



Eurojust Report on Drug trafficking

Experiences and challenges
in judicial cooperation

April 2021

Criminal justice across borders

Table of Contents

Executive summary	2
1. Introduction	4
2. Scope and methodology	4
3. Casework at a glance	6
4. Specific issues in international judicial cooperation on drug trafficking cases	7
4.1. New Psychoactive Substances and precursors	7
4.2. Cooperation with third countries	10
4.2.1. Cooperation agreements	12
4.2.2. Eurojust's network of Contact Points	13
4.2.3. Countries without a formal form of cooperation	15
4.3. Controlled deliveries	16
4.4. Conflict of jurisdiction	19
4.5. Financial investigations and asset tracing and recovery	22
4.6. The European Investigation Order	26
4.7. Drug trafficking in a digital environment	29
5. Best practices identified	32
6. Conclusions and recommendations	34

Executive summary

- Drug trafficking remains a **highly lucrative market** worldwide, with an estimated value of **EUR 30 billion** per year in the European Union alone. The overall impact on societies has dramatic consequences – for healthcare, governance, economics and other indirectly affected areas. This impact also affects law enforcement and judicial authorities, which find themselves overwhelmed by the steep increase of drug trafficking cases. Many EU Member States struggle to allocate sufficient resources to the fight against highly flexible organised crime groups acting across borders.
- In addition, organised criminal networks operating in Europe benefit from open borders and take advantage of the complexity of the many different legal frameworks in the EU. To effectively counteract these circumstances, **judicial authorities** in and outside the EU **successfully cooperate** – with support from **the European Union Agency for Criminal Justice Cooperation (Eurojust)**. A further rise in the number of referrals to Eurojust can be expected in the coming years and should be taken into account in planning.
- This report looks at **experiences** and **challenges** in judicial cooperation on the fight against drug trafficking. The **methodology** used consisted of the identification and analysis of a selection of suitable cases, drawn from the practical experience gained through the agency's support for drug trafficking casework between 2017 and 2020 (1 838 cases). This casework analysis is structured in six chapters.
- The report illustrates the assistance that Eurojust provides to overcome challenges relating to seven topics that come up frequently, namely: New Psychoactive substances (NPS) and (pre-)precursors, cooperation with non-EU countries (cooperation agreements, contact points and informal cooperation), controlled deliveries, conflict of jurisdiction, financial investigation, asset tracing and recovery, the European Investigation Order and drug trafficking in a digital environment.
- Based on this analysis and Eurojust's experience of judicial cooperation in the field, the report suggests and outlines **best practices** for cross-border investigations. It contains **conclusions** and draws **recommendations** that can be summarised as follows.
 - The EU's **efforts to tackle the legal challenges** regarding **NPS (New Psychoactive Substances)** and precursors **should be continued and reinforced**. As long as judicial authorities still face operational challenges, Eurojust is the right organisation to support the judiciary.
 - Continuous and reinforced cooperation with non-EU countries through Eurojust's Liaison Prosecutors, Contact Points and other networks or means is highly beneficial in many drug trafficking cases, showing **clear additional potential for national investigations**. In line with the recent EU security union strategy and the new EU drugs strategy 2021–2025, Eurojust welcomes and strongly supports the aim of fostering and enhancing cooperation with non-EU countries, for example by concluding further cooperation agreements, extending the network of Contact Points, and widening cooperation with other institutions, agencies and networks.
 - Eurojust's assistance may be of particular added value in **cross-border controlled delivery** cases to help national judicial authorities to overcome obstacles arising from the fragmented European legal landscape that must be taken into account before and during the execution of a controlled delivery. **Greater harmonisation** and **specific regulation of this investigative measure at EU level** should be considered to facilitate judicial cooperation in this area.
 - To avoid negative repercussions in parallel investigations, such as *ne bis in idem* issues, Eurojust offers its expertise in cases where there may be a **conflict of jurisdictions**. A **joint recommendation (or request)** may in some cases also be considered a valuable option that can be used to obtain an unbiased opinion on the way forward.

