



JITs Network



EUROJUST

The European Union Agency
for Criminal Justice Cooperation

Third JIT Evaluation Report

Evaluations received between: November 2017 and November 2019

March 2020

Third JIT Evaluation Report

Contents

Executive summary	3	3.4. Effectiveness of JITs and best practice.....	14
Findings from the evaluation of joint investigation teams..	3	3.5. Best practice identified	15
Eurojust's experience in joint investigation teams with third States	4	4. Findings related to the closure of the JIT	15
General introduction	5	4.1. Timing of joint investigation team closure.....	15
Chapter 1: Findings from the evaluation of JITs	7	4.2. Best practice identified	16
1. Joint investigation team (JIT) evaluation process...	7	5. Findings related to Eurojust's and Europol's support.....	16
2. Findings related to the setting-up of the JIT	7	5.1. Eurojust's support.....	16
2.1. Pre-setting-up phase: identification of the need to set up a JIT	7	5.2. Europol's support.....	17
2.2. Setting up a JIT: legal requirements, practical considerations and possible obstacles	8	6. Recommendations received.....	17
2.2.1. <i>A lack of ongoing investigations in the countries of relevance</i>	8	Chapter 2: Eurojust's experience in JITs with third States	19
2.2.2. <i>Identification of relevant JIT partners</i>	8	1. Joint investigation teams in a context of borderless crime	19
2.2.3. <i>Feasibility and willingness to participate in a JIT</i>	8	2. The increasing involvement of third States in JITs	19
2.2.4. <i>Diverging operational priorities/different levels in investigations</i>	8	3. What does the legislation say?	21
2.2.5. <i>Involvement of several authorities at national level</i>	9	4. How Eurojust supports the JIT partners	21
2.3. Discussing and signing the JIT agreement.....	9	4.1. Global network of Eurojust	21
2.4. Best practice identified	10	4.1.1. <i>Third States with most JIT experience</i>	21
3. Findings related to the operational phase of the JIT	10	4.1.2. <i>Role of the liaison prosecutors</i>	21
3.1. JIT working methods.....	10	4.2. Operational assistance throughout the JIT.....	22
3.1.1. <i>Coordination of investigative measures</i>	10	4.3. Financial support.....	22
3.1.2. <i>Tools for transmission of information and evidence</i>	10	5. When a JIT was discussed but not set up	23
3.1.3. <i>Seconded members</i>	11	6. Understanding the specifics of JITs with third States	23
3.2. Operational arrangements.....	12	6.1. Drafting the JIT agreement.....	23
3.2.1. <i>Disclosure</i>	12	6.2. Different legal systems	23
3.2.2. <i>Jurisdiction</i>	12	6.3. Operational planning	23
3.2.3. <i>Communication with the media</i>	13	6.4. Common working language	23
3.3. Challenges encountered and solutions found	13	6.5. Extradition and transfer of proceedings.....	24
3.3.1. <i>Language issues</i>	13	7. Want to know more?	24
3.3.2. <i>Cooperation with States not party to the JIT</i>	13	8. Example: Italy and Albania – enhanced cooperation in a JIT framework.....	24
3.3.3. <i>Different mandatory deadlines for the investigation</i>	13		
3.3.4. <i>Refusal of the execution of European Arrest Warrants due to prison conditions</i>	13		
3.3.5. <i>Legal requirements for statements of suspects/victims/witnesses</i>	14		

3

2

1

Executive summary

This report is the **third joint investigation team (JIT) evaluation report** published by the JITs Network since 2014. It contains two chapters.

Chapter 1 provides a non-exhaustive overview of findings from 99 evaluation forms completed by JIT practitioners between November 2017 and November 2019.

Chapter 2 specifically addresses Eurojust's experience in JITs with third States.

The executive summary provides an overview of the main practical findings of this report in terms of lessons learned and best practices identified.

Findings from the evaluation of joint investigation teams

(a) Setting-up of a joint investigation team

Specific challenges identified:

- ▶ lack of ongoing investigations in the countries of relevance;
- ▶ identification of relevant JIT partners when the case presents connections between more than two countries;
- ▶ feasibility and willingness to participate in a JIT;
- ▶ reluctance to join a multilateral JIT involving States with no direct links between their respective investigations;
- ▶ diverging operational priorities / different levels of investigations in involved countries;
- ▶ identification of relevant JIT partners when several criminal proceedings are ongoing at national level without a possibility of being merged;
- ▶ setting-up of a JIT without delay in cases when the decision to set up a JIT is made close to the time when actions are expected to be carried out.

Best practice:

- ▶ familiarity with a JIT tool: previous experience among States or national authorities to be involved in the JIT;

- ▶ agreement on a simplified procedure to deal with changes of JIT members;
- ▶ facilitation role of JIT national experts (coordinators) in the setting-up process;
- ▶ use of a common working language for the discussion of the draft JIT agreement;
- ▶ acceptance of a JIT agreement in English in national proceedings (no translation required);
- ▶ discussion at the time of the setting-up of a JIT of how an operational analysis is going to be done and by whom (Europol or national authorities);
- ▶ early clarification of legal and practical issues already in pre-JIT phase; involvement of Eurojust to provide assistance and advice.

(b) Operational phase

Specific challenges identified:

- ▶ language issues, in particular lack of time and translators in cases with large amounts of material to be translated or less common languages;
- ▶ coordination of a response to mutual legal assistance (MLA) / European Investigation Order (EIO) requests received by one party to a JIT requesting to share evidence collected within the JIT;
- ▶ different mandatory deadlines for the investigations in JIT parties that might interfere with operations;
- ▶ refusal of the execution of the European Arrest Warrants due to prison conditions;
- ▶ differences in legal requirements regarding hearings of victims and witnesses.

Best practice:

- ▶ role of liaison officers from one JIT State posted in the other JIT State: daily communication and deeper understanding of specifics of the legal system as well as cultural and social background;
- ▶ use of common/shared investigative methods and tools between law enforcement agencies of States involved;

- ▶ visibility of the teamwork to the arrested suspects;
- ▶ involvement of specific experts (national trafficking in human beings coordinator, Interpol, non-governmental organisations (NGOs) beneficial to the outcome of the case;
- ▶ implementation of the joint strategy regarding support/protection of victims of trafficking (multidisciplinary approach, including NGOs, ministries of justice);
- ▶ added value of joint surveillance and real-time analysis of intercepts in a drug-trafficking case in a border area;
- ▶ continuous engagement in discussion to clarify the legal systems and requirements in different countries;
- ▶ possibility of using the same interpreter/translator throughout the JIT activities (translation of wiretaps, interpretation during the meetings) to allow better overview of the case and contribute to the efficiency of cooperation;
- ▶ good protocolling of the information and evidence exchanged (using the JIT Log).
- ▶ Most JITs involving third States were set up on the basis of Article 20 of the Second Additional Protocol to the 1959 Council of Europe Convention. Article 19 of the UN Convention against Transnational Organized Crime was also used as a legal basis for setting up JITs.
- ▶ The global network of Eurojust has contributed significantly to establishing contacts at an early stage and to the increased successful setting-up of JITs with third States. In particular, the liaison prosecutors posted at Eurojust played a crucial role. Furthermore, several Eurojust contact points were involved in the successful establishment of JITs.
- ▶ Eurojust provided operational assistance throughout the entire lifecycle of the JITs with third State involvement. Coordination meetings at Eurojust offer a valuable platform to deliberate on the suitability of a case to set up a JIT, to draft the JIT agreement and to decide on the operational way forward. More and more JITs with third State involvement have also benefited from Eurojust JIT funding. National authorities could consider the setting-up of a Coordination Centre at Eurojust in support of common action days, including when the case involves one or more third States.

(c) Prosecution phase

Best practice:

- ▶ continued cooperation during the prosecution phase – reference in LORs to the closed JIT;
- ▶ continued cooperation in a JIT to tackle practical/legal/operational issues during the prosecution phase.

Eurojust's experience in joint investigation teams with third States

- ▶ JITs are increasingly seen as a valuable tool of judicial cooperation with third States. As at the end of 2019, 20 EU Member States had already gathered experience in JITs with third State involvement. From Eurojust's casework, it emerges that so far a total of 74 JITs have been set up with one or more third States as a member.
- ▶ Good, regular and efficient communication – ideally in a common working language – is the most important aspect of successful cooperation within a JIT, irrespective of whether or not a third State is also a member of the JIT. Specific issues that were addressed in JITs involving third States included specific clauses in the JIT agreement reflecting legal domestic requirements, different standards and rules on the gathering of evidence, and jurisdictional issues and the legal possibilities of a transfer of proceedings at an early stage.
- ▶ The reasons for not setting up a JIT were often the same as for cases with EU Member States only, such as being at too preliminary a stage to decide or at a different or advanced stage of the investigations/prosecutions. Some factors specific to the possible involvement of a third State were different rules governing disclosure, the lack of a common legal basis to set up a JIT and preference for cooperation using MLA.

Good, regular and efficient communication – ideally in a common working language – is the most important aspect of successful cooperation within a JIT.

General introduction

This report is the **third joint investigation team (JIT) evaluation report** published by the JITs Network since 2014.

It is based on **99 evaluations completed by JIT practitioners between November 2017 and November 2019**.

The periodic reports constitute one of the deliverables of the **JIT evaluation project**.

The JIT evaluation project was initiated in 2013 with the following objectives:

- ▶ firstly, assisting practitioners to evaluate the performance of the JIT in terms of results achieved, added value and possible shortcomings, in order to improve future cooperation;
- ▶ secondly, enhancing knowledge of JITs by facilitating the identification of the main legal and practical challenges experienced and solutions found.

