanish court decision verified the applicability of Article 359 to the trafficked substances. This solution satisfied the requirement of double criminality in both legal systems.

Eurojust played a crucial role as intermediary in facilitating judicial cooperation. Finland assumed jurisdiction in the case. A conviction was rendered by the Finnish Court of First Instance at the end of 2015 and was appealed.

### 2.1.8 Organised property crime committed by MOCGs

Organised property crime (OPC) committed by mobile organised criminal groups (MOCGs) covers a wide array of offences, such as motor vehicle crime, metal theft, pickpocketing, robbery and serial burglaries. Eurojust registered 201 cases of OPC in 2015 and held 21 coordination meetings. Thirteen JITs were in operation, including six formed in 2015.

Austria, France and Greece were the most requesting Member States. Germany, Italy and Romania were the most requested Member States.

Eurojust closely worked with Europol to support the fight against MOCGs, with a view to stimulating the national authorities to involve both organisations at an early investigative stage. Eurojust recommended that the national authorities involve Europol in an investigation into a large-scale MOCG involved in serial pickpocketing in several Member States, resulting in an operational meeting at Europol attended by prosecutors from Germany and Romania. On a strategic level, Eurojust supported an EMPACT initiative led by Europol to identify and target criminal groups from Bulgaria and Romania involved in serial burglaries, and representatives of the Bulgarian and Romanian National Desks at Eurojust participated in a Europol meeting on this topic in September 2015.

Eurojust and Spain continued to co-lead an OAP within the EMPACT project on OPC to identify and analyse practical and legal problems commonly faced, as well as best practice gained in OPC investigations across the European Union, and to raise awareness among law enforcement and judicial officials. Following a report, *Procedural and legal issues in proceedings on MOCGs specialised in OPC*, issued in 2014, Eurojust issued a follow-up report in 2015, *Procedural and legal issues in investigations, prosecutions and trials on Mobile Organised Crime Groups specialised in Organised Property Crime*. This report provides an analysis of the main challenges arising in OPC investigations. The report is based on the responses to a questionnaire addressed to judges and prosecutors, as well as specific initiatives and policies set in motion in Belgium and Norway to combat OPC. One of the challenges addressed in the report concerns the non-applicability to OPC-related offences, in some jurisdictions, of the same investigative measures of an intrusive nature (e.g. surveillance, wiretapping) typically and effectively used in the investigations of other serious organised crimes.

### ***Case illustration***

A German investigation into large-scale theft of motor vehicles and valuable car parts, such as navigation systems and airbags, uncovered an OCG, composed of Lithuanian, Latvian and German nationals, with links to several cities in Lithuania. Lithuanian youngsters between the ages of 16 and 19 were brought to Germany, mainly to commit thefts of and from motor vehicles. In addition to thefts, the OCG was suspected of committing burglaries and robberies. The stolen goods were shipped through Poland to be sold in Lithuania. The investigations disclosed that not one large, but rather six smaller OCGs that acted independently from each other were involved in the criminal acts. The OCGs worked together only for the purpose of transporting the goods to Lithuania.

To dismantle the OCGs, the German authorities saw the need for cross-border judicial cooperation and approached Eurojust for support. Coordination meetings were held in December 2014 and July 2015, leading to close cooperation between the involved public prosecution offices and police forces, and a smooth and accelerated exchange of information and execution of MLA requests.

This close cooperation culminated in a successful joint operation in October 2015. Over 1 000 police officers in Lithuania and Germany carried out searches of more than 100 homes and businesses. Liaison officers of the Lithuanian and German police were exchanged to enhance the effectiveness of the operation. To facilitate the joint actions, Eurojust representatives were in direct contact with the national authorities throughout the action day. Several German EAWs were executed on the action day and 47 suspects were arrested, including some leaders of the OCG. A considerable amount of cash and stolen goods was confiscated.

Supported by Eurojust, the common efforts of the German and Lithuanian authorities led to the discovery of 440 individual criminal acts and the establishment of criminal liability. The damages caused by these activities amounted to approximately EUR 7.5 million. The case was ongoing in 2015.

## **2.2 Eurojust assistance in other fields of criminal activity**

### **2.2.1 Money laundering**

Money laundering represents an area of continuing growth in Eurojust's casework as a direct consequence of the ancillary nature of this type of offence, which is typically associated with crimes such as fraud. In 2015, 283 money laundering-related cases were registered, a sharp increase compared to 2014 (220). Fifty-five coordination meetings on money laundering cases were held, the third most frequent crime type, after fraud and drug trafficking, dealt with in coordination meetings.

The most requesting Member States were Greece, France and Romania. The most requested Member States were Germany, Italy, Cyprus and the UK.

### 2.2.2 PIF crimes

Seventy cases dealing with offences that directly or indirectly affect or may affect the EU's financial interests (PIF crimes) were registered in 2015. Currently, not all Member States consider VAT fraud as a type of offence affecting the EU's financial interests. In Eurojust statistics, VAT fraud is treated as a separate category and not counted as a PIF crime. Eurojust operational support in PIF cases provided through coordination meetings increased (11, compared to seven in 2014) and Eurojust provided support to JITs (five JITs active in 2015, including four from 2014).

Greece, Hungary and Romania were the most requesting Member States. Germany, the Slovak Republic and the UK were the most requested Member States.

In 2015, the College of Eurojust agreed not to prioritise the strategic work in this area until the legislative process on a new Directive on PIF crimes is finalised and a commonly agreed definition of PIF crimes is adopted at EU level.

In October 2015, Eurojust contributed to a European Commission study on the potential benefits of an EPPO conducted by the *Consortium Österreichisches Institut für Wirtschaftsforschung* (ECORYS). An overview was provided of the number of cases concerning PIF and VAT fraud, including information on the requesting and requested Member States and cooperation with third States.

### 2.2.3 Maritime piracy

In April 2015, the second *Maritime Piracy Judicial Monitor (MPJM)* was published as a Eurojust document with limited access, following the publication of the first *MPJM* in September 2013 to enhance the expertise of European prosecutors dealing with maritime piracy cases and provide them with additional tools for ongoing and future cases. The *MPJM 2015* contains an overview of the applicable legal framework of 19 Member States, as well as Norway and the USA, and bilateral agreements with third States on the transfer of suspected pirates.

It further presents an analysis of judicial decisions that were either rendered in the first instance or are a follow-up to cases presented in the *MPJM 2013*. The analysis highlights practical and legal issues brought forward in the decisions, including human rights law aspects as well as challenges regarding maritime piracy proceedings held against minors or in third States.

The *MPJM 2015* also describes the process of establishing and running JIT Nemesis, a maritime piracy-related JIT, which was reconstructed through interviews with the Dutch and German public prosecutors who initiated and participated in the JIT, as well as Europol. Finally, it discusses the decrease in the number of piracy incidents in the Gulf of Aden, recognises the shift in piracy activity to West Africa, highlights the different shape of the phenomenon in the Gulf of Guinea and examines international cooperation at operational (e.g. via INTERPOL) and judicial levels in dealing with this emerging threat.

### ***Meeting on maritime piracy***

Eurojust held a maritime piracy meeting on 20 May 2015 with the participation of more than 40 experts in the investigation and prosecution of maritime piracy-related crimes, i.e. representatives of national judicial and law enforcement authorities of the Member States, Norway, Switzerland, the USA, Mauritius and Seychelles, as well as representatives of Europol's FP Maritime Piracy, INTERPOL's Maritime Security Sub-Directorate and the Registry of the European Court of Human Rights.

The goal of the meeting was to exchange information on recent maritime piracy cases and discuss strategies in the fight against maritime piracy, as well as the importance of international judicial cooperation in investigations and prosecutions. The main findings of the *MPJM 2015* were also discussed.

The meeting provided two interactive sessions. The first session, *The ups and downs of prosecuting maritime piracy offences: challenges, lessons learned and success stories*, included presentations from the prosecutors/judges who dealt with recent maritime piracy cases in Spain, Italy, the Netherlands, Poland, Germany, Belgium and France. The session touched upon a wide range of practical and legal challenges arising in such cases, including the collection of evidence, apprehension of suspects and cooperation within a JIT. Aspects related to due process and fair trial in maritime piracy cases, with particular regard to the right of suspects to be brought promptly before a judge, were also discussed.

The second session was entitled *Regional and international cooperation: the importance of legal and operational assistance in the fight against maritime piracy*. Representatives of Mauritius and Seychelles presented the legal frameworks and practical aspects of their authorities' judicial response to the maritime piracy phenomenon, while Europol and INTERPOL representatives presented the activities of their organisations in the field of international cooperation and the support provided to law enforcement and investigating authorities in countering maritime piracy.

#### **2.2.4 Environmental crime**

The Eurojust Contact Point on Environmental Crime follows up on environmental crime matters and shares expertise and best practice with practitioners and external stakeholders. To enhance judicial cooperation and to support competent authorities of the Member States in relevant cases, Eurojust is working on a list of contact points within the national prosecution services of the Member States with expertise in the field of environmental crime to increase the operational capacities of competent authorities in cross-border cases involving environmental offences.

Eurojust registered five cases concerning environmental crime in both 2014 and in 2015. Two of these cases had a fraud component. Sweden was the most requesting Member State in environmental crime cases, while Germany and the Netherlands were the most requested Member States.

Eurojust has maintained contacts with a number of networks active in the field of environmental crime, such as EnviCrimeNet and the European Network of Prosecutors for the Environment. Eurojust has been attending meetings of the DG ENVI Enforcement Group, which monitors enforcement policy and practice in the Member States and makes recommendations to improve the enforcement of wildlife trade legislation. Eurojust provides input to the discussions from a judicial perspective.

### 2.2.5 Child protection

In 2015, 45 cases involving victimised children were registered by Eurojust. The crime types most associated with offences against children were sexual abuse, THB, abduction, and child abuse images. The Slovak Republic, Sweden and Romania were the most requesting Member States, while Germany, the UK and Italy were the most requested Member States.

Eurojust's commitment to countering crimes against children is further supported by the work of the Contact Point for Child Protection, who represents Eurojust in matters of judicial cooperation relating to crimes committed against children, child protection and related matters towards national authorities, law enforcement organisations and other national or international bodies, including at the Second Awareness-Raising Conference of the European Financial Coalition against Commercial Sexual Exploitation of Children Online (EFC) held in 2015 at the European Parliament. The Contact Point also advises National Desks on tools and measures specifically designed for criminal investigations and proceedings concerning children, including witness and victim protection. Further, the Contact Point actively participated in the EMPACT meetings, with responsibility for the identification of best practice based on Eurojust's casework.

#### ***Meeting on major sports events***

On 17 and 18 June, Eurojust hosted a meeting on the *Development of a Best Practice Guide for judicial cooperation in relation to major sports events*. The meeting brought together experts from seven Member States that recently organised major sport events, namely Portugal, the Netherlands, Sweden, Belgium, Austria, the UK and France, as well as representatives of the EJM and the European Commission. Practitioners dealing with judicial cooperation in criminal matters in relation to major sports events met to discuss improving the sharing and exchanging of experience in preventing, investigating and prosecuting crimes that might be committed during such events.

The outcome was the identification of recommendations on how to exchange general information prior to, and case-related information and evidence during, major sports events, on the choice of forum for the prosecution, trial and execution of sentences regarding event-related crimes and on the application of fast-track procedures, if possible under the Host State's national law. Eurojust's role in enhancing cooperation between national competent authorities in relation to major sports events was highlighted, notably in assisting and facilitating the establishment of contact between the competent judicial authorities of the host State and participating States and in providing advice in cases of conflict of jurisdiction.

The Eurojust document, *Recommendations on judicial cooperation in criminal matters in relation to major sports events*, has been developed and is available on Eurojust's website.

## 2.3 Eurojust's partners

### 2.3.1 Cooperation with Europol

In 2015, Eurojust and Europol renewed their efforts to strengthen their cooperation, in line with the provisions of the Lisbon Treaty and their 2009 Cooperation Agreement.