- Financial investigation in drug trafficking cases and particularly asset freezing, confiscation and recovery have been shown to be of the utmost importance, considering their impact on organised crime groups. Relevant parties are encouraged to make full use of **Asset Recovery Offices (AROs)**, **Financial Intelligence Units (FIU)** and other networks. Eurojust supports practitioners at all stages of the financial investigation and in the practical implementation of the new **Regulation on freezing and confiscation orders** (Regulation (EU) 2018/1805).
- The **European Judicial Cybercrime Network (EJCN)** is an important actor and provides valuable support in the fight against drug trafficking on the darknet, on virtual platforms or using digital communication tools. As these investigations frequently require special knowledge not only at law enforcement level but also among judicial authorities particularly in a cross-border case, Eurojust also **encourages practitioners to approach their EJCN national contact points** in relevant cases.
- The setting up of a **joint investigation team (JIT)** is highly recommended in suitable drug trafficking cases. Contrary to widespread concern, establishing a JIT has never been simpler for judicial authorities, as **Eurojust offers support during all phases of a JIT**, providing help in negotiating, drafting, setting up, administering and financing a JIT.
- Despite the promising and successful outcome of Eurojust's **coordination centres** (e.g. during joint action days aimed at simultaneous and coordinated arrests, searches and seizures), national judicial authorities seem to be reluctant to request the setting up of coordination centres in drug trafficking cases. Eurojust therefore **invites and encourages judicial authorities to make more use of this powerful tool in this area of crime**.
- The **added value of an early referral to Eurojust** ultimately strengthens the international part of any national drug trafficking case. Therefore, Eurojust **encourages the authorities involved in cross-border drug trafficking cases** to contact their respective National Members to discuss the possibilities available in the specific case as early as possible.

1. Introduction

The trade in illicit drugs remains the largest criminal market in the European Union, with an estimated minimum retail value of EUR 30 billion per year in the EU ⁽¹⁾. It continues to be one of the most lucrative businesses for organised crime groups (OCGs). More than one third of the OCGs active in the EU are estimated to be involved in the production, trafficking or distribution of drugs ⁽²⁾.

The bulk of drug trafficking operates across borders, with many of the profits infiltrating the legal economy, leading to a variety of other crimes such as money laundering and tax evasion. Eurojust's analysis of its drug trafficking casework confirms the very high level of threat posed to the citizens of Europe and the EU Member States.

Eurojust works with national authorities to combat a wide range of serious and complex cross-border crimes. Drug trafficking cases represent a large proportion of its casework and present several international cooperation challenges.

Accordingly, this report builds on the analysis of and lessons learned from drug trafficking cases referred to Eurojust between 1 January 2017 and 31 December 2020. Its findings are offered to both practitioners, who may use them when dealing with cases presenting similar issues, and policymakers, who may be in position to address some of the legislative gaps identified in this report. To this end, a rather large number of case illustrations have been selected, to ensure a practical approach and thus the value of this report. Another objective of the report is to identify the main legal and practical challenges in international judicial cooperation on this crime type and to share best practices to successfully overcome these challenges.

Finally, the report outlines how Eurojust supports EU judicial authorities in tackling serious cross-border investigations into drug trafficking cases. The aim is, by raising awareness of the assistance and coordination tools offered by Eurojust, to promote the use of existing EU and international legal instruments.

2. Scope and methodology

This report is not an overview of the phenomenon of drug trafficking in general but, rather, of judicial cooperation issues in drug trafficking cases. Eurojust has been reflecting on these issues for almost 10 years, based on its casework. It has already published two reports on this area: *Enhancing the work of Eurojust in drug trafficking cases – Final results* in 2012 and *Implementation report of the action plan on drug trafficking* in 2015.

The current report builds on these previous publications. However, as a result of the large number of cases in the reporting period, 2017–2020 (1 838), the methodology of this report differs from that of the previous reports.

(1) Estimate for 2017 from p. 24 of the EU Drug Markets Report 2019, produced by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the European Union Agency for Law Enforcement Cooperation (Europol) (https://www.europol.europa.eu/sites/default/files/documents/drug_markets_report_2019.pdf).

(2) Europol, European Union serious and organized crime threat assessment 2017, p. 34 (https://www.europol.europa.eu/sites/default/files/documents/socta2017_0.pdf).

First, the authors identified specific recurring issues in drug trafficking cases at Eurojust. Second, in selecting suitable cases for inclusion they concentrated on cases where a coordination meeting ⁽³⁾ was held, a coordination centre ⁽⁴⁾ was organised and/or a joint investigation team (JIT) ⁽⁵⁾ was established.

The information for analysis was gathered by extracting data from the Eurojust Case Management System and, for some cases, by retrieving information from Eurojust Case Information Forms ⁽⁶⁾ and by interviewing representatives of the national desk that worked on the case in question at Eurojust. The analysis covered both operational and procedural non-personal information on the relevant Eurojust cases.

The main body of this analysis is structured in the following chapters:

- Chapter 3, which consists of an infographic that presents statistics on Eurojust casework on drug trafficking during the reporting period;
- Chapter 4, which examines selected cases and illustrates the assistance that Eurojust provides to national authorities, focusing on the most frequently occurring and relevant issues identified in Eurojust casework;
- Chapter 5, which contains best practices gleaned from the cases analysed.