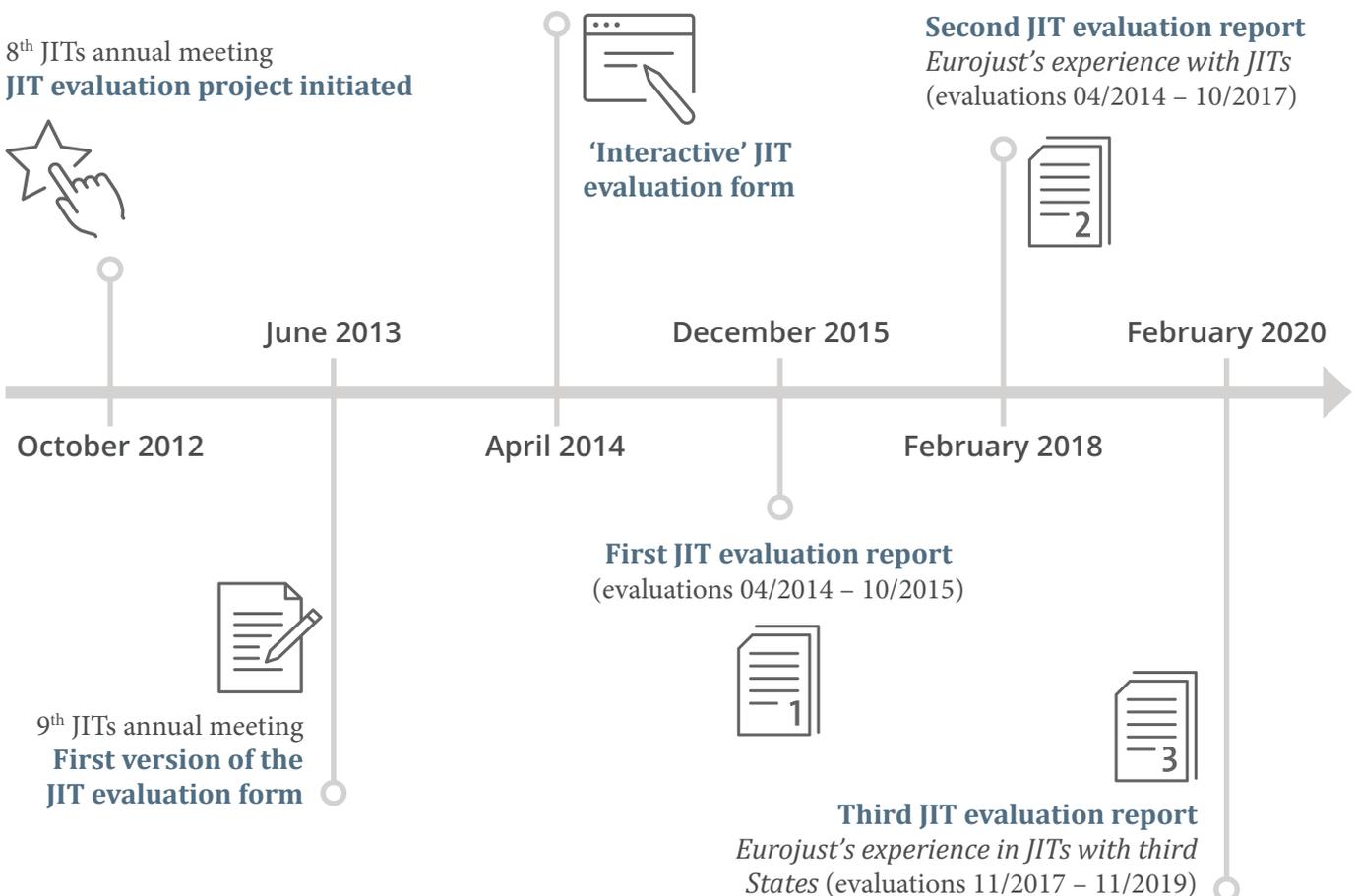
An interactive evaluation form ([available on Eurojust's website](#)) was introduced in 2014 as a tool to facilitate evaluations. In practice, the form is completed either remotely by JIT leaders or following a dedicated meeting.

Since the last evaluation report, the project has been implemented in close cooperation with Eurojust. This report therefore contains **two chapters**:

Chapter 1 provides a non-exhaustive overview of the findings from the evaluation forms received between November 2017 and November 2019.

Chapter 2 specifically addresses **Eurojust's experience in JITs with third States**. The number of JITs involving third States has increased through the years and so far 74 JITs involving third States have been set up and supported by Eurojust.

Considering the importance of the topic, Chapter 2 provides information on the status quo and captures the main lessons learned and best practices identified.





Chapter 1 - Findings from the evaluation of JITs

1. Joint investigation team (JIT) evaluation process

The objectives of the third JIT evaluation report are to **provide the main highlights of the content of the JIT evaluation forms received by the JITs Network Secretariat between November 2017 and November 2019**, to address Eurojust's experience with third States and to complement the findings of the previous reports.

JIT national experts continue to play a key role in the evaluation process, since they represent the main vector of transmission of the completed evaluation forms to the JITs Network Secretariat. Moreover, JIT national experts very often initiate and support the evaluation process themselves.

Joint evaluations include the viewpoints of all parties involved and therefore contain the most valuable findings. The JIT Network Secretariat received 33 evaluation forms that were prepared jointly by the JIT parties. The Secretariat and/or Eurojust directly supported 15 evaluations during dedicated evaluation meetings.

While the number of received evaluations increased in comparison with previous reporting periods, the number of unilateral evaluations received (66) shows that obtaining a joint evaluation might still present a challenge for various reasons. To facilitate the evaluation process and make it more accessible, an online JIT evaluation module that would allow direct and immediate evaluation by the JIT practitioners is under preparation.

Chapter 1 analyses the findings related to the three main stages of the lifecycle of a JIT (setting-up phase, operational phase and closure), specific legal/practical issues and best practices identified, as well as recommendations addressed by practitioners to Eurojust, Europol and the JITs Network Secretariat.

2. Findings related to the setting-up of the JIT

2.1. Pre-setting-up phase: identification of the need to set up a JIT

A JIT requires, primarily, that competent authorities of the States concerned **identify a common purpose and interest** in establishing such a cooperation framework, which presupposes that the **connections between the investigations in the different States are established and verified**.

The evaluations reveal that the parties identified the need to set up a JIT mostly by way of **exchanging (and analysing) information between national law enforcement authorities (bilateral contacts)**, with the support of Europol, if applicable. One JIT highlighted that the participation of prosecutors during the operational meeting at Europol facilitated discussion on establishing the JIT.

Once the need to set up a JIT is identified, practitioners mostly **involve Eurojust in view of discussing the setting-up of a JIT during coordination meetings**.

Coordination meetings at Eurojust are designed to bring together the judicial and law enforcement authorities of the involved countries to stimulate and achieve agreement on their cooperation and/or the coordination of investigations and prosecutions at national level.

One JIT described in detail how **familiarity with a JIT tool, based on previous experience**, facilitated the process of setting up the JIT.

At the very moment when the authorities of Member State A became aware of the investigation being opened in Member State B they aimed for setting up a JIT. Due to the active role of the JIT national expert and previous experience the authorities of Member State A were already familiar with the tool and considered it essential in this case where a large number of victims needed to be interviewed and cooperation through mutual legal assistance (MLA) / European Investigation Orders (EIOs) would not have worked. The authorities of Member State A prepared a draft JIT agreement in consultation with their National Desk and presented it to the authorities of Member State B during the first coordination meeting at Eurojust.

In some cases **the need to set up a JIT appeared in the course of Eurojust coordination meetings** after the connections between existing parallel investigations were identified or when discussion triggered the initiation of investigations in the Member States in which investigations had not yet commenced.

In 2017 an investigation in Member State A was opened, in which it was noticed that minors were sent to Member State B to exploit an international event that was

taking place there, by the minors acting as pickpockets. When Member State A sent a letter of request (LoR) to the authorities of Member State B a connection was made between the request and the investigation in Member State B. Member State B then initiated a coordination meeting at Eurojust, where it appeared necessary to have a JIT to facilitate progress and coordinate these investigations.

2.2. Setting up a JIT: legal requirements, practical considerations and possible obstacles

The evaluated JITs recommended that law enforcement and judicial authorities from the States concerned **meet to discuss legal requirements, practical considerations and possible obstacles at the earliest opportunity**, and involve Eurojust, which with its expertise can play a key role in this respect.

The evaluations received pointed out the following issues that required specific consideration before the JITs were set up.

2.2.1. A lack of ongoing investigations in the countries of relevance

In the majority of cases, parallel proceedings were already in place in all States considering setting up a JIT. When this was not the situation at the moment of the first contacts between national authorities, the opening of an investigation was triggered by issuing an LoR, by spontaneous exchange of information or, more exceptionally, by the request of a Eurojust national member.

One of the evaluated JITs reported on the importance of Eurojust's support in such cases: *'The big advantage was mainly the coordination meeting before the setting-up of the JIT. It helped to identify the main purpose of the investigations in Member States A and B and the practical result was the opening of a new investigation in Member State B immediately.'*

2.2.2. Identification of relevant JIT partners

When the case presents **connections between more than two countries**, their respective levels of involvement are also taken into account: sometimes it is agreed as a first step that a JIT will be established not between all countries concerned, but between the ones most involved, while the cooperation of the others will be sought through MLA/EIO. In a complex value added tax (VAT) fraud case a decision was made to limit the case to the most relevant States.