Eurojust and Europol regularly exchanged information on scheduled operational meetings at Europol and coordination meetings at Eurojust to ensure that both are aware of ongoing operational work. Europol attended 99 coordination meetings and was involved in 34 cases registered at Eurojust in 2015. Europol attended five coordination centres.

Eurojust continued to be a fully integrated participant in Europol's focal points. In 2015, Eurojust gained formal association with Focal Points Asset Recovery, Sports Corruption and Travellers, bringing the total number to 24. Last year, Eurojust participated in a number of operational activities held within the framework of Focal Point Furtum (Operation Kasimir and Operation Sprinter, which targeted OCGs involved in the theft of cars and car parts in Germany and Poland, respectively) and Focal Point Cola (Operation Partagas, which resulted in the arrest of a major UK international drug trafficker in Spain). Moreover, Eurojust monitored the developments of the EMPACT joint action days called Operation Blue Amber, which took place in the course of 2015, by being on standby via the OCC and by attending briefing sessions at Europol's Operation Centre to ensure prompt judicial follow-up when required.

Eurojust contributed to Europol's 2015 TE-SAT by providing data on convictions and penalties for terrorist offences in the Member States – collected pursuant to Council Decision 2005/671/JHA – and relevant amendments in national legislation on terrorism. Eurojust participated in the development of the revised methodology for the upcoming SOCTA 2018-2021 report.

At regular meetings at working and management levels, the following topics were discussed to enhance cooperation and explore further means of cooperation: (i) the relationship between Europol focal points and Eurojust contact points, (ii) the possibility of cross-checking Eurojust data against Europol's information system and (iii) the 2014 Joint Annual Report to the Council and the Commission (EU document 10472/15).

Eurojust and Europol continued to hold exchange programme sessions, which are designed to raise mutual awareness of their respective tasks, structures and capabilities.

### 2.3.2 Cooperation with OLAF

Based on the Practical Agreement of 2008, cooperation between Eurojust and OLAF in countering fraud, corruption and other crimes affecting the financial interests of the European Union continued. This cooperation shows how important information exchange and mutual involvement are in safeguarding the EU's financial interests.

Eurojust and OLAF worked jointly on 20 cases (eight Eurojust cases and 12 OLAF cases), seven of which were new common cases opened in 2015. OLAF representatives attended five coordination meetings at Eurojust, leading to an effective multiagency approach in cross-border cases. Eurojust also attended one coordination meeting organised by OLAF at its premises.

A milestone in operational cooperation in 2015 was the co-participation of OLAF, for the first time, in a JIT. The case concerned an OCG involved in excise fraud, tax evasion, cigarette smuggling and money laundering. The targeted OCG assembled huge quantities of cigarettes in clandestine factories by using illegally procured components (tobacco, filters, foil, packages, tax stamps). The cigarettes were subsequently illegally introduced into the European Union by truck or other land transportation means, accompanied by forged export, import and transit documents.

Eurojust and OLAF regularly exchanged case summaries concerning PIF crimes to identify cases that would benefit from mutual collaboration. The information exchange has become more detailed to facilitate the assessment of the collaboration and identification of best practice, with specific information, such as number and type of coordination meetings organised or JIT-related activities.

During the regular meetings between Eurojust and OLAF at working and management levels, opportunities to increase cooperation were discussed, such as the evaluation of the methodology of exchanges of case summaries, and training. In 2015, Eurojust organised a second training session at OLAF to raise the awareness of investigators of the role and tasks of Eurojust and its working methods.

#### ***Eurojust and training***

Eurojust's thematic seminars are attended by practitioners and allow for the sharing of experience and best practice. These seminars can be considered practical training. More specifically, Eurojust supports training in judicial cooperation in criminal matters on the basis of a Memorandum of Understanding signed with the EJTN (2008).



In the framework of the EJTN Exchange Programme, 15 prosecutors/judges from eight Member States (Germany, Austria, Hungary, Poland, Sweden, Spain, Italy and Bulgaria) participated in long-term trainee periods (3 or 4 months) at the Eurojust National Desks, supporting their operational work. In 2015, Eurojust introduced a one-week study visit, which took place in March and was attended by 25 prosecutors/judges from 17 Member States. In addition, members of the National Desks actively participated in six EJTN seminars within the framework of the Criminal Justice Project I, *International Judicial Cooperation in Criminal Matters in Practice: EAW and MLA simulations*. Eurojust's role in these seminars is to supervise the work of the practitioners. Following the rationale behind the methodology of 'learn by doing', a presentation, *The Role of Eurojust in Judicial Cooperation in Criminal Matters*, is scheduled for the last day as a conclusion to the seminar. On 7 December 2015, the Secretary General of the EJTN met with the President of Eurojust to discuss ways to enhance cooperation.

In accordance with the Memorandum of Understanding with CEPOL (2010), Eurojust also continued to support training courses in different areas, such as financial investigations and excise fraud analysis, cocaine and heroin smuggling, counter-terrorism and FTFs, counterfeiting of goods and intellectual property rights, JITs, EAWs and EIOs, THB and illegal immigrant smuggling. Further, jointly with the EJTN, Eurojust actively participated in the course *Joint Investigation Teams and Team Leadership*.

Eurojust supports CEPOL webinars by disseminating them internally and sometimes actively participates in them with speakers, e.g. the webinar *Police and Judicial Cooperation in the field of Child Sexual Exploitation*. Eurojust is also a stakeholder in CEPOL's European Joint Master Programme.



### 2.3.3 Cooperation with third States

#### *Cooperation agreements*

Negotiations for cooperation agreements with Ukraine and Montenegro were finalised. Both draft cooperation agreements were submitted to the Council for approval. Following the judgement of the CJEU of 16 April 2015, in all cases where acts under the former third pillar confer implementing powers on the Council, the Council should consult the European Parliament, pursuant to Article 39(1) of the former Treaty on European Union. In accordance with the new procedure in place, the Council launched consultation procedures with the European Parliament in October 2015. Discussions were held with the Moldovan authorities with a view to the entering into force of the Cooperation Agreement between Eurojust and Moldova, which was signed in July 2014.

Contacts were pursued to assess the implementation of data protection legislation and explore the possibility of initiating negotiations on cooperation agreements with Albania, Bosnia and Herzegovina, Israel, Serbia and Turkey. Georgia was added to Eurojust's priority list to initiate preliminary talks on the possible entry into negotiations for a cooperation agreement. Contacts to explore possibilities for future cooperation agreements were established with Brazil. The establishment of contacts with other Latin American and Caribbean countries, particularly Colombia and Mexico, was also reconfirmed as a priority.

#### ***Seminar on the application of the Mutual Legal Assistance and Extradition Agreements between the European Union and the USA***

On 8 and 9 October, the *Seminar on the application of the Mutual Legal Assistance and Extradition Agreements between the European Union and the USA* was held at Eurojust. The seminar was jointly organised by the USA, the European Commission and Eurojust as a follow-up to the 2012 *Workshop on the application of the Mutual Legal Assistance and Extradition Agreements between the European Union and the USA*.

The seminar brought together practitioners from the Member States and the USA, the Liaison Prosecutors for Norway and Switzerland posted at Eurojust as well as representatives from the European Commission, the General Secretariat of the Council, the EU Counter-Terrorism Coordinator, the Council of Europe and Europol. During the open sessions of the seminar, representatives of the private sector were also present.

The seminar was conducted in the spirit of good cooperation and showed the will of all participants to work together to improve judicial cooperation between the Member States and the USA. Therefore, emphasis in the presentations and discussions was placed on enhancing trust and understanding each other's legal systems and potential for cooperation while remaining aware of the limits placed by the applicable legal framework and available resources.

A main focus of the seminar was to provide participants with an extensive overview of the possibilities, requirements and limitations in preservation and gathering of electronic evidence, and ensuring its admissibility in criminal proceedings. Other topics discussed in more detail were confiscation, asset recovery and sharing of assets, cooperation in extradition proceedings and the status of application of the EU-US Mutual Legal Assistance Agreement, particularly regarding obtaining bank information according to Article 4 and the setting up of JITs according to Article 5 of the abovementioned agreement. The participants from the USA provided valuable information and materials regarding the practicalities and legal requirements for different forms of MLA and extradition requests towards the USA, and their EU counterparts did likewise.

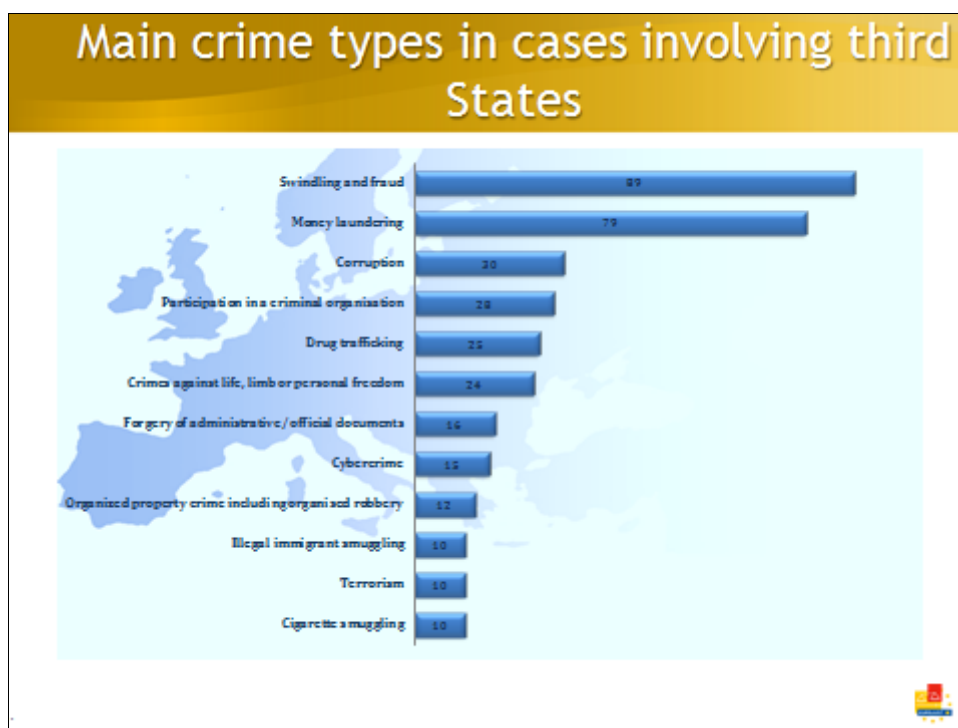
The seminar concluded with an outlook on recommendations to be considered by the Member States and the USA to improve judicial cooperation and to address the identified issues therein, such as the organisation of workshops that could be supported by Eurojust subject to availability of budget and resources.

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

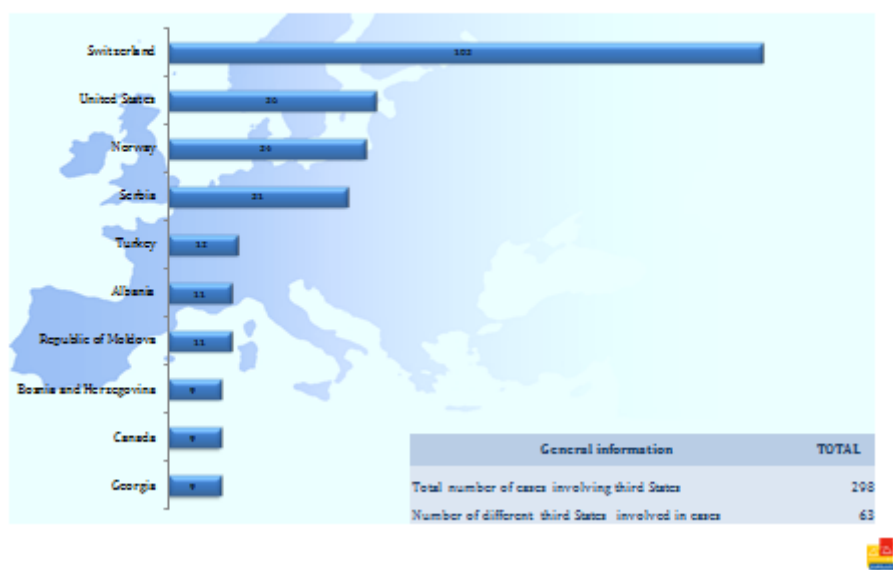
Eurojust provided assistance in 298 cases involving third States, a significant increase compared to 208 cases in 2014. Out of the 63 third States, Switzerland (103) was the most frequently involved third State, followed by the USA (36), Norway (34) and Serbia (31).

The main crime types were swindling and fraud, money laundering, corruption, involvement of an OCG, drug trafficking and crime against life, limb or personal freedom. In 2015, the number of cybercrime cases involving third States increased when compared to 2014 (from 10 to 15). Terrorism and illegal immigrant smuggling are now also among the main crimes types involving third States when compared to 2014.

Third States were represented at 67 coordination meetings organised by Eurojust, compared to representation in 41 coordination meetings last year. The third States attending Eurojust coordination meetings were Switzerland (19), followed by the USA and Norway (14 each), and Ukraine (6). Switzerland (2), Norway (1) and Ukraine (1) were involved in coordination centers at Eurojust. Involved third States in JITs were Norway (3), Moldova and Serbia (2 each), as well as Australia, Bosnia and Herzegovina, Switzerland, Ukraine and the USA.



## Top ten third States in Eurojust casework



### *Case illustrations*

In December 2014, French authorities sought Eurojust's assistance to disrupt an OCG based in Bosnia and Herzegovina (BiH), with links to Austria and France. The OCG, run by a clan leader and his three sons, was engaged in THB involving minors, exploiting the victims by forcing them to commit theft, mainly on the Parisian public transport system. The OCG, active since at least 2012, was further suspected of drug dealing, trafficking of stolen vehicles and money laundering, with estimated profits exceeding EUR 2 million. The proceeds were sent back to BiH and were used to buy luxury vehicles and properties.

Two coordination meetings were set up in The Hague and Sarajevo, respectively, facilitating the sharing of information between France and BiH, and thus avoiding the initiation of parallel investigations in Austria. To advance the investigations in France and BiH, the first-ever JIT between a Member State and BiH was set up. The JIT served to simplify the involvement of investigators from one State in the investigations pursued by the other State. Through the JIT, the participating States were able to synchronise their operations, particularly during the arrest phase, and to avoid the loss of information, as well as the possible escape of suspects. The JIT cooperation also furthered the gathering of evidence to be used in the judicial proceedings and the seizure and confiscation of proceeds of crime both in France and BiH.

The close cooperation among the judicial authorities, police, NGOs, UNODC, institutions in charge of legal child protection and Eurojust throughout the case demonstrates that international judicial cooperation with third States brings positive results, even when dealing with advanced and complex forms of OCGs. Ultimately, a common action day set up in France and BiH in July 2015 led to the disruption of the OCG.

Eurojust's support was requested in a Spanish money laundering case affecting at least 11 Member States and several third States. The Spanish authorities suspected an OCG of laundering a significant amount of money through investments in real estate in Costa del Sol (Malaga, Spain). Payments were channelled through Belgium, France, Germany, Ireland, Poland and the UK, as well as through Switzerland, the USA and Gibraltar. The OCG was also suspected of bribing local Spanish authorities by making illegal payments to obtain building permits (abuse of duties and bribery offences). At the time of opening a Eurojust case in April 2013, the suspected former leader and financier of the OCG had been tried and convicted in the USA for money laundering, and the Spanish investigation focused on his successors and other involved parties.

A coordination meeting was held in July 2013, which confirmed that the case was linked to similar activities in many countries and highlighted an ongoing investigation in Belgium related to the former leader and his accomplices. Asset recovery was brought forward as one of the main objectives of the Spanish investigation. Participants pointed to the national legislative framework applicable to this offence. As in various other Member States, the Spanish case depended on the determination of a predicate offence for money laundering, requiring a need for additional evidence from other participating States. Eurojust facilitated the transmission of Spanish MLA requests to several Member States and to Switzerland. Considering that the Spanish investigation related to money laundering committed in Spain, a *ne bis in idem* situation was discussed, but was not considered to be a serious risk.

The case was linked to a UK case registered in 2013, and, therefore, a joint coordination meeting related to the same OCG was held in March 2014. A possible JIT between Spain and the UK was considered, but was not found to be appropriate at the time, as emphasis was put on direct liaison and 'targeted' MLA. In support of the Spanish cases, the Belgian authorities agreed to share with their Spanish counterparts any available Belgian court decisions that had been rendered against the former leader of the OCG.

By 2015, investigations into the illegal practices of the OCG had been opened in a number of States, and many MLA requests had been issued by the Spanish authorities. In preparation for the coordination meeting in February 2015, Eurojust made an analysis of all outstanding MLA requests, thus streamlining the discussion on the state of play of their execution in the participating States and leading to a valuable exchange of information. At this stage of the case, the *ne bis in idem* issue was raised again. Participants agreed that a copy of the indictment that had been prepared as a result of the Belgian investigation would be sent to the Spanish authorities to avoid a possible later *ne bis in idem* issue. Eurojust's assistance, under the umbrella of Article 40 of the Eurojust Council Decision, was requested to progress the swift execution of a Spanish MLA request to Gibraltar, which is an autonomous jurisdiction. Europol was involved throughout the case and supported the ongoing judicial proceedings by providing all involved States with a detailed report linking cases in a number of States.

The case was ongoing in 2015.

### Liaison Prosecutors at Eurojust

The presence of Liaison Prosecutors at Eurojust and their involvement in cases has been considered beneficial in identifying the relevant contact points in their State of origin and facilitating judicial cooperation between the competent authorities of concerned Member States and third States. Eurojust has three Liaison Prosecutors, seconded from Norway, the USA and, since March, Switzerland.

Following the visit of the Honorable Ms Loretta Lynch, US Attorney General, and her announcement of the secondment of a US Cybercrime Prosecutor from the US Department of Justice's Criminal Division to Eurojust, a US Cybercrime Prosecutor was appointed in November to take up duties in January 2016.

The Liaison Prosecutor for Norway registered 50 cases, mainly dealing with drug trafficking and involvement in an OCG. The most frequently involved Member States in these cases were Poland, Lithuania, Spain and France. The Liaison Prosecutor for Switzerland registered 47 cases, mainly dealing with swindling and fraud, money laundering, corruption, crimes against life, limb or personal freedom and drug trafficking. The most frequently involved Member States in these cases were Spain, Germany, the Netherlands and the UK. The Liaison Prosecutor for Switzerland organised two coordination meetings and co-organised one, and the Liaison Prosecutor for Norway organised two coordination meetings.



### *Eurojust contact points in third States*

The appointment of Eurojust's contact points in third States is another tool commonly used for improving cooperation between Member States and third States by facilitating contacts through Eurojust. In 2015, Eurojust continued to extend its worldwide network of contact points by adding contact points from Algeria, Chile, Iraq, Jordan, Lebanon, the Palestinian Authorities and Saudi Arabia. At present, a total of 39 third States have Eurojust contact points.

### *Support for external projects*

Eurojust continued to support initiatives in the Western Balkans, such as the projects mentioned above (*see* chapter 2) regarding illegal immigrant smuggling and THB, including the EU-funded Instrument for Pre-Accession Assistance 2014 project *International Cooperation in Criminal Justice: the Prosecutors' Network of the Western Balkans*.



## Operation Vertigo: a closer look

A typical cross-border fraud case would tend to follow logical geographical lines and could, for example, focus on a particular language group. Operation 'Vertigo' did not follow a usual pattern. Its sheer scale and complexity made it exceptional.

In this carousel fraud case, the OCG behind the criminal activity used a sophisticated infrastructure (buffer companies, missing traders, companies functioning as 'alternative payment platforms' to facilitate money laundering and crime-related money transfers) spread over various Member States and a number of third States, defrauding EU citizens of approximately EUR 320 million in tax revenues.

Several coordination meetings, initiated by the German Desk at Eurojust, took place at Eurojust between November 2013 and October 2015. The Czech Republic, Germany, Poland and the Netherlands established a JIT, partly funded by Eurojust. Eurojust and Europol demonstrated strong collaboration from the early stages of the investigation. Europol provided extensive analytical support and intelligence sharing.

A coordination centre set up at Eurojust coordinated the judicial response and provided support to the **first common action day** in 2015, the goal of which was to disrupt the operation of one branch of the OCG. As a result, nine suspects were arrested and 26 premises in the participating Member States were searched.

The **second common action** day led to the arrest of 14 suspects, including some alleged masterminds, and more than 40 searches. In parallel, the German, Czech and Polish authorities proceeded to carry out arrests and searches on the basis of national warrants in the framework of their own national investigations.

The **third common action day** focused on searches and interviews of suspects and witnesses who had been identified mainly based on evidence gathered in the framework of the two previous common action days. More than 49 searches and 27 hearings of witnesses and suspects were carried out in Belgium, the Czech Republic, Denmark, France, Germany, Italy, Ireland, Luxembourg, the Netherlands, Poland, Romania, the Slovak Republic, Spain, Sweden and the UK.

Europol deployed a mobile office at all three Eurojust coordination centres, which allowed direct access to Europol's databases for cross-checking and analysing data and facilitated real-time information exchange. Eurojust facilitated the handling of MLA requests, EAWs, searches, seizures and hearings on the spot.

*Legal and practical issues:*

- The key challenge was the *modus operandi* of this OCG, particularly the way in which the OCG managed the payments, making use of so-called alternative payment platforms to facilitate crime-related money transfers and associated money laundering. This method allowed the OCG to spread its activities across the globe, for example by placing the tool for managing payments in one country while the bank account of the alternative payment platform was located in another country. Furthermore, the masterminds behind the fraud could reside anywhere, without being limited by the ongoing criminal activities, meaning that any action on the part of the investigating authorities would require them to cross the border of their own jurisdiction, necessitating international cooperation.
- The size of the investigations also necessitated cross-border cooperation. In Germany alone, more than 500 MLA requests were issued.
- Due to the large scope of the criminal activities, a number of investigations had been initiated in the affected States. Facilitating and coordinating effective judicial cooperation in this setting required that all parallel investigations were identified.

*Lessons learned:*

- Despite the links discovered to most Member States, a decision was made to focus the Eurojust case on the main States involved. The effectiveness of a dynamic JIT composed of only four Member States was considered more important than establishing a more inclusive but perhaps less flexible JIT.
- The channelling of MLA and requests made among JIT partners through Eurojust was only done for requests to be executed during the action days. Future cases could profit from channelling all such requests, including follow-up requests, through Eurojust.
- To prepare an action day, a coordination meeting at Eurojust was held six weeks before the envisaged date. At least one month before this coordination meeting, notifications about the targets or, if possible, drafts of the MLA and JIT requests were distributed via the National Desks of the involved countries, for the purpose of collecting and verifying data concerning the targets, prior to issuing a domestic court order. In this fashion, a more expedient execution of MLA requests can be achieved and sufficient time can be allocated to prepare the final MLA requests and the necessary translations, as well as the execution of the requests during the action day.
- Three coordination centres were necessary due to the scope of the case and the actions needed and also allowed the national authorities to focus on a certain level of perpetrators or measures each time.
- During the coordination centres at Eurojust, direct communication without necessarily having to first go through the respective National Desks (for example, Dutch authorities communicating directly with the representative of the Eurojust German or Spanish Desk and vice-versa) worked very well, enabling the handling of an immense number of follow-up measures at very short notice.
- Communication and follow-up of MLA requests via the Eurojust National Desks took a great burden off the national authorities.