Because of the complex crime investigated and the fact that links could be found with nearly all EU Member

States, at the beginning the public prosecutor's office (PPO) from Member State A was considering setting up a JIT with all 28 Member States. Eurojust helped identify the most relevant countries for this case to be involved in the JIT (three Member States), while cooperation with other Member States went via normal MLA with the assistance of Eurojust. At a later stage, Europol helped to find further links with Member State X, which was then invited to join a JIT.

Another issue that emerged in this case was the initial reluctance of one of the Member States involved **to join a multilateral JIT involving another Member State with which that Member State had no direct links**. After Eurojust's intervention, it was finally agreed to have a trilateral JIT instead of two bilateral JITs running at the same time.

2.2.3. Feasibility and willingness to participate in a JIT

The flexible nature of the tool as well as its added value in the fight against cross-border organised crime was particularly demonstrated in one of the evaluated JITs. Although this Member State was less significantly affected by the activities of the organised crime group (OCG), it was still willing to join the JIT to cooperate and support the common efforts.

At the time when Member State A received a LoR, there was no ongoing investigation in this State. In this case Member State A had a supportive role by providing technical assistance to other countries; however, it decided to open the investigation and join the JIT to support international efforts against this OCG. In general, in such cases it might be more difficult to fully involve and motivate the police officers to work on other countries' case, but that was not an issue within the JIT; the authorities of Member State A were fully motivated and engaged. Since this case, Member State A has taken part in several other JITs to provide such technical but vital support, in particular in cases when evidence needed to be gathered in real time.

2.2.4. Diverging operational priorities / different levels in investigations

When investigations are already ongoing, the **stage of each national investigation** can play a role: in particular, national authorities may be more inclined to engage in a JIT when their investigation is still at a relatively preliminary stage and when investigations carried out in other countries are at an equivalent stage.

One of the JIT parties presented how they dealt with the situation when the other party had already arrested the main suspect in their investigation.

National authorities may be more inclined to engage in a JIT when their investigation is still at a relatively preliminary stage and when investigations carried out in other countries are at an equivalent stage.

In the early stages of investigation, the authorities of Member State A were faced with the challenge of how to involve authorities of Member State B, as the main target in Member State B was already arrested. After a couple of months police officers of Member State A travelled to Member State B to present the results of the ongoing investigation, including the results of wiretapping and surveillance. The material indicated that the amphetamine was intended for Member State B and the authorities of Member State B then agreed to continue their investigation and set up a JIT despite the arrest of the main target.

2.2.5. Involvement of several authorities at national level

One of the evaluated JITs pointed out the issue of **two criminal proceedings ongoing at national level** in one of the Member States involved and the need to decide which one is more suitable for cooperation within a JIT.

To find a solution in this case, coordination meetings between Member States involved were held in the Member State where the two parallel proceedings were ongoing. This allowed more representatives from the Member State with this issue to be present at the meetings. After several meetings that included the competent authorities from both national proceedings, a solution was found and the JIT was set up with the involvement of the national authorities in charge of the investigation that was more advanced.

2.3. Discussing and signing the JIT agreement

One JIT highlighted the expeditious process of signing the JIT agreement, which was linked to specific domestic arrangements (signature by Eurojust national member as member of the General Prosecution Office, signature by the prosecutor in charge of the case, without specific authorisation required). In one evaluation, only 1 day was required to sign the JIT agreement.

The drafting and signing of the JIT agreement was rapid: before the first coordination meeting it was already clear that authorities of Member States A and B agreed to enter into the JIT. The national desk of Member State A took the role of drafting the JIT agreement. The English version was prepared and exchanged between the parties for possible comments before the meeting and was then ready for signature during the first coordi-

nation meeting. This was possible because members of the national desk of Member State A have authority to sign, and in Member State B the prosecutor in charge of the case can sign the JIT agreement. The national desk of Member State A also provided a translation of the agreement in the language of Member State A. The need to sign the JIT agreement as soon as possible was also related to the possibility for the JIT to still apply for funding in the open call.

Received evaluations show that it was very helpful to the setting-up process when parties agreed to **negotiate the JIT agreement in a common working language**. Some JITs reported in addition that they could also sign an English version of a JIT agreement and did not require the JIT agreement to be translated into their national languages.

In a particular case a flexible solution was found to accelerate setting up a JIT. As the JIT was discussed between neighbouring countries, the first coordination meeting between the Member States involved, including Eurojust, was organised in a city in one of the Member States, which allowed progress to be much faster and more efficient.

In the context of the food scandal on an international scale, the JIT had to be set up in a very short term. It took less than 2 weeks between the first discussion and the signature of the JIT. In order to achieve this, the first meeting between the Member States involved and Eurojust took place exceptionally in city X.

In cases where the decision to set up a JIT is made close to the time when actions are expected to be carried out, it might be crucial that the JIT is set up without any delay.

Despite the relatively quick establishment of a JIT, due to continuous exploitation of victims and a flow of money from the involved Member State and the fact that the investigation was already in a very advanced stage with actions being planned, the authorities of that State were eager for a JIT agreement to be signed as soon as possible. Waiting for the signature felt like a slow process.

Some of the JITs reported that, in **anticipation of the UK's withdrawal from the EU**, original JITs (based on specific EU legal bases) were terminated and re-

placement JIT agreements were drafted referring to Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. This was done with a view to ensuring legal certainty of ongoing JITs after Brexit. In a case where one of the Member States involved had not ratified the Second Additional Protocol the parties needed to resort to Article 19 of the United Nations Convention against Transnational Organized Crime (UNTOC) as a common legal basis for establishing a JIT.

The evaluations also highlighted the need for JIT partners to agree – if not already included in the JIT agreement itself – on **specific practical arrangements**, such as disclosure and admissibility requirements, clarification of respective domestic rules and identification of specific requirements that may be relevant in view of JIT operations.

One JIT specifically stated that it is crucial to discuss and decide at the time of the setting-up of the JIT **how the operational analysis is going to be done and by whom**. The JIT parties considered it would be useful if Europol could conduct such analysis in parallel with national authorities.

2.4. Best practice identified

Best practice in setting-up phase

Familiarity with a JIT tool: previous experience among States or national authorities to be involved in the JIT

Agreement on a simplified procedure to deal with changes of JIT members

Facilitation role of JITs national experts (coordinators)

Use of a common working language for the discussion of the draft agreement

Acceptance of a JIT agreement in English in national proceedings (no translation required)

Discussion at the time of the setting-up of a JIT of how an operational analysis is going to be done and by whom (Europol or national authorities)

Early clarification of legal and practical issues already in pre-JIT phase; involvement of Eurojust to provide assistance and advice

Drafting techniques to define the scope of the JIT agreement: reference to the national case files, crime type, start date of the investigation; if applicable a reference to the OCG and list of targets

3. Findings related to the operational phase of the JIT

3.1. JIT working methods

3.1.1. Coordination of investigative measures

To achieve their purposes, JITs require the effective coordination of domestic proceedings and planning of investigative/prosecutorial steps.

In the majority of cases, investigative measures were coordinated between **JIT partners through face-to-face meetings**, fully in line with the clear tendency to **value direct contacts and communication between JIT parties**. Between the meetings, parties relied on direct, often informal contact and used telephone communication or email to coordinate actions. Several JITs used WhatsApp groups, telephone and/or videoconferences by Skype to facilitate communication.

The evaluations once again confirmed that direct communication and personal contacts are essential for efficient cooperation, with one JIT remarking: ‘In the early day of the investigations we talked to each other every day; it was as if we had shared an office’.

As reported in the evaluations, cooperation within a JIT in many cases facilitated organisation of common action days.

In line with the findings of the previous report, a relatively limited use of operational action plans (OAP) to coordinate JITs’ activities has been documented.

3.1.2. Tools for transmission of information and evidence

The evaluations still show a clear preference for informal relations regarding the exchange of information and evidence. A large number of JITs rely on **emails, encrypted CDs and DVDs, other telecommunication tools or meetings**.

For data protection and security it may be advisable to use the **Secure Information Exchange Network Application (SIENA)** or, alternatively, Eurojust’s ded-

***SIENA** (Secure Information Exchange Network Application) is a communication tool developed by Europol to enable the swift, secure and user-friendly exchange of operational and strategic crime-related information and intelligence between EU Member States, Europol and third parties.*

icated equipment and **secure email made available by the Eurojust JIT funding scheme**. It was, however, noted that the use of SIENA still presents a challenge for some countries with a centralised system that does not allow direct/individual transmitting of messages.

In line with the findings of previous reports, the traceability of information/evidence sometimes represents a challenge, in particular when large sets of data are being exchanged between multiple JIT partners.

One JIT observed that, when a lot of data are exchanged within a JIT, there is a need for good **'protocolling' of the information exchanged**. This makes it clear where the information comes from, as that might not be always obvious but could be important during a court proceeding.

In a complex VAT fraud case in which large amounts of information/evidence needed to be exchanged, one of the national desks involved created a **specific document/template**. This simple Word document (translated into four official languages of the JIT parties) contained some specific identifiers (i.e. date, information on requesting and requested authorities, object of the request, measure requested) for the purpose of keeping track of all ongoing requests and was called the JIT Log.

Another JIT stressed the need for the creation of a **common platform/database for exchange of information and documents** in more complex JITs with many activities.

In July 2019, the European Commission, with the support of Eurojust and other stakeholders, initiated the 'Digital Criminal Justice study'. Specifically, the study seeks to better understand the business needs of the judicial community working on cross-border criminal cases, and assess how these needs could be met by technological solutions.

In line with the findings of this report, as well as previous ones, the need for an **'operational online collaborative environment'**, enabling law enforcement and judicial authorities involved in a JIT (including agencies such as Europol) to securely 'post' information and evidence, in conditions facilitating the traceability (and thus, further admissibility) of the evidence exchanged need was confirmed during the Digital Criminal Justice study and will be subject of a specific recommendation.