*Best practice:*

- The early involvement of Eurojust ensures that the authorities competent to execute the MLA requests are identified at an early stage and that direct contact with these authorities is established. For example, close cooperation with the police on Cyprus on the first action day was of added value, as the determination of the actual place of residence of a main suspect and his arrest on the basis of an EAW was made possible.
- To prepare an action day, a coordination meeting at Eurojust should be held at least six weeks before the envisaged date.
- Strong collaboration among all parties involved should be ensured at an early stage, which is an important factor in the success of the investigations. For example, Europol was able to link the German, Polish, Czech and Dutch investigations. This collaboration, together with the help and coordination of Eurojust and Europol, were key factors in forming the JIT.
- While all States participating in the JIT had previous experience with this judicial coordination tool in smaller scale cases, the present case convinced the JIT participants that large-scale cases can equally be handled more efficiently through JITs.
- A form has been created, which is used among JIT members to keep track of requests made and evidence exchanged.
- While Eurojust coordination centres to date have offered a complementary service to national coordination efforts during action days, the coordination centres set up in this case acted as the *sole* point of coordination of the actions in the main participating States. This case demonstrates that Eurojust can perform the full range of tasks involved in a large-scale multilateral action day. The active participation of the national authorities ensured the smooth flow of information between the Eurojust coordination centre and the authorities responsible for executing the actions.
- The presence at Eurojust of national authorities from participating countries during the common action days, working together with Eurojust staff in one room, ensures an immediate pooling of information, which allows for quick judicial responses to new/emerging evidence/information (for example, new freezing orders, searches), prompt solutions to practical problems and conclusions from all sides.
- The process of collecting lessons learned throughout the lifecycle of a case significantly helps in improving cooperation and in facilitating the judicial response among the identified stakeholders. Having collected this information will also be of great assistance to the evaluation at the end of the Eurojust case, the results of which can be used for future cases of a similar scope and size.

The Polish, Dutch and German prosecutors in charge of the case commented on the third joint common action day in November 2015:

*'While still busy gathering and evaluating the outcome of the numerous procedural measures conducted during the action day, we can already say that the operation was a huge success, which was only made possible by the outstanding contributions from all the participants. It proves that working together in a JIT with support of Eurojust, Europol and the national authorities give us an advantage in the ongoing international battle against MTIC fraud.'*

## Chapter 3 Challenges and best practice

Through its operational casework and its strategic work, Eurojust contributes to the identification of challenges and best practice in different areas of judicial cooperation in criminal matters. In 2015, Eurojust focused on three areas: conflicts of jurisdiction, data retention and controlled deliveries.

Conflicts of jurisdiction was a priority for the EU Presidency in the framework of the 9th meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States (Consultative Forum). Eurojust gave its input to the reflections based on its operational experiences and lessons learned.

The annulment of the 2006 Data Retention Directive by the CJEU in April 2014 necessitated an analysis of the impact of this judgement on Member States' national legislation as well as an identification of difficulties caused thereby in the prevention, detection, investigation and prosecution of serious crime and judicial cooperation in relation thereto. Eurojust supported such impact assessment with regard to data retention.

The College of Eurojust chose to hold a thematic discussion on controlled deliveries, bearing in mind the challenges observed in Eurojust's casework in this area.

### 3.1 Conflicts of jurisdiction

Eurojust continued to support national practitioners in cases regarding the prevention and resolution of conflicts of jurisdiction. As in preceding years, the majority of cases were settled informally rather than through the formal use of the powers under Articles 6 and 7 of the Eurojust Council Decision. In 2015, no formal recommendations were made by the College under Article 7 of the Eurojust Council Decision, but the use of Article 6(a)(ii) of the Eurojust Council Decision by the National Desks increased considerably, with 34 requests issued in 2015 compared to 12 in 2014. The Hungarian Desk made the greatest number of requests, followed by the Spanish Desk. The German Desk received the greatest number of requests, followed by the Austrian, French and UK Desks.

Eurojust Level II meetings, coordination meetings and JITs are considered to be crucial tools in the context of conflicts of jurisdiction. They facilitate the effective and early exchange of information and help to identify and/or coordinate possible parallel proceedings, to detect links with cases in other Member States, to prevent conflicts of jurisdiction, to agree upon transfer of proceedings and/or to avoid *ne bis in idem*.

One of the main challenges related to conflicts of jurisdiction is the early detection of parallel proceedings. In this regard, Article 13(7)(a) of the Eurojust Council Decision, which imposes a duty on national authorities to inform Eurojust of cases in which conflicts of jurisdiction have arisen or are likely to arise, plays a pivotal role. Unfortunately, the number of notifications under Article 13(7)(a) suggest that this provision is still underused. Even though the number of notifications on the basis of Article 13(7)(a) of the Eurojust Council Decision has increased since 2011, the actual number of notifications in 2015, namely 35, remains low. Moreover, these 35 notifications originate from only five Member States: Hungary (21 notifications), Spain (11 notifications), Belgium, the Netherlands and Finland (one notification each).

Conflicts of jurisdiction was the topic of discussion at the June 2015 Eurojust strategic seminar, *Conflicts of jurisdiction, transfer of proceedings and ne bis in idem: Successes, Shortcomings and Solutions*. The report was published as Council doc. 14172/15 and available on Eurojust's website. The report was also discussed at the 9<sup>th</sup> meeting of the Consultative Forum (see section 5.4). At these meetings, national practitioners, Forum members and Eurojust representatives discussed shortcomings of and solutions to four issues: parallel proceedings, criteria to determine which jurisdiction should prosecute, transfer of proceedings and *ne bis in idem*.

**Parallel proceedings:** Participants concluded that problems such as duplication of work, waste of resources and *ne bis in idem* issues can occur if parallel proceedings are not identified at an early stage and/or they are not coordinated. Solutions to enhance early identification include increased communication between competent authorities, increased awareness of the duty of national authorities to inform Eurojust in cases of conflicts of jurisdiction (Article 13(7)(a) of the Eurojust Council Decision), and possibly also, in the long run, the creation of centralised national databases of ongoing investigations and a system to link these databases at EU level. Coordination meetings and JITs were considered excellent tools to coordinate parallel proceedings.

**Criteria for deciding on the best place to prosecute:** Participants underlined that most Member States have general criteria on internal jurisdiction, but few have set criteria for deciding on the best jurisdiction to prosecute in cases of conflicts of jurisdiction in a cross-border context. The Eurojust *Guidelines for deciding which jurisdiction should prosecute?* were considered a very useful tool, but they could be further elaborated by including examples or by stipulating additional criteria to reflect recent developments in EU criminal justice. Participants argued that, to ensure flexibility and adaptability to different case scenarios, criteria should not be ranked.

**Transfer of proceedings:** Participants' commonly held view was that many challenges exist, such as the lack of a legal basis, lack of information on the follow-up of the case, lack of deadlines, translation issues and evidential problems. Early contact, active cooperation, early assessment of the validity of the evidence to be transferred and translation of case summaries at an early stage were considered examples of best practice. A new EU legislative instrument on transfer of proceedings, with, for example, criteria for taking over the procedure, grounds for refusal, technical issues such as translation, minimal content of the request and deadlines, could overcome the current obstacles.

**Ne bis in idem:** Participants stated that both the concept of 'the same acts' and the question of when a case is 'finally disposed of' still lead to problems and different interpretations. Several participants highlighted the importance of further training and awareness-raising and suggested access to a compilation of existing case law (CJEU and national courts), including summaries, as well as an overview of national legislation and other relevant information.

In preparation for the seminar and Consultative Forum meeting, the College of Eurojust held a thematic discussion and produced the *Report on Eurojust's Casework in the Field of Prevention and Resolution of Conflicts of Jurisdiction* covering the period 2009-2014, touching upon the four preceding issues, in light of Eurojust's casework, published as Council doc. 9474/15 and available on Eurojust's website.

### ***Case illustration***

Eurojust's support in a motor vehicle theft case in 2015 illustrates the complexity of OPC cases. While it concerned only one suspect, who, by renting cars in one Member State and selling them to accomplices in another Member State, committed relatively minor crimes on each occasion, the case exemplifies both that the total number of crimes committed may be significant and that the mobility of offenders may cause legal obstacles and challenges to judicial cooperation.

A Bulgarian court approached Eurojust for assistance concerning a complicated conflict of jurisdiction and potential *ne bis in idem* issue. The court was faced with two competing EAWs concerning an Italian citizen allegedly involved in car theft. The warrants were issued by Poland and Romania, respectively. At the same time, the suspect was subject to a criminal investigation for similar offences in Bulgaria, where he was in detention, having been surrendered by the Czech authorities in execution of a Bulgarian EAW. The Bulgarian authorities were informed by the suspect that he had been convicted of the same or similar offences in Hungary and the Czech Republic and had served prison sentences in both countries.

The Bulgarian Desk at Eurojust invited the Czech, Hungarian, Polish and Romanian National Desks to a Level II meeting to share information on this legally complex situation and find a way forward. The Bulgarian authorities were aware that the offence in the Polish EAW corresponded to one of a total of seven offences listed in the Romanian EAW. As a result of the meeting, the Czech and Hungarian authorities were able to inform the Bulgarian Desk that the offences for which the suspect had been convicted in the Czech Republic and in Hungary corresponded to some of the alleged offences in the Romanian EAW.

Establishing the exact overlap in offences was complicated because, in many legal systems, several incidents of theft may be considered as a continuous crime and, thus, as one single offence. The information exchange initiated at the meeting further pointed to a particular interest of the Romanian authorities in furthering the case, as the suspect worked with accomplices located in Romania, who were subject to a Romanian investigation.

A possible outcome was first found in the amendment of the Romanian EAW to include only those offences that had not been part of the Czech and Hungarian cases and would have caused a *ne bis in idem* situation in the event the suspect would be subject to Romanian proceedings for the same offences. In addition, the Romanian authorities were asked to request temporary surrender of the suspect, due to the ongoing Bulgarian investigation and an interest in prosecuting the suspect for alleged offences in Bulgaria.

A further request was made to the Polish authorities to withdraw their EAW, based on the argument that the offence for which the suspect was sought was included in the Romanian EAW. Preference was given to the execution of the Romanian EAW, due to the many offences committed in Romania and because the Romanian EAW preceded the Polish EAW.

However, as the Romanian EAW could not be amended, the Bulgarian court promptly tried the suspect. The suspect was convicted, and the execution of the sentence was postponed for five years, thus allowing the Bulgarian court to subsequently execute the Romanian EAW. The basis for surrender to Romania was limited to those offences for which the suspect had not been convicted previously. The support and liaison efforts of Eurojust, as well as the effective use of the Level II meeting as a cooperation tool, contributed to the case's positive outcome, which was reached approximately one month after the initiation of the case at Eurojust.

### 3.2 Data retention

Directive 2002/58/EC (the E Data Directive) was designed to protect the fundamental right and freedom of natural persons to privacy by laying down rules for processing by network and service providers of traffic and location data generated by the use of electronic communication services. The E Data Directive itself recognised the right of Member States to restrict the scope of such rights where necessary, within a democratic society, to safeguard national security, or for the prevention, investigation, detection and prosecution of criminal offences. In the interest of effective coordination of criminal investigations and prosecutions, Directive 2006/24/EC on Data Retention (the DRD) sought to harmonise Member States' provisions in relation to such restrictions, particularly within the area of retention and use of electronic data. In April 2014, the CJEU, while acknowledging that the DRD genuinely satisfied an objective of general interest, declared it invalid *ab initio* in *Digital Rights Ireland Ltd* (C-293/12) on the basis that it exceeded the limits of proportionality and necessity to achieve that objective.

Member States' reactions to this annulment varied, with some repealing the legislation, others amending it to comply with the terms of the judgement, and others concluding that the necessary level of protection and proportionality was inherent within their own regimes. This range of reactions undermined the goal of the DRD to achieve harmonisation and created fragmentation in legal data retention regimes across the European Union, leading in turn to significant challenges in the investigation and prosecution of serious crime as well as judicial cooperation in relation thereto.

As data retention schemes are acknowledged to be indispensable tools in detecting, preventing, investigating and prosecuting serious crime, including cross-border crime, Eurojust decided to analyse the legal framework within the different Member States, with the intention of identifying: (i) obstacles created by the annulment of the DRD and the different legal regimes on data retention that arose as a consequence, (ii) possible solutions, lessons learned and best practice in addressing such challenges, both domestically and in cross-border cases, and (iii) areas for further cooperation and/or legislative action, as appropriate. In this endeavour, Eurojust circulated a questionnaire to the National Desks, followed by a thematic discussion by the College. The outcome of the work was presented to the Council at the meeting of the Working Party on General Matters including Evaluation (GENVAL) of 29 October 2015. Data retention was also the topic of the Workshop and Consultative Forum meeting of 10 and 11 December.

The main challenges identified relate to the difficulty, or even impossibility, of law enforcement agencies accessing information crucial to investigations, both nationally and in respect of cross-border cases. The divergence in data retention regimes (most notably retention periods) in Member States and third States raises difficulties in cross-border/parallel investigations, in the resolution of conflicts of jurisdiction (as the choice for the best forum to prosecute may be undermined), in the efficiency of JITs and in the obtaining and admissibility of evidence. The Workshop and Consultative Forum meeting revealed a clear trend in support of establishing an EU obligation of retention with adequate procedural safeguards, effective conditions of security and accuracy of data and a meaningful data retention period. Support was further shown for an EU solution with the objective of harmonising data retention frameworks across Member States, possibly through a new legislative initiative.



### 3.3 Controlled deliveries

On 6 October 2015, the College held a thematic discussion on cross-border controlled deliveries, focusing on the role and experience of Eurojust and on ways of improving Eurojust's operational capacity to support national authorities in this context.

The following legal and practical difficulties were identified on the basis of Eurojust's casework: (i) differences in national legislation dealing with controlled deliveries may have operational consequences; (ii) the need for translation of MLA requests into the language of the executing Member State can cause delays in the execution of controlled deliveries; (iii) the authorisation of a controlled delivery following an MLA request might be time consuming in the requested Member State due to procedural constraints; (iv) difficulties in identifying the national authorities competent for authorising a controlled delivery arise, especially in the Member States that have not appointed a central authority to be contacted in such a situation; (v) upon receiving an MLA request for authorising a controlled delivery, some Member States can be in the situation of starting (principle of legality v. principle of opportunity) their own investigations on the basis of information received through the MLA request, which might lead to parallel proceedings in the requesting and requested Member States; and (vi) the combined use of GPS devices and/or of surveillance measures conducted by police officers during the execution of a controlled delivery may raise issues related to the availability of resources on a practical level and/or the admissibility of evidence from a legal perspective.

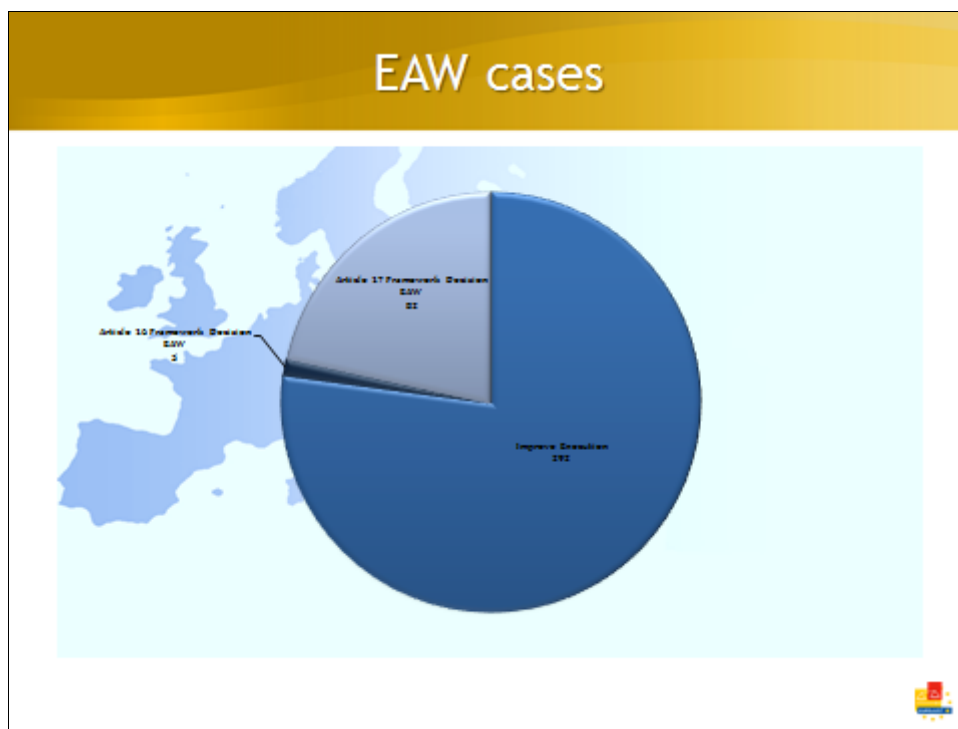
Best practice in relation to Eurojust's involvement in controlled deliveries was identified, including the following: (i) Eurojust should be involved at the earliest stage possible in setting up a cross-border controlled delivery, especially in complex multilateral cases; (ii) Eurojust can assist in identifying the appropriate authorities in the Member States for authorising and executing a controlled delivery; (iii) the organisation of coordination meetings by Eurojust can be of added value in the preparation of controlled deliveries, with a view to clarifying the legal requirements of the Member States involved and anticipating all possible scenarios that might occur during the execution phase; and (iv) National Desks at Eurojust can channel communication and facilitate the flow of information among the national authorities throughout all the phases of a controlled delivery, especially when third States are involved.

#### ***European Arrest Warrant***

Eurojust continued to play a key role in improving the application of the EAW. In 2015, 292 cases concerning the improvement of the execution of EAWs were registered at Eurojust, amounting to 13 per cent of all cases. Greece made the greatest number of requests (55), followed by Poland (33) and France (21). The most often requested were the UK (36), Germany (32) and Italy (30).

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 subject of EAWs issued by two or more Member States. Five such cases were opened at Eurojust.

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 provided for in Article 17, it shall inform Eurojust and provide the reasons for the delay. In 2015, 82 breaches of time limits were registered at Eurojust, seven of which required further action. For the sixth consecutive year, Ireland reported the largest number of breaches. Other cases were referred by Bulgaria, the Czech Republic, Spain, Hungary and the UK.



The College held a thematic discussion on virtual currencies in January 2015. Challenges and difficulties encountered in investigations dealing with virtual currencies were presented, followed by an exchange of views among participants. The key issues discussed included the legal qualification of virtual currencies and the suitability for seizure in different national jurisdictions, factors to establish jurisdiction in cases involving virtual currencies and the possible need to delete electronic data containing virtual currencies as a last resort, if national jurisdictions do not provide rules to deal with the seizure of this type of currency.

## Focus of the year: Freezing, confiscation and asset recovery

OCGs collect substantial profits from various criminal activities, and the proceeds of crime are laundered and re-injected into the legal economy. Depriving criminals of the proceeds of crime is an essential component in disrupting organised crime. Against this backdrop, the confiscation and recovery of criminal assets is a very effective way to fight organised crime. Moreover, confiscation has a deterrent effect by strengthening the notion that ‘crime does not pay’.

Despite the number of legal instruments enacted in this area, judicial cooperation continues to be hampered by major differences between national legal systems and a lack of harmonised rules. Member States face numerous obstacles in the execution of requests for MLA, in the identification and freezing of the proceeds of crime and in the recognition of Member States’ confiscation orders, especially when NCBC is involved. Consequently, the amounts recovered from organised crime are modest.

In 2015, Eurojust supported, both at operational and strategic levels, a swifter application of the EU legal instruments in the field of freezing and confiscation that give effect to the principle of mutual recognition, including Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence, Framework Decision 2006/783/JHA on the application of mutual recognition to confiscation orders, and Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU. In so doing, Eurojust encouraged common understanding and cooperation among the authorities concerned and ultimately enhanced the use of mutual recognition instruments in the field of asset recovery. The need for improvement of cross-border freezing and confiscation of criminal assets was the subject of reflection at EU level, and the European Agenda on Security emphasized Eurojust’s role and expertise in assisting national authorities when conducting financial investigations.

Eurojust continued to play an important role in improving cooperation in criminal matters between Member States (Article 3(1)(b) of the Eurojust Council Decision), particularly by: (i) facilitating the recognition and execution of freezing and confiscation orders and the execution of requests for judicial cooperation; (ii) assisting in the drafting of freezing and confiscation orders and LoRs, the identification of competent authorities in the requested Member States, information exchange, and translation of relevant information; (iii) enabling the coordination of investigations and helping investigating and prosecuting authorities to act simultaneously in the execution of freezing orders; (iv) clarifying the legal requirements of both issuing and executing authorities, and solving practical problems arising from the diverse legal and procedural requirements in different legal systems; (v) assisting Member States in reaching agreements for the disposal of confiscated property and asset sharing; and (vi) identifying best practice to manage assets from the outset of an investigation (e.g. by requesting the sale of perishable or rapidly depreciating goods or goods with high management costs at the same time as issuing the freezing order).

Eurojust continued to identify practical ways to maximise judicial cooperation in this area and to overcome obstacles arising from different freezing and confiscation regimes. Some of the legal and practical issues identified by Eurojust in 2015 in its casework in the field of asset recovery, including freezing and confiscation, concerned:

- i) Difficulties associated with the principle of dual criminality when the conduct referred to in the freezing order (or LoRs seeking the freezing of assets) does not constitute a criminal offence in the requested Member State;
- ii) Additional difficulties linked to the principle of dual criminality in relation to tax fraud/fiscal crimes in which, despite the fact that the offence is considered a crime in the requested Member State, the damage or loss to the public budget is suffered by the requesting Member State;
- iii) Difficulties linked to the cross-border recognition of civil seizure and confiscation: while in most Member States legal assistance can only be provided in the framework of criminal proceedings and assets can be recovered following a criminal conviction, some Member States provide for civil recovery orders or other means whereby a decision on confiscation is possible without a criminal conviction;
- iv) Additional issues arise in the context of LoRs issued by a non-judicial authority in the framework of civil confiscation proceedings in which the requested Member State requires other measures to be taken by the requesting Member State to be able to deal with those LoRs (e.g. signing by a judge);
- v) The freezing order is considered to have a limited scope, and practitioners often rely instead on LoRs in accordance with the 1959 and 2000 Mutual Legal Assistance Conventions, as well as the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime, which can include requests for searches, interceptions of telecommunications, freezing and confiscation of assets;
- vi) Issues arising from the absence of a central national register/database of ongoing proceedings in cases of separate and unconnected freezing orders with respect to the same assets; and
- vii) Difficulties linked to delays in the execution of freezing orders (or LoRs) or in the recovery of the frozen assets when the Member State to which money has been transferred by criminals initiates its own investigation into money laundering and freezes the money in the framework of its own investigation rather than pursuant to the freezing order (or LoR).

Eurojust produced a Report on Eurojust's Experience in the field of Asset Recovery, including Freezing and Confiscation, covering the period 2010 to 2013, which was published in June as Council doc. 10179/15 and is available on Eurojust's website. The Report touches upon the role of Eurojust in the field of asset recovery and is based on Eurojust's casework, projects dedicated to Eurojust's casework in specific crime types, Eurojust's opinions on draft EU legislation, and seminars, meetings or similar events organised or co-organised by Eurojust.

The Report of the Strategic Seminar Towards Greater Cooperation in Freezing and Confiscation of the Proceeds of Crime: a Practitioners' Approach, organised jointly by Eurojust and the Italian Presidency on 11 December 2014, was published in May as Council doc. 8570/15 and is available on Eurojust's website. The goal of the seminar was to bring practitioners together to identify difficulties in mutual recognition in asset recovery associated with the current legal framework. On this basis, legal and practical ways to enhance judicial cooperation in this area were identified, particularly regarding i) asset tracing, freezing and confiscation: challenges in mutual recognition and execution; ii) alternatives to conviction-based confiscation: ensuring that crime does not pay; and iii) legal and judicial challenges in asset management and disposal, sharing and repatriation of confiscated assets from a practitioner's point of view.