3.1.3. Seconded members

The level of involvement and role of seconded members varied from case to case; however, their participation during the action period (arrests, interrogations, searches and seizures) as well as after the actions (selecting and reviewing relevant material, interviewing the victims/witnesses) was regarded as an important contribution to the efficiency of investigations.

One JIT noted: *'The possibility for seconded members to participate in investigative measures in other JIT parties was a real added value for the case, as it enabled **the people most knowledgeable about the case to be actively involved**'.*

It was beneficial for the JIT members of Member State A to accompany police from Member State B during the action day against the outstanding five OCG members, as they already had detailed knowledge of the case and understanding of the prosecution needs in Member State A. They were best placed to identify the scope of the search and the relevancy of the items found.

The participation of seconded members during interrogations **made the teamwork visible and sent an important signal to the criminals**, as described by one of the JIT members.

When arrested in Member State A the suspect was very calm and not impressed when he was informed of the suspicion against him. However, when he saw the investigators from Member State B present, he realised the investigation was bigger and coordinated with other countries and then he got nervous.

The important **role of the seconded members during victim/witness interviews – in particular to facilitate contact and/or provide care** – was indicated by several evaluations.

In a large trafficking in human beings (THB) case for which a large number of victims/witnesses needed to be interviewed in several locations, the involvement and attendance of the seconded members improved the performance of the local officers, who were less familiar with the case, and helped them to spot certain important elements from the statements provided. Another JIT (in a THB case) reported that the presence of the seconded members during questioning of victims/witnesses was very helpful, as it allowed victims/witnesses originating from the same State as the seconded members to feel more comfortable, trustful and ready to talk. In some cases the presence of seconded members also prevented unnecessary duplication of interviews.

One of the advantages of JITs in comparison with LoRs is the possibility of sharing information directly between JIT members.

Several evaluated JITs highlighted in particular the role of seconded members in **selecting and reviewing relevant material** for their respective files, contributing to the efficiency of the proceedings as well as saving on costs of translation.

In some of the JITs the role of seconded members was of a more **advisory nature**, but their knowledge and presence were useful for investigators carrying out investigation activities to gain deeper cultural and general understanding around foreign criminality.

3.2. Operational arrangements

3.2.1. Disclosure

One of the advantages of JITs in comparison with LoRs is the possibility of sharing information directly between JIT members. However, national legislation may vary regarding:

- ▶ the extent to which information received can (or has to) be included in the proceedings and serve as evidence at court; and
- ▶ the extent to which information may (or has to) be disclosed to interested parties and the stage of proceedings when such disclosure is to take place.

Evaluated JITs highlighted the role of the seconded members who assisted authorities of the other State to review the investigative material and assess what should be included in the case file.

The system in the particular Member State requires that the prosecutor assess the material gathered during investigation for the purpose of disclosure. In this respect, the assistance of the police officer who came to this Member State (two times for 2 weeks) to review the file together with the prosecutor was of major importance.

Several JITs underlined that, in the absence of detailed rules in the JIT agreements, a continuous engagement in an in-depth discussion on disclosure issues, not only in the pre-JIT stage but also during the operational phase, is very important to prevent any possible impact on the operations.

In a drug-trafficking case a question arose on the way to ensure prosecution of arrested couriers without disclosing information that could jeopardise pro-

ceedings against other suspects. A decision was made to divide proceedings and appoint different prosecutors to deal with each part of them.

In another drug-trafficking case a similar issue arose concerning the notification of coercive measures, which was required by the legislation of one of the States involved. This could have led to granting a suspected person early access to the proceedings, whereas the investigation in the other Member State was still in the covert phase. As a result, the decision was made to deal separately with the proceedings against this suspect.

3.2.2. Jurisdiction

Agreements on sharing of jurisdiction or transfer of proceedings are often mentioned, thus confirming that JITs are a very effective platform to address jurisdiction issues.

Several JITs provided useful information in relation to the criteria used to decide on the forum in which to prosecute: location of the arrest, when and where (most of) the offences were committed, location/nationality of a main suspect, suspects' and/or victims' origin. The prospects of the case in a given jurisdiction – particularly in view of the evidence collected, admissibility standards and applicable sanctions – are also taken into consideration.

One JIT emphasised the 'need to consider the issue at the earliest stage possible', since jurisdiction arrangements could affect the operational phase, particularly the execution of European Arrest Warrants (EAWs).

In view of a common action day the JIT decided to divide the targets to be arrested between Member State A and Member State B. Consequently, Member State A issued EAWs to Member State B to prosecute the suspects in Member State A. Member State B refused the execution of the EAWs on the basis of a ground of refusal specifically provided for in its legislation because the offences were committed totally or partially in the territory of Member State B. It became evident that this legal requirement was not clear to Member State A when the decision on the arrests was made.

The problem could only be overcome at the coordination meeting after the JIT expired. It was finally decided to transfer the proceedings from Member State B to Mem-

ber State A, which was the country better placed to prosecute the four suspects for whom EAWs were issued.

On the other hand, thanks to the flexibility offered by the JIT, initial arrangements can be reconsidered in view of the developments of the investigation, as was the situation in the following case.

This was a very positive aspect of cooperation in the JIT, as they could discuss the subject of jurisdiction in detail and decide who was going to prosecute based on which country would be in a better position to do so. It was very important to discuss this question at the beginning and to know on which evidence to focus as well as following the development of the investigation in later stages. Accordingly, based on the developments of the case it was agreed between the parties that Member State A was in a much better position to prosecute the entire group. Member State B would not be in a position to do it itself; it could only prosecute some of the couriers. This was not that clear at the beginning so it was very important to monitor developments of the case and continuously discuss the issue.

3.2.3. Communication with the media

JITs clearly appear to facilitate a common approach to communicating with the media, with two main options identified: either no communication took place or a coordinated approach was agreed upon between the JIT partners.

In some cases JIT parties worked together with the support of Eurojust to issue a joint press release. In one case the parties agreed that seconded members who supported the action day would be joined by a member of the press office, who then attended the actions and captured the relevant material. This material formed part of a jointly considered press release.

Relations with the media affected the confidentiality of the procedure in only one reported case. Practitioners highlighted that *'It's important for JIT members to discuss the media communication strategy and respect the confidentiality of proceedings until the final judgment is issued'*.

3.3. Challenges encountered and solutions found

3.3.1. Language issues

Among the practical challenges identified, language difficulties were often mentioned by evaluated JITs. To avoid large costs of interpretation and translation, JITs often relied on the facilitating role of liaison officers or investigators with knowledge of other languages. In particular in cases with a large amount of material to

be translated or languages that are not very common, a problem with a limited number of translators was observed, leading to prolonging of proceedings and/or the need to prioritise the material.

In one case where only two interpreters were available for a specific dialect used by the suspects and there was a need to interpret a large amount of intercepted material simultaneously, both interpreters were fully involved, taking turns. As some of the intercepted conversations were of poor sound quality, a constant exchange between the interpreters on how to understand specific passages needed to be ensured.

3.3.2. Cooperation with States not party to the JIT

In one case a question arose about how to deal with an LoR received by one party to the JIT, asking to share evidence that was collected within the JIT. The evidence could not be shared with the requesting non-JIT State without the consent of the other JIT party. In this case the non-JIT State had to submit LoRs to both JIT parties.

The JITs also reported on difficulties in cooperation with specific partners, in particular the ones with specific autonomous status such as Greenland and Gibraltar. Despite efforts to establish cooperation in these cases, the JIT partners were not successful and no solutions were found.

3.3.3. Different mandatory deadlines for the investigation

Different mandatory deadlines for the investigation might also interfere with operations, as reported by another JIT.

The investigation [in a drug-trafficking case] in Member State A started already in September 2014 and wiretapping of the suspects was ongoing since then. In Member State A, wiretapping is allowed for 30 days and then the court needs to review the request. Until August 2015, the authorities of Member State A needed to visit the court several times while they still did not make any seizures. Within the JIT they were informed about the delivery coming from Member State B. They managed to seize the drugs and request further prolongation of wiretapping, also referring to their participation in the JIT.

3.3.4. Refusal of the execution of European Arrest Warrants due to prison conditions

In practice, the use of JITs has to be combined with the application of mutual recognition instruments, in particular EAWs. A JIT facilitates the investigation, but remains dependent on the effectiveness of the instru-

ments. In one case, the competent authority in the executing State (a party to the JIT) refused the execution of EAWs due to the prison conditions in the issuing State (the other party to the JIT). In the executing State the case was referred to the Supreme Court and the final ruling was issued after almost a year. Because of the extensive time that had passed, the competent authority in the issuing State had to release the other suspects (members of the same OCG) from pre-trial detention and resort to other supervision measures. Finally, to be able to continue with the court proceeding against other suspects, the competent authority in the issuing State decided to charge *in absentia* the suspects against whom EAWs were issued.

3.3.5. Legal requirements for statements of suspects/victims/witnesses

Some JIT parties observed several differences in their legislations regarding the hearing of victims and witnesses. The evaluations show that parties involved showed a lot of flexibility to accommodate the requirements of the national legislations of other parties to obtain statements that would be admissible in the court proceedings. In one case, although the legislation of the JIT party does not recognise such a practice, the request of the other JIT party to repeat the interviews was accepted as well as the request to extend the JIT, based mainly on the need to repeat these interviews.

3.4. Effectiveness of JITs and best practice

The level of satisfaction with the use of JITs is extremely high, with almost all evaluated JITs indicating that the use of JITs made an effective contribution to the investigation. One JIT elaborated further on this topic, particularly highlighting the **positive effect of JITs on mutual trust, building expertise and sharing of professional practice**.