The conclusions were presented during the 8<sup>th</sup> meeting of the Consultative Forum on 12 December 2014, and served as a basis for further discussion by Forum members. The conclusions of the Consultative Forum were published in May as Council doc. 8552/15 and are available on Eurojust's website. Forum members called upon EU institutions to consolidate and codify EU legislation in this field to respond to the need for greater harmonisation of the substantial and procedural criminal provisions with a view to enhancing mutual trust, a key condition for effective mutual recognition. General agreement was reached on the importance of adopting a multidisciplinary approach and promoting interaction among the judiciary, police and financial authorities involved in the investigation and prosecution of asset recovery cases. Forum members highlighted the possibility to use confiscated property in the public interest or for social purposes to enhance public confidence in the justice system. As regards the recognition and execution of NCBC orders, Forum members indicated that the concern raised that NCBC should not be subject to mutual recognition, as orders may be in breach of fundamental rights protected under the European Convention on Human Rights, may need a more nuanced analysis. In this regard, further legislative action could be considered at EU level to support non-conviction-based asset recovery. The definition of a limited NCBC remedy with minimum safeguards that could enjoy mutual recognition at EU level was suggested.

Concerning the role of Eurojust, Forum members highlighted the added value of Eurojust's operational tools, such as coordination meetings, as a trusted forum where practitioners can share information and where searches, seizures and arrests can be coordinated. Likewise, Eurojust actively supports Member States in setting up and running JITs and in facilitating judicial cooperation with third States.

Finally, Forum members considered that best practice in Member States should be collected and shared among practitioners, and encouraged Eurojust to continue research towards designing an acceptable common model with minimum safeguards that could achieve mutual recognition at EU level. In line with those conclusions, Eurojust is in the process of collating relevant case law, both at European and national levels, touching upon issues encountered with respect to NCBC, as well as constitutionality issues in relation to domestic legislation related to forfeiture or preservation of property that might permit the definition of a limited NCBC model with minimum safeguards.

In December 2015, Eurojust participated and delivered a presentation at the EMPACT THB expert meeting on financial investigations and asset recovery. The presentation focused on the challenges found in the cross-border process of seizure and recovery of the proceeds of crime.

### **Case illustration**

In early 2013, the UK health authorities informed their Spanish counterparts about six illegal shipments containing 25 600 tablets of counterfeit medicines originating from India that were about to be transported to a person in Spain. A controlled delivery was set up, and the recipient was arrested by the Spanish authorities.

The UK investigation indicated that approximately 50 websites hosted on servers located in the Czech Republic and the Netherlands were advertising medicines for sale without medical prescription, mainly products used to combat erectile dysfunction. The drugs that were produced in India were sent to the UK to be forwarded to other retail sellers within the European Union for further distribution. The orders were placed either via the Internet or by telephone. The payments were made by credit card to bank accounts in several Member States, which channelled those funds through a layer of bridge accounts to bank accounts in Cyprus.

Links with another investigation in Austria targeting a criminal group of Ukrainian origin with connections to Israel and the Russian Federation were identified by Europol. Two operational meetings at Europol, in April 2013 and February 2014, allowed the various police services to exchange information, which detected possible links with a French investigation concerning a group of websites, managed from Israel, that also offered medicines without medical prescription.

The Spanish authorities submitted MLA requests to Austria, Belgium, Cyprus, Germany, India and the USA to identify the beneficiaries of the illegal activity and to try to locate and seize the criminal proceeds, the value of which was estimated at approximately EUR 1 800 000. As a result of the meetings at Europol concerning potential connections with investigations in other countries, the Spanish authorities approached Eurojust to coordinate the judicial aspects of the cases. A coordination meeting was held in March 2014, attended by Spain, Austria, Belgium, Cyprus, Germany, France, the UK, the USA and Europol.

The meeting resulted in close links being identified between the cases in several States, and a JIT, in which Eurojust and Europol participated, was set up between Austria, Spain and France. The JIT was funded through Eurojust and was later extended to the UK. The coordination meeting also allowed discussion about the offences under investigation in each State to avoid a conflict of jurisdiction or *ne bis in idem*. Finally, supported by Eurojust's analysis of the MLA requests, the participants were able to identify overlapping requests, coordinate their execution, agree on the terms and conditions for sharing the evidence obtained and identify a bank account that appeared in proceedings in Austria, Spain and France.

In June 2014, the Spanish authorities carried out a new arrest and seizure of 25 000 tablets, and new evidence was gathered in Austria, France and the UK that demonstrated the need to discuss possible actions in the short term. To this end, a coordination meeting with Austria, Spain, France, Eurojust and Europol was held in Vienna. The ongoing proceedings were discussed and a common strategy was agreed. Austria, Spain and France focused on fraud and public health-related offences, while the UK applied an innovative approach by investigating only money laundering activities, with an emphasis on asset tracing for further freezing. The UK investigation benefited from the investigations in the other States to prove that predicate offences were committed elsewhere in the European Union. During the meeting, a decision was made to conduct coordinated actions during a common action day to gather additional evidence. As most of the planned actions had a judicial component, for example the execution of MLA requests, a coordination centre was held at Eurojust in September 2014 with the participation of all JIT members.

During the action day, 12 suspects were arrested and 16 people were interviewed as either suspects or witnesses. Austria, Hungary and the UK carried out 23 searches, and 91 bank accounts were frozen or seized in the participating States, along with 1 million tablets. Assets with an estimated value of approximately EUR 7.8 million were seized.

A final coordination meeting was held at Eurojust in March 2015 to exchange information on the proceedings in the participating States and evaluate the JIT cooperation.

## Chapter 4 Eurojust's Administration

The Eurojust Administration supports the College in its operational work and when functioning as Management Board of Eurojust. In 2015, 27 operational meetings and 10 Management Board meetings were held. The Administration further assists the National Desks in dealing with their cases. A total of 128 College team and task force meetings were held. These are preparatory bodies composed of College and Administration members, which prepare and implement College decisions in their respective areas of expertise.

### 4.1 Support to operational and strategic work

The Administration supports the National Desks in their casework by assisting in the use of electronic tools related to the systematic management of cases (CMS in particular) and manual files, in line with guidelines adopted by College. Furthermore, the preparation and follow-up to coordination meetings and coordination centres is supported by the Administration upon request, including the provision of preliminary case notes, analysis reports, as well as legal opinions and advice on the application of judicial cooperation instruments. Work progressed regarding the development of the *Operations Manual*, particularly guidelines on the initiation of a Eurojust case and three chapters dedicated to operational meetings (Level II meetings), coordination meetings and coordination centres. These important parts of the *Operations Manual* were adopted by the College with a view to improving and harmonising Eurojust's internal practice, thus facilitating operational work. All remaining chapters were presented in 2015 to the College for reflection and discussion.

The Administration contributed in 2015 to the development of new knowledge management tools at Eurojust. In this context, in addition to the continuous development of the CMS, the new Case Information Form (CIF) was designed and made available to all National Desks. The CIF records relevant information related to cases, such as how obstacles were overcome, best practice and lessons learned, and provides a flexible way of searching in the collected data for similarities between cases and preparing statistics.

Supported by the Administration, the College launched seven operational topics and four thematic discussions in 2015.

**Operational topics** National authorities can ask Eurojust to gather information or provide legal advice from the Member States on a topic that may be relevant or have operational implications. The College registered seven such operational topics: (i) the use of MLA and the conditions of LoRs being granted in attempted and completed wire fraud cases; (ii) extradition to Turkey; (iii) principle of *ne bis in idem* related to tax fraud; (iv) FTF in Ukraine; (v) new Danish weapons legislation; (vi) how the audiovisual recording of contacts between police and suspects operates in Member States (both in detention and witness statements); and (vii) how to proceed in the extradition of a person located in Crimea.

**Thematic discussions** As the result of a College decision of 2014, time is set aside during plenary meetings to exchange expertise and best practice in areas of special operational interest for Eurojust. Four thematic discussions were held: (i) virtual/crypto currencies; (ii) conflicts of jurisdiction; (iii) data retention; and (iv) controlled deliveries. Thematic discussions are prepared by a rapporteur from the College, supported by the Administration.



With a view to facilitating the structured exchange of information between Eurojust and the Member States, the Administration prepared an improved, more user-friendly Article 13 form, which was adopted by the College for further testing and subsequent development. To support the work of the ENCS, the Administration regularly updated the Extranet area created for the national correspondents for Eurojust. In this context, national guidelines on the implementation of Article 13 and the distribution of cases between Eurojust and the EJM continued to be collected and updated, together with the *Fiches Suédoises*, providing an overview of the set-up and functioning of the ENCS in the Member States.

Throughout 2015, the Administration continued to assist the College with monitoring and analysing ongoing negotiations on the draft Eurojust, Europol and EPPO Regulations and with the preparation of related Eurojust opinions and contributions to EU stakeholders. In addition, the Administration assisted in the setting up and monitoring of the action plans for the implementation of the recommendations of the sixth round of mutual evaluations and the external evaluation.

## 4.2 Staff and budget

At the end of 2015, Eurojust had 349 post-holders, including 69 National Members, Deputies and Assistants, 199 Temporary Agents, 7 Interims, 23 Contract Agents, 23 Seconded National Experts and 28 Interns.

Eurojust's budget for 2015 was EUR 33 818 million, including the amending budget to meet the projected budget shortfall related to staff costs.

Eurojust again faced a budget deficit in 2015 due to unforeseen cost developments combined with structural deficiencies in the European Commission's Communication on the Programming of Human and Financial Resources (hereinafter referred to as the Multi-annual Financial Framework (MFF)). For the second successive year, Eurojust was forced to resort to mitigation measures subject to an amending budget, including postponing activities and deferring technological developments intended to yield long-term efficiency gains. With confirmation of the amending budget uncertain and only officially confirmed in the final quarter of the year, Eurojust's planned delivery on its Annual Work Programme (AWP) was necessarily disrupted to ensure that the legal obligations of the organisation and the operational work remained priorities. While Eurojust has been successful in terms of implementing its budget and securing recognition of the additional credits necessary through amending budgets, the unavoidable increase in the carry forwards and budget transfers has resulted in remarks from the auditors regarding weaknesses in budget planning and implementation.

With the voted and amending budgets exceeding the MFF ceilings in the last three years (2016 inclusive), Eurojust is optimistic that the review of the MFF foreseen by the European Commission in 2016 (in parallel with 2017 budgetary cycle) may remedy the situation with regard to the budget and the number of posts. In this respect, Eurojust seeks a review of the MFF to acknowledge structural deficits and other unforeseen and unavoidable costs. Such a review will represent not only an efficiency gain but, more importantly, assure Eurojust of the means to use its (human) resources fully to respond to the increasing demands of Member States for judicial cooperation and advance the objectives of the AWP as planned. Without this necessary adjustment of the MFF ceilings for Eurojust in the period 2017-2020, cumulative and unavoidable legal/financial obligations will infringe on operational work.

Financial performance further improved compared to 2014, with an execution rate of 99.86 per cent. In accordance with the Interinstitutional Agreement and the requirement to reduce posts by five per cent, Eurojust identified four vacant posts that were designated for this purpose in 2015, in line with the organisation's strategy not to terminate present employment contracts to achieve such reductions.

The implementation of the ABAC Enhancement project allows for more efficient utilisation of the Eurojust Administration's human resources, while the new time registration tool (eRecording), which was implemented by the Administrative Director for all Administration staff in 2015, is an important step towards activity-based monitoring and reporting.

Eurojust continued its practice of exchanging its work programme with the other JHA Agencies and also provided feedback on the planning documents of the other JHA Agencies.

### ***Consolidated Annual Activity Report***

The Administrative Director's Consolidated Annual Activity Report (CAAR) 2015, under preparation at the time of publication of the Eurojust Annual Report 2015, contains further detailed information on the Administration's achievements during the year. Reporting through the CAAR follows the structure approved by the Heads of EU Agencies and is based mainly on the implementation of the Eurojust AWP 2015 Objectives, Activities and Key Performance Indicators set out therein for each strategic objective, as well as human and financial resources allocated.

### **4.3 External communication**

Eurojust focused in six areas: (i) corporate communications and identity, i.e. branding, marketing and positioning; (ii) external and EU relations; (iii) expanding media impact and coverage across Europe; (iv) strengthening Eurojust's digital communications; (v) publications, e.g. studies, reports, and brochures; and (vi) internal communications.

Eurojust regularly publishes press releases and news items (95 in 2015) on both its operational work and non-operational activities.

Within the framework of the JHA Agencies Network hosted by eu-LISA in 2015, Eurojust contributed to the JHA Agencies' video clip. Eurojust also contributed to a leaflet with Frontex, EASO, Europol, eu-Lisa and FRA on Hotspots.

Eurojust's publications and infographics are available on our website. *A sample of Eurojust's products in 2015:*

**EUROJUST CBRN-E Handbook**  
 Overview of EU and international legislation applicable to CBRN (Chemical, Biological, Radiological and Nuclear) substances and Explosives  
 Supranational entities, systems and databases active in the field of CBRN-E  
 June 2015

**Internal EUROJUST Report**  
**Terrorism Convictions Monitor**  
 Issue 23 October 2015 5/1/2015

**EUROJUST News**  
 Issue No. 13 - June 2015

**Prosecuting THB for the purpose of labour exploitation**  
 Report  
 THB Project Team  
 December 2015

**Asset recovery**  
 Freezing and confiscation of the proceeds of crime - the main issues  
 Despite the number of legal instruments enacted in this area, judicial cooperation continues to be hampered by major differences between national legal systems and a lack of harmonised rules. Judicial cooperation is particularly difficult with regard to asset-confiscation based (NCJ) confiscation and extended confiscation, but problems also arise in relation to the rights of bona fide third parties and confiscation orders issued following in rem confiscation.

**IN THIS ISSUE**

- 1 Freezing and confiscation of the proceeds of crime - the main issues
- 2 Definitives
- 3 Legal framework
- 4 Eurojust's work in this area
- 5 European efforts
- 6 ICB coordination: if not, why not?
- 7 Interviews with Mr. Jill Thomas, Dr. Hilda Sol-mocho and Dr. Sultana Khoukoul

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Eurojust held marketing seminars in Ireland in March, Spain in May and Romania in November, and 42 roadshows in different Member States, as part of its ongoing initiative to highlight the work of Eurojust and make practitioners in the Member States aware of the value and efficiency that Eurojust brings to cross-border cases. The marketing seminars deal in greater depth with Eurojust's casework and how Eurojust can assist practitioners. Roadshows provide a more general overview of Eurojust's work.

## 4.4 New premises

In 2015, construction proceeded as planned and the programme remained on schedule. Q4 saw the building taking shape. The design project was finalised and procurement procedures were started, which will conclude in 2016.

# Chapter 5 Eurojust and practitioner networks

The Secretariats of the EJNI, the JIJs Experts Network and the Genocide Network are hosted by Eurojust, drawing on its resources. Its members are part of the Eurojust staff and ensure regular reporting to the College on their initiatives and activities. The Secretariats offer services to the Networks and facilitate cooperation with the National Desks in their common fields of action. Eurojust also supports the activities of the Consultative Forum.

## 5.1 European Judicial Network

The EJNI is a network of Contact Points for the facilitation of judicial cooperation in criminal matters. It was established in 1998. The Secretariat was set up in 2003 at Eurojust.

**Meetings** The 2015 plenary meetings took place in Riga and Luxembourg. The meeting in Riga dealt with the EU Framework Decision on Transfer of Prisoners and the Directive on the European Protection Order. At the meeting in Luxembourg, the three directives on procedural rights of suspects and accused persons were discussed. Three meetings were held at Eurojust in The Hague: the regular meeting, the National Correspondents meeting and the Tool Correspondents meeting.

In addition, regional meetings were held in Croatia, Estonia and Lithuania, and national meetings were held in Bulgaria, France and Portugal, to discuss and improve international judicial cooperation in different areas, including relations between the EJNI and Eurojust. Representatives from Eurojust National Desks participated in these meetings.

**EJNI Newsletter** The EJNI Newsletter was introduced in 2015 as a means to provide information about the ongoing activities of the EJNI and the EJNI Secretariat to the EJNI Contact Points.

**EJNI Trio Presidency** The EJNI changed the current Trio Presidencies' working method in favour of a more dynamic method, involving the future EJNI Presidencies in the planning at an earlier stage than previously. The new format, the EJNI Presidency Board, consists of the former, current and two incoming EJNI Presidencies.

**EJNI and Eurojust** The EJNI and Eurojust worked together on a common approach to the recommendations regarding the EJNI in the sixth round of mutual evaluations. An action plan was set up to ensure that the recommendations will be implemented.

The joint paper, *Assistance in International Cooperation in Criminal Matters for Practitioners: EJNI and Eurojust, 'What can we do for you?'*, was translated into all official EU languages and published on the EJNI and Eurojust websites. This joint paper informs judicial practitioners in the Member States of the services and assistance that can be provided by the EJNI and Eurojust to assist practitioners in deciding whether cases should be dealt with by the EJNI or Eurojust. The paper also ensures that both the EJNI and Eurojust will deal with cases falling within their mandates by using time and resources efficiently and effectively and preventing duplication of work.

**EJN website** A new homepage for the EJN website was introduced. The new design provides easier access to the information and tools on the website. The website's Judicial Library now has all forms of mutual recognition instruments on judicial cooperation in criminal matters in editable Word format in all official EU languages. The new version of the Judicial Atlas was launched. It can now assist practitioners in identifying the competent authorities for all mutual recognition instruments as well as for traditional MLA requests.

**e-Justice Portal** Discussions on cooperation between the EJN and e-Justice continued, with the objective of hosting the EJN website on the e-Justice Portal, the electronic interface in the Area of Freedom, Security and Justice.

**Training** The EJN Secretariat organised the sixth English language training session for the EJN Contact Points in collaboration with the Academy of European Law (ERA) in Trier. During one week, the participants learned and practiced using judicial cooperation in criminal matters' expressions and vocabulary and exchanged information regarding their respective national systems.

## 5.2 Network of National Experts on Joint Investigation Teams

The JITs Experts Network, established in 2004, is composed of national judicial and law enforcement contact points responsible for stimulating the use of JITs and fostering the exchange of information and best practice between Member States. Eurojust has been hosting its Secretariat since 2011, contributing to more effective interaction.

**Annual meeting** The 11th annual meeting of JITs National Experts took place on 11 and 12 June 2015. The main topic of this year's meeting was *Enhancing access to JITs: what tools to support innovative practice?*, with a view to assessing the need to revise the existing JITs' supporting tools (JITs Manual, model agreement, JIT Operational Action Plan) in light of the experience gained. Conclusions of the meeting are available on Eurojust's website.

**Projects** Significant progress was achieved in relation to the projects of the JITs Experts Network. A total of 12 *Fiches Espagnoles* – summaries of Member States' legislation on the setting up and operation of JITs – were made available via the JITs Experts Network restricted area. In December, a first *JIT evaluation report* was released and made available to practitioners and interested stakeholders. This document consolidates quantitative and qualitative findings resulting from the self-assessment of 42 JITs received by the Secretariat between April 2014 and October 2015. It outlines the main benefits, best practice and challenges experienced by practitioners in using JITs.

**JITs Experts Network restricted area** The JITs Experts Network restricted area is a web platform operating as a single repository for JIT-related information, particularly on JIT legislation and practice. In 2015, a decision was taken as part of the conclusions of the JITs annual meeting to extend the access to this platform to all interested EU practitioners, e.g. EJN contact points and JIT leaders involved in a JIT that received financial support.

**JITs funding** The successful interaction between Eurojust and the JITs Experts Network is also evidenced by the responsibility given to the Secretariat, since 2013, to manage Eurojust's financial support to JIT activities (*see* section 1.4).

**Training** The JITs Expert Network and its Secretariat continued the successful cooperation established with CEPOL and the EJTJN to design and implement practical trainings on JITs – both inside and outside the European Union – which play an important role in enhancing the use of the tool.

### 5.3 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. The Genocide Network Secretariat was set up in July 2011 at Eurojust.

**Meetings** Two plenary meetings took place at Eurojust in 2015, in April on the use of open source and earth observation information for the purpose of investigating and prosecuting core international crimes, and in October on the distinction between combatants and civilians and on possibilities to prosecute diverse participants in contemporary armed conflicts under different sets of legislation (counter-terrorism, international crimes, ordinary crimes). The conclusions of both plenary meetings are available on Eurojust's website. In addition, two *ad hoc* meetings were held to discuss and advance national investigations of the ongoing armed conflict in Syria and to facilitate cooperation on issues relating to the former conflict in Liberia.

**Strategy paper** Progress was achieved by the publication of the *Strategy*, containing a comprehensive set of measures for strengthening support to national authorities in the fight against impunity. The *Strategy* was endorsed by the Ministers of Justice and Home Affairs and became an EU reference tool with practical guidelines for investigating and prosecuting core international crimes at national level. It was translated into all official EU languages and is available on Eurojust's website.

**Expanding the Restricted Area** The Restricted Area, a web platform containing information relevant to national authorities in their fight against impunity, was further expanded and updated to provide a more user-friendly and helpful service for national contact points.

**Training** Training for national judges and prosecutors on core international crimes and the specifics of related prosecutions and trials took place for the first time in 2015. The training was developed and implemented by the Genocide Network Secretariat in cooperation with the EJTJN. The training focused on judicial specifics of international criminal law cases and their application in domestic jurisdictions. It included modules on determination of crimes, modes of liability, evidentiary challenges and practical components in building up a case for trial as well as judicial cooperation with third States, the UN and NGOs.

### 5.4 Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union

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 in the development of the Area of Freedom, Security and Justice. In 2015, Eurojust continued to provide legal, administrative and financial support to the activities of the Consultative Forum, including hosting its twice-yearly meetings.

In June 2015, Eurojust hosted the 9<sup>th</sup> meeting of the Consultative Forum under the Latvian Presidency. The meeting was convened by the Prosecutor General of Latvia and provided an opportunity for Forum members to discuss the setting-up of the EPPO and its relationship with Eurojust with Ms Věra Jourová, Commissioner for Justice, Consumers and Gender Equality. Views on the roles of the EPPO, Eurojust, the EJM, Europol and OLAF in light of the present and future legal framework were exchanged between Forum members. As another topic of great interest, Eurojust presented its viewpoint on the phenomenon of FTF and the criminal justice response. The meeting of the Consultative Forum coincided with a Eurojust strategic seminar, *Conflicts of jurisdiction, transfer of proceedings and ne bis in idem: successes, shortcomings and solutions*. The Consultative Forum reached common conclusions on this topic on the basis of the outcome of the seminar and the contributions provided by the Forum members (see section 3.1).

The Prosecutor General of Luxembourg convened the 10<sup>th</sup> meeting of the Consultative Forum at Eurojust in December 2015. Forum members exchanged views on the practical implications of the CJEU's annulment of the DRD for investigations and prosecutions. Eurojust shared with the participants the recent work of Eurojust in the field of counter-terrorism and FTF as well as information on recent EU initiatives to address the migration crisis and Eurojust's activities to tackle illegal immigrant smuggling. Forum members exchanged experience on challenges faced at national level, and common conclusions to be presented to the EU policymakers in these areas. The Consultative Forum meeting was preceded by a Eurojust workshop, *Data retention in the fight against serious crime: the way forward* (see section 3.2).

Both occasions brought together a wide range of experts and high-level representatives of national prosecution authorities, and representatives from the EU agencies and institutions. On the occasion of the fifth anniversary of the Consultative Forum, a reflection on the future format and content of the Consultative Forum was launched. The conclusions of the meetings of the Consultative Forum are available on Eurojust's website.