The members of the JIT learned from each other and obtained new knowledge regarding tactical and strategic responses, which they are now sharing also among their national authorities. It was highlighted that without the JIT only half of the members of the OCG would have been arrested and the rest could have continued their activities ('the reach of only one country would be too short'). The team communication was excellent; they did not act as two countries, but as one team.

The added value of the **JIT in comparison with 'classical' MLA** was illustrated by several JITs, confirming – in various crime areas – the benefits of JITs when swift cooperation and adjustments are required to reflect the changing needs of the investigation.

The JIT members confirmed that without cooperation within the JIT they would not have been able to dismantle the OCG; they would have been able to achieve only a partial result by arresting some of the couriers. The cooperation based only on LoRs would have been impossible, as a lot of work had to be done on the ground, and efficient and quick exchange of information was of crucial importance. Surveillance was the key in this case, as suspects did not use phones or computers, and cooperation in the JIT was essential to monitor developments and coordinate investigative and prosecutorial strategies.

Several JITs outlined in particular the benefits of the JIT cooperation in **fast, direct and efficient exchange of information**, allowing investigations to progress much faster and more effectively.

One evaluation described how the establishment of the JIT provided a platform for fluid and rapid exchange of information in real time. This allowed the investigators to follow the suspects from Member State A to Member State B and to identify suspects accompanying them (an additional layer of the OCG was revealed this way). Real-time exchange of information – staying online and having knowledge of what is going on now in the other State – would not be possible without a JIT.

In a drug-trafficking case Member State A needed to open its own investigation against a suspect from Member State B to be able to request a court order for surveillance and electronic surveillance of the premises. It was late afternoon when it became known that the suspect would come to Member State A the next day. Through direct contact with colleagues from Member State B (by phone), it was possible to gather enough information to justify opening the investigation. The next day the court in Member State A issued an order for surveillance against this suspect. This was possible only thanks to existing cooperation and already established personal contacts within the JIT.

The evaluations once again recognised the benefit of JITs when it comes to **joint use of resources, expertise**

The added value of the JIT in comparison with 'classical' MLA was illustrated by several JITs ... [in particular] when swift cooperation and adjustments are required to reflect the changing needs of the investigation.

and technical capabilities, allowing better and more efficient cooperation results. For instance, joint forensic investigations of seized weapons were conducted in one case, leading to rapid sharing of knowledge and results.

On **cooperating with non-JIT States**, several evaluations indicated that the JIT facilitated a coordinated approach.

Whenever a JIT member requested evidence from a third party (either a Member State or a third State), it always asked for permission to share the information/evidence within the JIT. The LoRs actually included a clause to the effect that the evidence requested would be shared with the other members of the JIT. It was noted as best practice to provide third parties with information on the purpose of the JIT to encourage closer cooperation.

The cooperation within the JIT proved to be efficient also in **determining one case to be a THB case and prosecuting it as such**. In this case Member State A was confronted with an investigation that was the first of its kind, the purpose being the exploitation of the identity of victims. This case started when national authorities of Member State A received several reports of burglaries and frauds committed by a group of suspects. After intercepting a telephone conversation between suspects, the authorities understood that the suspects might actually be victims, recruited by the OCG in Member State B. They were transported to Member State A to perform various tasks and commit crimes for the benefit of the OCG. Finally, the involvement of the national coordinator for THB clarified that it was a THB case and the JIT was set up. The visits of the seconded members from the victims' State (Member State B) were crucial to understand the background and situation of the trafficked victims. In this way Member State A managed to prosecute the case as THB and support it with relevant evidence.

Furthermore, in one reported case, cooperation in a JIT proved to be crucial for the implementation of a strategy on the handling and protection of **victims**.

Engagement with victims was a key to the success of this investigation and required specialised skills. Due to the personal circumstances and vulnerability, the victims often lead chaotic lifestyle and it was difficult to locate them and interact. A suitable amount of time to facilitate interaction with these victims was necessary and the team members of Member State A had provided considerable support to victims by involving NGOs and other institutions. On the other side, Member State B substantially contributed to their safety by implementing all the safety measures needed: it provided housing and safeguarding, and escorted the victims throughout

the process as well as when travelling to Member State A. The JIT also allowed safeguarding to be implemented immediately when one of the victims reported that she was being intimidated, and the authorities of Member State B were able to protect her and her family.

In one case, the cooperation in a JIT secured crucial evidence, as it allowed an important witness, who was scared to testify in the country of origin, to be heard in another JIT party by the JIT leaders of both parties and in the presence of the witness's lawyer.

3.5. Best practice identified

Best practice at operational stage

Role of liaison officers from one JIT State posted in the other JIT State: daily communication and deeper understanding of specifics of the legal system as well as cultural and social background

Use of common/shared investigative methods and tools between law enforcement agencies of States involved

Visibility of the teamwork to the arrested suspects

Involvement of specific experts (national THB coordinator, Interpol, NGOs) beneficial to the outcome of the case

Implementation of the joint strategy regarding support/protection of victims of trafficking (multidisciplinary approach, including NGOs, ministries of justice)

Added value of joint surveillance and real-time analysis of intercepts in a drug-trafficking case in a border area

Continuous engagement in discussion to clarify the legal systems and requirements in different countries

Possibility of using the same interpreter/translator throughout the JIT activities (translation of wiretaps, interpretation during the meetings) to allow better overview of the case and contribute to the efficiency of cooperation

Good protocolling of the information and evidence exchanged (using the JIT Log)

4. Findings related to the closure of the JIT

4.1. Timing of JIT closure

The evaluations showed that there are differences in practice and national legislations about the stage until which a JIT can be operational. In some Member States a JIT can be extended until the issuing of an indictment; in others it could cover the prosecution and trial phase; finally some Member States allow a JIT to be established or prolonged after the trial phase for the enforcement of specific measures

Eurojust is perceived as an actor that facilitates a good level of interaction between JIT partners, particularly through coordination meetings where parties [can] discuss outstanding issues and rely on the legal expertise of Eurojust.

(confiscation, judicial orders aimed at preventing re-offending).

Several JITs reported on the best timing for the closure of a JIT. In one case it was reported that a lot of requests were made after the expiry of the JIT. These requests included a reference to ‘the spirit of the JIT’ – although it had been formally closed – and this proved effective. The liaison officer in the other JIT party was used to channel these requests. It was noted by the JIT members that it would be useful to be able to continue the JIT until the final sentence.

In another JIT, many challenges surfaced during the trial phase. Whereas the suspects made use of their right to remain silent during the pre-trial proceedings, during the court proceedings the suspects testified and came up with a different version of the events. Additional further investigations were urgently required in order to be able to respond to their claims. According to the members of the JIT, it is advisable to keep a JIT operational during the trial phase too, to facilitate coordination and cooperation.

In a case of THB for the purpose of labour exploitation, it was agreed that one party would prosecute all the members of the OCG. The trial was concluded and most of the members of the OCG were convicted. When the JIT was about to expire, the JIT members decided to extend it, as there were still ongoing proceedings in the other JIT party against other possible OCG members, as well as for the purpose of restraint and confiscation of the proceeds of crime in both parties involved.

One evaluation recommended not closing the JIT until the transfer of proceedings is concluded in order to be able to ensure financial support for translations of documents exchanged.

4.2. Best practice identified

Best practice at operational stage

Continued cooperation during the prosecution phase – reference in LoRs to the closed JIT

Continued cooperation in a JIT to tackle practical/legal/operational issues during the prosecution phase

5. Findings related to Eurojust’s and Europol’s support

5.1. Eurojust’s support

National authorities recognise Eurojust’s expertise in the field and the intention to establish a JIT is often a triggering factor for national authorities to refer the case to Eurojust.

Several evaluations highlighted the role of Eurojust in the **setting-up phase**, in particular by organising coordination meetings, facilitating clarification of national legal requirements among the possible JIT partners, assisting in assessing the need to set up a JIT and determine its scope and purpose, and providing assistance in drafting JIT agreements.

In a large VAT case where links were detected with almost all EU Member States, Eurojust assisted national authorities to identify the most relevant JIT partners and – eventually – to limit the scope of this JIT to three parties.

During the **operational phase**, Eurojust is perceived as an actor that facilitates a good level of interaction between JIT partners, particularly through **coordination meetings** where the parties could discuss outstanding issues and rely on the legal expertise of Eurojust (e.g. jurisdiction, admissibility of evidence, disclosure, witness strategy, victim protection, transmission and execution of EAW).

The evaluations also observed **the facilitating role of Eurojust in cooperation between the JIT and third parties** (Member States or third States not participating in the JIT), particularly by facilitating LoRs/EIOs addressed to these countries and inviting them to coordination meetings at Eurojust.

In the abovementioned VAT case that involved almost all EU Member States, Eurojust was used as a sort of information hub for LoRs addressed to other Member States. Therefore, the PPO from one of the JIT parties would only send LoRs to the national desk involved for following up with other national desks at Eurojust.

In almost all evaluated cases, Eurojust’s **financial support to JITs is also valued**.

As part of its wider efforts to facilitate the use of JITs, Eurojust provides financial support to JIT activities. The support provided by Eurojust may include funds for day-to-day operations of the JIT (travel and accommodation expenses), and the cost of specific services such as translation or interpreting services, transfer of seized items and case-related materials.

In one case JIT funding was described as crucial to sustain the endurance of the investigation. Because of the complexity of the case, the investigation took longer than would normally be the case in the particular Member State. In this context the funding proved instrumental.

The practical benefit of JIT funding was highlighted by one JIT stating, *'It's much easier to arrange necessary actions without issues over what Member State foots the bill'*.

JIT members also appreciated the possibility of **borrowing equipment**, such as laptops, mobile phones, scanners and printers. One JIT, however, expressed its dissatisfaction, as the equipment was delivered too late and it finally had to rely on other means to exchange information.

Despite practical improvements introduced over time, some practitioners still regard the funding procedure as lengthy and burdensome. Some JITs also perceive funding rules to be not flexible enough, in view of the changing needs of the investigation (e.g. strictly defined action periods, means of travel).

One JIT underlined the importance of **good planning** when dealing with funding applications. In this case the team was well coordinated, which resulted in a very high budget execution rate. The JIT national expert, who was familiar with the procedure and could provide assistance to the team, coordinated the funding process.

The practitioners also experienced issues, at the reimbursement stage in particular, with gathering all the relevant documents (such as invoices and boarding passes).

Some JITs reported on the difficulties linked to the **reimbursement of translation costs** in cases where large amounts of material needed translation, which resulted in invoices being issued outside the action period.

For JITs operational for several years, JIT members would appreciate receiving an **overview** of all the

applications, grant decisions, amounts awarded and execution rates. This would enable to document the results and plan future activities. A similar overview would also be useful in the reimbursement phase.

5.2. Europol's support

Europol's support to JITs was also acknowledged, particularly through **operational meetings, cross-checks of information, data analysis and deployment of mobile offices**.

In one of the evaluated JITs, a cross-check of information resulted in a hit linking two national proceedings that actually triggered the setting-up of a JIT between competent authorities.

A great contribution of Europol to the large VAT case, by analysing a large number of data, was emphasised. Thanks to its analysis it was possible to detect a further link with a particular Member State, which was then invited to join the JIT.

It was further noted that Europol's support is more visible in the setting-up phase, and some JITs remarked that more engagement would be beneficial in the operational phase too.

One of the evaluated JITs benefited from the funding provided by Europol to finance certain measures.

Europol representatives who participated in evaluation meetings observed that, owing to the direct co-operation between the JIT partners, the countries involved do not always submit enough and/or relevant information to Europol for analysis purposes, which limited Europol support. It was considered that a more proactive approach from both sides (the national authorities to submit information, Europol to ask for information) is advisable to foster the information exchange with Europol. Involving representatives of Europol liaison bureaux at the JIT's operational meetings could help to avoid some of the communication issues and ensure a constant flow of information.

One JIT highlighted the importance of coordinated approach to media not only between JIT parties but also with the agencies involved.

6. Recommendations received

In the course of JIT evaluations, practitioners addressed several recommendations concerning the setting-up and operation of JITs. Some of them have already been considered and solutions implemented accordingly.

Recommendations received from practitioners

Development of better working methods with Europol to avoid misconceptions and ensure the best possible support; Europol to prepare a list of relevant information/documents that it needs to receive from JIT parties.

Organising more training for JIT leaders (similar to European Judicial Training Network (EJTN)/ European Union Agency for Law Enforcement Training (CEPOL) courses).

JIT Network Secretariat to provide JITs periodically with an overview of financial support received (applications, estimates, funds received).

One-page document on essentials of the JIT funding.

Direct access to SIENA by the relevant national authorities.

Extension of action period provided in JIT-funding rules (to fit the prolonged time needed to translate large amounts of material).¹

At the closure of each award, Eurojust to send overview of reimbursements made to all JIT partners to allow them to learn from experience and, if needed, to adjust their next submission.

Coordination of media communications between JIT parties and agencies involved (Eurojust, Europol).

Address admissibility/disclosure requirements at the earliest stage possible; provide a link to the European Judicial Network Fiches Belges (legal requirements of EU Member States for various investigative measures).

The JIT agreement to include a clause on sharing information with non-JIT countries/third parties.

¹ Information on the extension of the action period is [available on the Eurojust website](#).

Chapter 2 - Eurojust's experience in JITs with third States

1. Joint investigation teams (JITs) in a context of borderless crime

Crime does not know borders and one of the biggest challenges faced is the negative side effects of **globalisation**. Criminals benefit from the opportunities offered by a globalised world with enhanced cross-border interactions and the internet (e.g. cybercrime).

To counter serious cross-border crime, efforts have been undertaken to enable swifter and more flexible cooperation tools with countries outside the EU. The international agreements put in place offer possibilities such as the setting-up of JITs that go beyond the 'classical' MLA.

Eurojust is an important component of the operational response to countering cross-border crime and has consolidated strong partnerships with selected third States. Chapter 2 provides information on the specific expertise gathered by **Eurojust in its work with JITs involving third States**. It is based on findings from Eurojust casework and input by selected national desks with substantial experience in the field.

2. The increasing involvement of third States in JITs

Practitioners from EU Member States increasingly see JITs as a valuable tool of judicial cooperation with third States. In fact, as at the end of 2019, 20 EU Member States⁽²⁾ had already gathered experience in JITs with third State involvement. From Eurojust's casework, it emerges that so far a total of **74 JITs** have been set up with one or more **third States as members** (Figure 1).

In 2012, the very first JITs with third State involvement were set up with the assistance of Eurojust: one with Norway, the other with North Macedonia.

Over the ensuing years, the number of JITs with third State involvement and the list of third States concerned grew steadily.

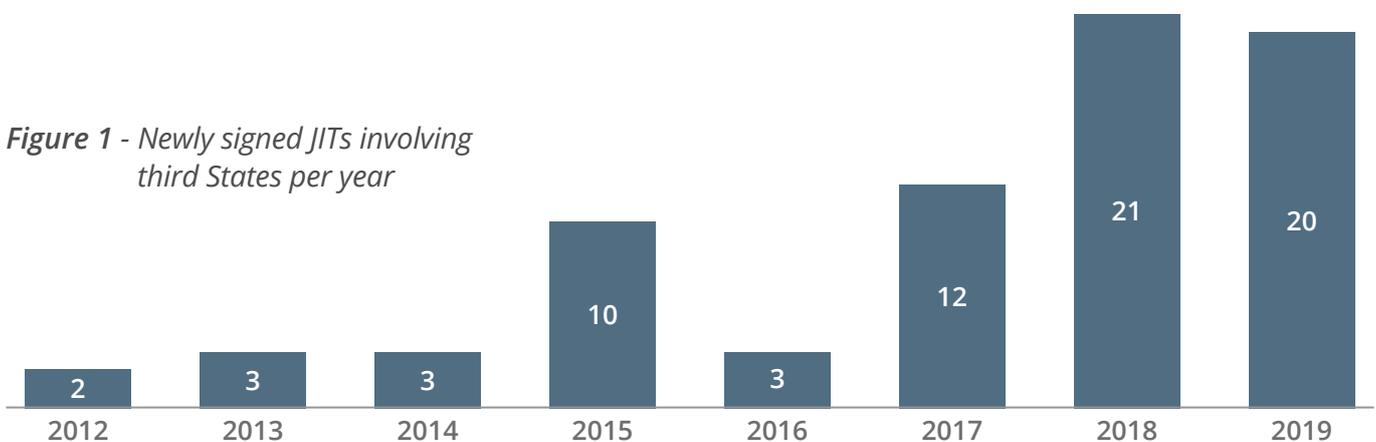
A peak came in 2018, with the impressive number of 21 JITs set up with third States as JIT parties (out of 91 JITs set up in total in 2018). The high level of involvement continued in 2019, with 20 JITs set up with third States (out of 105 JITs set up in total in 2019).

Norway and Switzerland are the third States most frequently involved in JITs. Moldova, Ukraine, Serbia and Albania have also been involved in JITs on several occasions. Furthermore, JITs have been set up with the involvement of Bosnia and Herzegovina, Argentina, Australia, Malaysia, North Macedonia and the United States (Figure 2).

A close look at the JITs reveals that most JITs between the same EU Member State and third State were set up by countries sharing a land or sea border: France and Switzerland; Italy and Albania; and Romania and Moldova. Cooperation between these countries is successful not only because of the geographical vicinity but also because of a common language used.

The type of crime most often concerned in JITs with third States is involvement of an OCG, followed closely by drug trafficking and money laundering. Several JITs with third States were also set up in relation to THB, fraud, cybercrime and organised property crime (Figure 3).

Figure 1 - Newly signed JITs involving third States per year



² Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Spain, France, Italy, Lithuania, Hungary, the Netherlands, Austria, Poland, Portugal, Romania, Slovak Republic, Finland, Sweden and the United Kingdom.