## Theme: Evaluation and future perspectives

### *Sixth round of mutual evaluations in the Member States*

In line with Joint Action 97/827/JHA, adopted by the Council on 5 December 1997, GENVAL decided in June 2011 that the sixth round of mutual evaluations would be devoted to the practical implementation and operation in the Member States of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by Decisions 2003/659/JHA and 2009/426/JHA and of Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network, repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters in the Member States.

Peer evaluations were conducted in the Member States by experts between May 2012 to May 2014; Eurojust observers have participated in each of these evaluations. Following on-site visits to the Member States, reports were drafted by the experts with the support of the Council Secretariat and observers. The final report, which reflects the overall outcome of the sixth round of mutual evaluations, was adopted on 17 December 2014. It contains 24 recommendations to Member States, European institutions, Eurojust and the EJNI.

In October 2014, the College of Eurojust adopted an internal action plan to facilitate the implementation of the recommendations addressed to Eurojust from the sixth round of mutual evaluations. In 2015, further progress in the implementation was achieved in all of the areas, i.e. strengthening Eurojust's operational capacities, increasing the means and tools for information exchange with competent national authorities and further streamlining cooperation with the EJNI.

#### ***Eurojust Extranet***

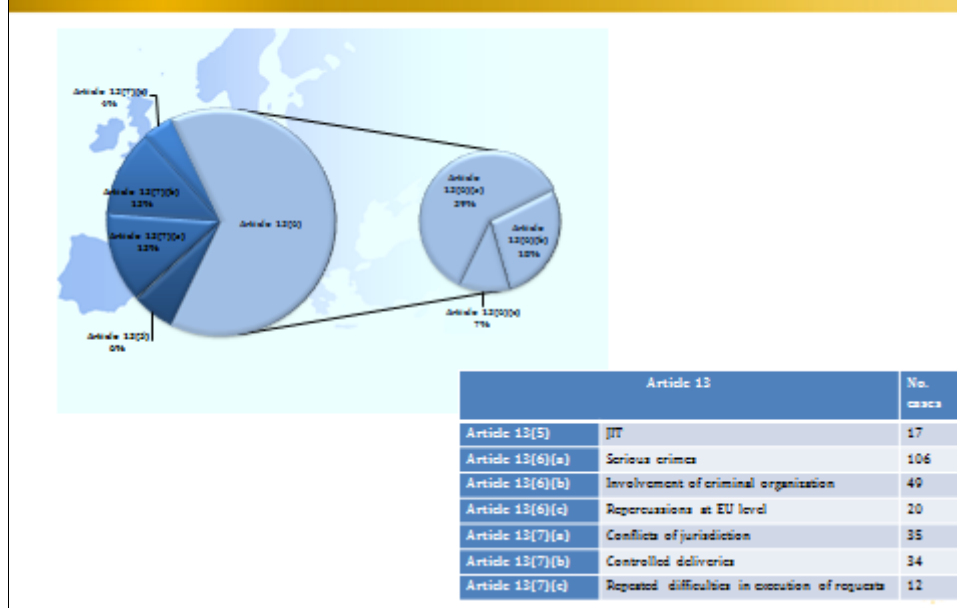
The Eurojust Extranet is a restricted area on Eurojust's website accessible to the national correspondents for Eurojust. It includes documents of relevance to the work of practitioners, such as national guidelines on the distribution of cases between Eurojust and the EJNI, national guidelines on the implementation of Article 13 of the Eurojust Council Decision and the *Fiches Suédoises* on the setting up of the ENCS in the Member States.

#### ***Fiches Suédoises***

The *Fiches Suédoises* provide an overview of the structure and functioning of the ENCS by Member State. This tool is regularly updated by Eurojust to support ENCS implementation and the exchange of experience and best practice. Since November 2014, the *Fiches* include a section providing a collection of available national guidelines relating to the implementation of Article 13 of the Eurojust Council Decision and to the distribution of cases between Eurojust and the EJNI.



## Article 13 cases



Article 13		No. cases
Article 13(5)	JIT	17
Article 13(6)(a)	Serious crimes	106
Article 13(6)(b)	Involvement of criminal organization	49
Article 13(6)(c)	Repercussions at EU level	20
Article 13(7)(a)	Conflicts of jurisdiction	35
Article 13(7)(b)	Controlled deliveries	34
Article 13(7)(c)	Repeated difficulties in execution of requests	12

### *External evaluation of Eurojust and its activities*

Article 41a of the Eurojust Council Decision stipulates that the College shall commission an independent external evaluation of the implementation of the Eurojust Council Decision as well as of the activities carried out by Eurojust before 4 June 2014 and every five years thereafter.

The College of Eurojust started the process to commission an evaluation of Eurojust in 2013 by adopting the terms of reference for the evaluation in consultation with the European Commission. A procurement procedure was carried out in the first half of 2014 and EY (formerly Ernst & Young) was commissioned to carry out the evaluation. The evaluation of Eurojust was conducted from September 2014 to June 2015. The EY Final Report on the evaluation of the Eurojust Council Decision and the activities carried out by Eurojust was issued on 30 June 2015. The report was forwarded to the European Commission, the European Parliament and the Council.

**Quotation from the EY Final Report:** *'Eurojust is a fundamentally effective organisation that continues, time and again, to excel at its core operational work. The overall casework of Eurojust has increased steadily (increasing from 1 085 in 2007 to 1 804 cases in 2014), attesting to the good reputation and trust that the organisation has built with National Authorities and the added value it has been able to offer.'*

The College considered and discussed the recommendations by EY for development and improvements, particularly concerning the governance set-up and need for streamlining of internal working structures, practices and operational procedures of the College. At the end of 2015, the College adopted an internal action plan for the implementation of the recommendations that complements the internal action plan related to the sixth round of mutual evaluations. The President reported to the European Parliament on the evaluation findings and planned follow-up by Eurojust in December 2015.

#### *Legislative developments on Eurojust Regulation*

With a view to Article 85 TFEU, and to strengthen Eurojust and increase its effectiveness, the European Commission presented a Proposal for a Eurojust Regulation in July 2013. In March 2015, the Council adopted a partial general approach covering the provisions of the draft Regulation, except for the provisions related to the EPPO. Eurojust continued to contribute to the EU institutions' negotiations on the basis of its experience, *inter alia* on data protection.

The European Commission launched the legislative proposal for the establishment of an EPPO in parallel with the Proposal for a Eurojust Regulation, taking into account Article 86 TFEU, which stipulates that a future EPPO may be established from Eurojust. The functional relationship between a future EPPO and Eurojust and its impact on Eurojust's activities and resources remain under consideration by the EU institutions. Eurojust has been sharing its input and concerns with the EU institutions based on its expertise.

## Follow-up to Council Conclusions

In July, the JHA Council adopted Draft Conclusions on the Eurojust Annual Report 2014. More information can be found below in the areas in which the Council asked Eurojust to enhance its work and/or made recommendations.

### **Strengthening operational capacities**

- Development of an Operations Manual to improve Eurojust's efficiency and effectiveness, including guidelines on coordination meetings;
- Eurojust regularly monitors and assesses the use of the OCC by national authorities. The OCC is designed to be used by competent national authorities to contact their respective national representative at Eurojust in urgent cases outside working hours. The OCC responds in the caller's own language and forwards the call to the national OCC representative on duty. The external evaluation of Eurojust comes to the conclusion that use of the OCC so far has been relatively limited. National Members could be contacted on a 24/7 basis even before the implementation of the OCC. Eurojust gave input to the negotiations on the text of the Eurojust Regulation, suggesting the deletion of the phrase '*through a single OCC contact point at Eurojust*', as it limits alternative solutions;
- Work on an improved, more user-friendly Article 13 form commenced, taking the relevant recommendations from the sixth round of mutual evaluations in the Member States into account;
- A new CMS functionality was developed to strengthen Eurojust's capacity to make feedback available to national authorities as a result of Article 13 notifications. This new solution allows for overnight link detection through the CMS and makes maximisation of the number of useful hits possible;
- Two more secure network connections between Eurojust and Member States (Spain and Luxembourg) became operational in 2015, bringing the total to 13;
- Two upgraded versions of the CMS were produced to support the implementation of Article 12 of the Eurojust Council Decision in line with Eurojust Data Protection Rules. Eurojust has continued to explore more cost-effective ways for members of the ENCS, mainly the national correspondents for Eurojust, to access the CMS;
- The national correspondents for Eurojust are regularly updated on national guidelines regarding the implementation of Article 13 and the distribution of cases between Eurojust and the EJN. Further information on the functioning of the ENCSs in the Member States can be found in the *Fiches Suédoises*. All information is available on the restricted area of the Eurojust Extranet;
- Internal action plans have been developed to implement the recommendations from the sixth round of mutual evaluations and the external evaluation of Eurojust in a timely and streamlined manner.

### **Crime areas: terrorism - FTF and cybercrime**

- Increased information-sharing in accordance with Council Decision 2005/671/JHA;
- Eurojust *TCM 2015*;
- Third Eurojust report on FTF;
- Association with Europol Focal Point Travellers;
- Contribution of Eurojust to *TE-SAT*;
- Tactical meeting, *Towards a common judicial response to foreign fighters*;
- Annual strategic meeting of the national correspondents for Eurojust for terrorism matters;
- Appointment of contact points from Algeria, Chile, Iraq, Jordan, Lebanon, the Palestinian Authorities and Saudi Arabia;
- Posting of a Eurojust representative at EC3;
- Joint Eurojust-Europol paper, *Common challenges in cybercrime cases*;
- Impact assessment on annulment of the 2006 Data Retention Directive;
- Tactical meeting on *Territoriality in cyberspace and the admissibility of e-evidence in cybercrime-related judicial proceedings*;
- Eurojust meeting, *Towards a Judicial Cybercrime Network*;
- Participation in the seventh round of mutual evaluations devoted to cybercrime.

### **Cooperation with partners EJM, Europol and OLAF**

- Joint Eurojust/EJM paper, *Assistance in International Cooperation in Criminal Matters for Practitioners: EJM and Eurojust, 'What can we do for you?'*, translated into all official EU languages and available on both websites;
- Eurojust and EJM coordinated their internal action plans to follow up on the recommendations from the sixth round of mutual evaluations;
- Europol attended 99 coordination meetings and five coordination centres, and was involved in 34 Eurojust cases;
- Formal associations with 24 out of 29 Europol focal points and active participation in the development of the OAP 2016;
- OLAF participated in five coordination meetings and jointly worked with Eurojust on 20 cases; the first JIT with participation of OLAF.

### ***Cooperation with third States***

- Increased involvement of third States in Eurojust cases, coordination meetings, coordination centres and JITs;
- The secondment of a Liaison Prosecutor for Switzerland at Eurojust;
- Negotiations finalised on Cooperation Agreements with Ukraine and Montenegro;
- Eurojust network of contact points enlarged to 39 third States;
- Seminar, *Application of the Mutual Legal Assistance and Extradition Agreements between the EU and the USA*;
- Eurojust further discussed the role and legal status of the Eurojust liaison magistrates in third States, including criteria for selecting third States for their posting; Eurojust continued the work on the technical side towards adopting, in consultation with the European Commission, the implementing arrangements in accordance with Article 27a(4) of the Eurojust Council Decision;
- Eurojust supports several projects in the Western Balkans.

## Public access to documents

### *Public access to documents*

In 2015, 18 requests for public access to Eurojust documents were received, a decrease compared to 25 requests received in 2014. No confirmatory applications were received in 2015. Further information is available on Eurojust's website.

### *Public Register*

The Public Register is designed to provide citizens with easier access to documents held by Eurojust without the need to make a formal access to documents request. The Public Register is accessible on Eurojust's website.

## Thank you and farewell

We thank **Donatella Frendo Dimech**, former National Member for *Malta*, **Ingrid Maschl-Clausen**, former National Member for *Austria*, and **Harri Tiesmaa**, former National Member for *Finland*, for their work and valuable contribution to Eurojust.

[PHOTOS]

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