Figure 2 - JITs involving third States per signing year

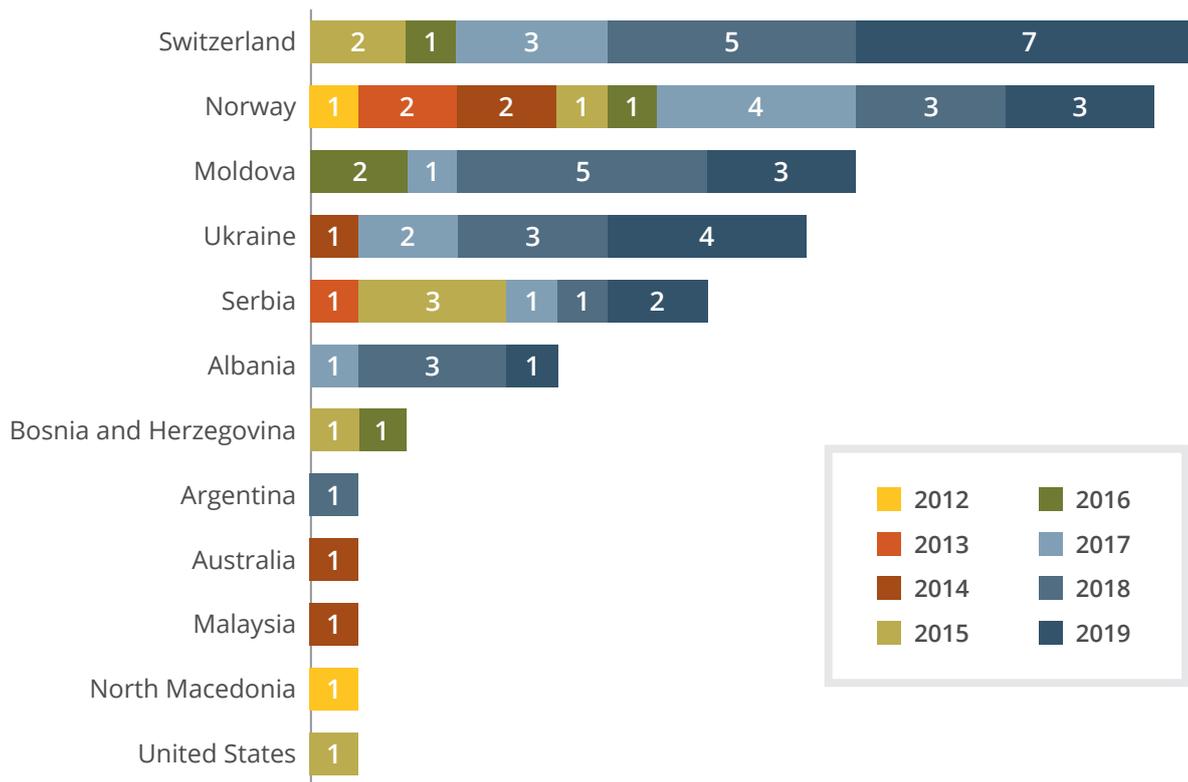
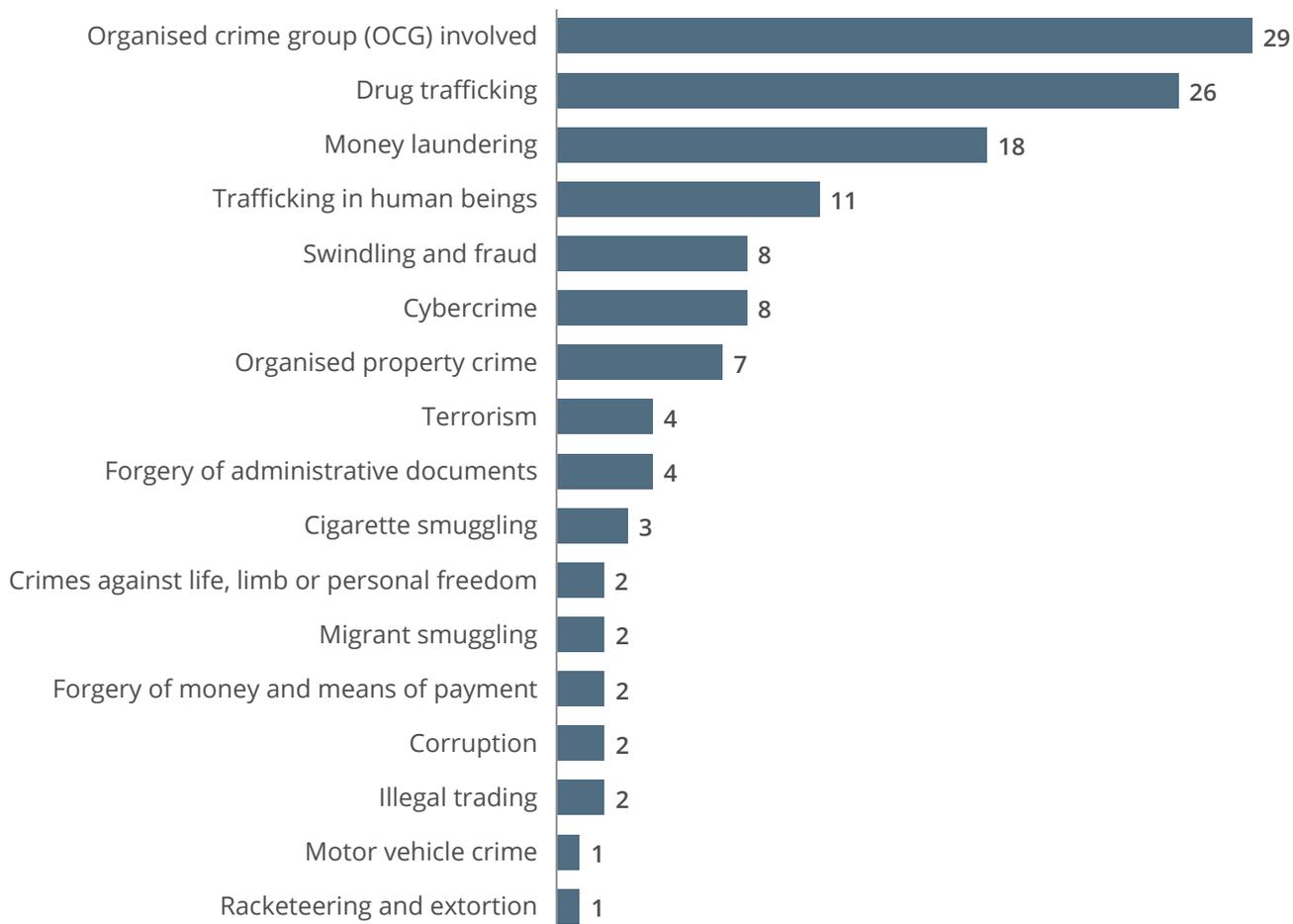


Figure 3 - Eurojust crime types in JITs with third State involvement, 1 January 2012 – 31 December 2019



3. What does the legislation say?

Countries outside the EU can be involved as parties in a JIT with EU Member States when a legal basis for the creation of such JITs exists. Eurojust can help to identify the applicable legal basis, which can take the form of an international legal instrument, a bilateral agreement, national legislation or the principle of reciprocity.

Most JITs involving third States were set up on the basis of Article 20 of the Second Additional Protocol to the 1959 Council of Europe Convention. This provision is almost identical in content and level of detail to the provisions included in the 2000 MLA Convention / 2002 Framework Decision on JITs and is the favourite option of many EU Member States.

In relation to Norway, the Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 EU MLA Convention and the 2001 Protocol thereto applies.

Article 19 of the UNTOC was also used as a legal basis for setting up JITs. Since the relevant provision is far less detailed and leaves a number of issues open, the JIT agreements between the participating States in question had to be drawn up more carefully.

4. How Eurojust supports the JIT partners

Eurojust has provided various kinds of support to JITs with third States during the entire lifecycle of the cross-border investigations.

4.1. Global network of Eurojust

In practice, effective cooperation often relies not on legal instruments (where there is a wish to cooperate, it is possible to find a legal basis) but rather on net-

*Eurojust has concluded **12 cooperation agreements** with third States: Albania, Georgia, Iceland, Liechtenstein, Moldova, Montenegro, Norway, North Macedonia, Serbia, Switzerland, Ukraine and United States. Countries that have concluded a cooperation agreement with Eurojust may post a **Liaison Prosecutor** to Eurojust. Currently, Eurojust hosts Liaison Prosecutors from Norway, Switzerland, Montenegro, the USA, North Macedonia, Ukraine and Serbia.*

working and good relations. At the very beginning of an investigation with a cross-border dimension, it is important to identify key partners and linked investigations in other countries.

In relation to third States, the **global network of Eurojust** has contributed significantly to establishing contacts at an early stage and ultimately to the increased successful setting-up of JITs with third States.

The liaison prosecutors posted at Eurojust have played a crucial role in the setting-up of JITs, which is also reflected in the number of JITs set up so far with third States.

4.1.1. Third States with most JIT experience

By far most JITs with third State involvement were set up with Norway and Switzerland, with the support of the respective liaison prosecutors posted at Eurojust. The number of JITs with Ukraine has also increased significantly since 2018, when the liaison prosecutor for Ukraine joined Eurojust permanently.

4.1.2. Role of the liaison prosecutors

The liaison prosecutors helped with establishing contact with the right counterpart in their country, identifying the legal basis to set up a JIT, explaining certain legal requirements and specifics to be taken into account, the drafting of JIT agreements and assistance during the operational phase of the JIT.

*Eurojust has a network of **judicial contact points in 52 third States** all around the world. In 2018, new judicial contact points were established in Nigeria, Iran, Mauritius and South Africa. In 2019, Armenia, San Marino, Belarus, Uruguay and Somalia joined.*

Several Eurojust contact points were involved in the successful establishment of JITs.

- ▶ In one case, a JIT between Romania and Serbia was set up in just 5 days thanks to efficient communication with the Eurojust contact point in **Serbia**.
- ▶ With great assistance from the Eurojust contact point in Albania, which facilitated communication with Albanian authorities, a total of five JITs were set up in a relatively short period between Italy and **Albania**.

4.2. Operational assistance throughout the JIT

Eurojust assists the JIT partners during the initial setting-up of JITs as well as during the wider lifecycle of the tool, providing a wide range of legal, operational and logistical support, including the arrangement of coordination meetings between the partners.

Once the key partners and linked investigations have been identified, Eurojust can support the authorities involved with an assessment of the suitability of the case for the establishment of a JIT and with the drafting of the JIT agreement.

Especially when new working relationships had to be established between an EU Member State and a third State and/or the third State considered becoming a member of a JIT for the first time, the organisation of a **coordination meeting** at Eurojust has been very beneficial. In these coordination meetings, the participants could discuss the – at times substantial – differences in the legal systems and specific clauses that had to be inserted in the JIT agreements.

In several coordination meetings, the participants managed to finalise the JIT agreement and to sign it on the spot.

At the beginning of 2015, the **first JIT with Bosnia and Herzegovina** was set up after the JIT agreement was finalised and signed by the French and Bosnian authorities at a Eurojust coordination meeting. The agreement had to be concluded under some time pressure due to restrictions in the Bosnian legislation on the duration of ongoing telephone interceptions. The level of cooperation was even more advanced because, simultaneous to the discussion on the JIT agreement, a JIT funding request was prepared and submitted to Eurojust on the very same day (it was the last day of the relevant call for funding).

Throughout the operational phases of JITs too, Eurojust worked with the JIT partners to ensure the smooth running of joint investigations, providing a range of legal and practical support.

In particular, Eurojust helped to identify and resolve issues, coordinate investigative and prosecutorial strategies between the partners, and enable the coordination of joint operations.

Coordination meetings were also organised to discuss certain issues during the operational phase of the JIT, which required tailor-made solutions, such as on the admissibility of evidence, jurisdictional issues and asset sharing.

*During an action, the **Eurojust coordination centre**, a unique tool in Europe, is used to provide real-time exchanges of information among judicial and law enforcement actors involved in complex cross-border cases, and synchronise operations (arrests, searches, seizures) in the different States concerned.*

In support of common action days, Eurojust can set up a **coordination centre** (CC).

So far, one CC has been set up with the participation of a third State in a case with a JIT involving a third State. However, looking at all CCs set up at Eurojust so far (115 CCs), thus including cases without JITs, in more than 20 % of them third States were invited (25 CCs) and provided assistance in the execution of measures, and two CCs were organised by a third State.

4.3. Financial support

Since 2016, Eurojust can also reimburse costs incurred by practitioners from non-EU States who are parties to the JIT. The condition is that at least one EU Member State should be involved in the JIT, and that that Member State submits the application on behalf of the JIT via the JITs Funding Portal.

Eurojust JIT funding continues to be used significantly, including for JITs with third States. Looking specifically at JITs supported by Eurojust within the time period from JIT Funding Call 7/2017 until Funding Call 8/2019, Eurojust has provided financial support to 37 JITs involving both Member States and third States.

Of these JITs, 28 are bilateral, involving one Member State and one third State, and 9 are multilateral, involving multiple Member States and third States.

Collectively, the positive funding award decisions allocated to these JIT Teams within the timeframe studied exceed EUR 1 000 000.00. The funding has been for the undertaking of diverse investigative measures such as:

- ▶ travel and accommodation for meetings between JIT members to plan operational activities, such as joint action days, or to discuss the undertaking of analyses into the flows of the proceeds of crime or seizure of IT infrastructure;
- ▶ the translation of operational material (intercepts, LoRs, confiscation requests, extradition documents, transfer of criminal proceedings documents);

- ▶ interpretation during meetings or hearings, and real-time interpretation of intercepts; and
- ▶ the direct transfer of evidence.

5. When a JIT was discussed but not set up

In some cases with links to third States, their possible involvement as party to a JIT was discussed, but in the end the JIT was set up between EU Member States only or the JIT was not set up at all.

The reasons for not setting up a JIT were often the same as for cases with EU Member States only, such as being at too preliminary a stage to decide or the investigations/prosecutions being at a different or advanced stage. Some factors were, however, specific to the involvement of a third State:

- ▶ **Different rules governing disclosure.** When, because of the JIT setting, the legislation of a specific third State would provide for an extensive and resource-consuming disclosure, which would be likely to affect the other JIT partners as well, this may lead the States involved to use JITs only in specific situations (e.g. where it appears from the outset that charges would be brought more effectively before the courts of the other JIT partner).
- ▶ **Lack of a common legal basis to set up a JIT.** In some cases, the setting-up of a JIT was considered but there was a lack of a common legal basis for all involved countries to set up a JIT. For example, UNTOC is not regarded by certain States as a sufficient legal basis to establish a JIT.
- ▶ **Preference for cooperation through MLA.** In some JITs, there were links to one or more third States, but the JIT partners deemed a coordinated approach within the JIT to issue LoRs to the third State(s) effective enough.

6. Understanding the specifics of JITs with third States

The experience of Eurojust is that cooperation with third States is mostly equivalent to cooperation between EU Member States only as long as there is willingness to work together and a legal basis. The criteria to assess whether or not a case is suitable for a JIT are the same. **Good, regular and efficient communication** is thus the most important aspect of successful cooperation within a JIT, irrespective of whether or not a third State is also member of the JIT.

Nevertheless, there were specific issues, which were addressed in JITs involving third States.

6.1. Drafting the JIT agreement

Practitioners widely/increasingly use the Updated **JIT Model Agreement**, which includes a non-exhaustive list of legal instruments enabling the setting-up of JITs with non-EU States.

In relation to **Switzerland**, a specific clause was drawn up and included in the JIT agreements, which reflects a specific legal domestic requirement: a JIT with Switzerland still requires an LoR to Switzerland by the other JIT member(s) for it to be able to use as evidence the material gathered by the JIT on Swiss territory.

In a JIT involving Italy and **Albania** a specific clause was included in the JIT agreement that enabled the direct submission in real time of telephone intercepts between the countries.

6.2. Different legal systems

A continuous dialogue between JIT partners is necessary to understand the differences in legal systems of the countries involved, such as in relation to the gathering of evidence. For example, in Norway there are specific standards and rules regarding cases involving minors. Especially in hearings of minors, specific rules need to be respected. Children who are victims of a crime need to be questioned in the presence of a Norwegian magistrate, even if the hearing takes place on the territory of the other JIT party. This legal requirement was added to the JIT agreement in an annex.

6.3. Operational planning

Regular meetings of JIT members and regular video-conferences help to exchange information within a JIT and to decide on and execute operational plans. In a case involving Norway as a JIT member and with links to Ukraine, conference calls were held every 3 weeks to update all parties on the progress and status of the investigations.

6.4. Common working language

A common working language is advisable, for example for the negotiation of the draft JIT agreement. Good experiences were noted with the level of proficiency in English of representatives of third States. In some JITs, a different common working language was chosen (such as Italian for JITs between Italy and Albania, and Romanian for JITs between Romania and Moldova).

6.5. Extradition and transfer of proceedings

In JITs with third State involvement it is important to discuss jurisdictional issues and the legal possibilities for a transfer of proceedings at an early stage, because several EU Member States do not extradite their own nationals to third States and vice versa. In particular in view of common action days, tailor-made solutions for the gathering of evidence and planning of arrests are necessary.

7. Want to know more?

Eurojust and the JITs Network Secretariat have drawn up **Guidelines on joint investigation teams involving third States**, which were published in January 2019 ⁽³⁾. These guidelines aim to provide more specific guidance to practitioners considering the setting-up of a JIT with the involvement of a third State. The guidelines also include in an annex particular details for setting up JITs with North Macedonia, Norway, Switzerland and Ukraine. The guidelines are available for practitioners at the JITs Restricted Area.

8. Example: Italy and Albania – enhanced cooperation in a JIT framework

In July 2017, the Public Prosecution Office of Bari, Italy, referred a case of international drug trafficking to Eurojust.

Two powerful organised criminal groups, composed of Italian and Albanian nationals, operated out of Bari and its environs, including Sicily, Campania, Calabria and Abruzzo, and with the involvement of Albania. Logistics were handled in Puglia, Italy, while the production, packaging, sorting and transfer of the drugs from Albania to Italy were handled by the Albanian operation.

The Italian Desk of Eurojust supported the PPO of Bari and the PPO for Serious Crimes in Tirana in swiftly setting up a JIT in July 2017. The drafting and finalisation of the JIT agreement in a short period of time was of particular importance, since it was summertime, which is the period when maritime trade in drugs intensifies. The complex investigation is still ongoing and the JIT receives Eurojust JIT funding.

The investigations carried out in Italy and in Albania within the scope of the JIT framework enabled essential technical and dynamic activities (more than a hundred telephone interceptions conducted, installation of GPS devices) and observations, which resulted in the collection of strong evidence against several citizens of both Italian and Albanian origin.

As a result of the successful efforts of the members of an Italian/Albanian JIT, 43 people have been arrested so far for large-scale drug trafficking. To date, more than 2300kg of marijuana, cocaine and heroin have been seized, with an estimated total value of EUR 15 million. Judicial and law enforcement authorities from Bari (Anti-Mafia Investigative Directorate), and the Albanian Police were involved in the investigation and arrests.

Keys to the success of this operation so far are the JIT and the support of Eurojust, which played a major role in setting up and financing the JIT. In fact, Eurojust funded four operational JIT meetings in Albania and three in Italy. In addition, a coordination meeting with the participation of the respective authorities took place at the Eurojust premises in The Hague. In the coordination meeting, Italy and Albania discussed several judicial cooperation issues and identified solutions to speed up the investigations. In particular, the authorities agreed on a specific procedure, which enabled the direct transmission of intercepted wiretaps in real time from Albania to the Italian authorities.

³ Council document 5697/19 (LIMITE).



JITs Network Secretariat

Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
+31 70 412 5000 • jitsnetworksecretariat@eurojust.europa.eu • www.eurojust.europa.eu

Print: Catalogue number: QP-04-20-087-EN-C • ISBN: 978-92-9490-413-3 • DOI: 10.2812/289254
Pdf: Catalogue number: QP-04-20-087-EN-N • ISBN: 978-92-9490-412-6 • DOI: 10.2812/22082