In the final chapter, Chapter 6, the conclusions offer a summarised and factual overview of the report's findings, whereas the recommendations are aimed at both practitioners and policymakers and suggest from a more subjective viewpoint what could be further improved in judicial cooperation in the area of drug trafficking cases.

⁽³⁾ A meeting bringing together the respective judicial and law enforcement authorities at Eurojust, benefiting from the agency's (legal) expertise, facilities and translation service.
See Eurojust, 'Coordination meetings' (<http://www.eurojust.europa.eu/Practitioners/operational/Pages/coordination-meetings.aspx>).

⁽⁴⁾ Coordination centres support joint action days; through them participants share information and coordinate simultaneous operations between judicial, police and, if need be, customs authorities.
See Eurojust, 'Coordination centres' (<http://www.eurojust.europa.eu/Practitioners/operational/Pages/eurojust-coordination-center.aspx>).

⁽⁵⁾ A JIT is an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges) and law enforcement – of two or more states, established for a limited duration and for a specific purpose, namely to carry out criminal investigations in one or more of the states in question.
See Eurojust, 'Joint investigation teams' (<http://www.eurojust.europa.eu/Practitioners/JITs/Pages/JITs-sitemap.aspx>).

⁽⁶⁾ A Eurojust internal database storing case information without operational data for knowledge retention purposes.



EUROJUST

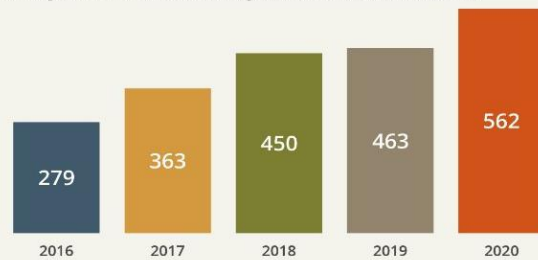
3. Casework at a glance



Eurojust casework on DRUG TRAFFICKING 2016-2020

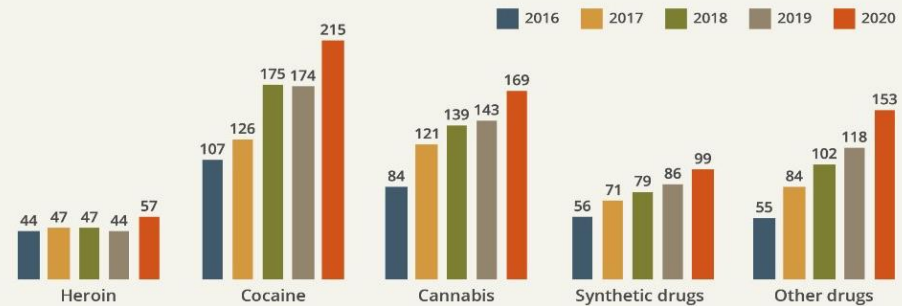
Drug trafficking cases registered

The last 5 years have seen a steady increase in case numbers



Main drug types identified

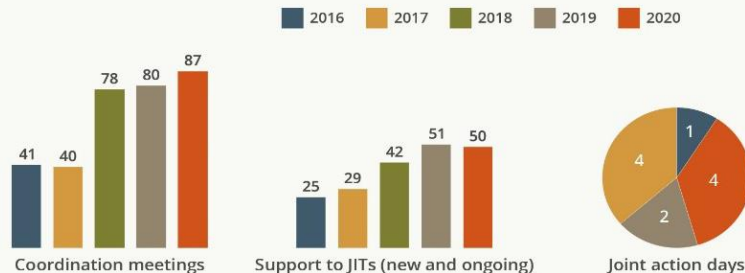
Most of the cases registered involved the trafficking of cocaine and cannabis



Drug trafficking networks operating in Europe and worldwide exploit the porousness of international borders and use increasingly sophisticated means to commit their crimes. Through its coordination of national efforts to investigate and prosecute these and other transnational crimes, Eurojust actively contributes to bringing down organised drug crime and making Europe a safer place.

Access to judicial cooperation tools

Supported by Eurojust and Europol, national judicial and law enforcement authorities coordinate their drug trafficking investigations through tools such as **joint investigation teams (JITs)**, **coordination meetings** and **action days** organised in real time from Eurojust's coordination centre.



Access to jurisdictions beyond the EU

Third country involvement in Eurojust drug trafficking cases has steadily increased since 2016, showing the extent of Eurojust's outreach in the world.



4. Specific issues in international judicial cooperation on drug trafficking cases

The analysis of the cases resulted in the identification of several issues that were most frequently detected and hence discussed in cases registered at Eurojust during the reporting period. The seven main topics of interest to practitioners in drug trafficking cases are:

- New Psychoactive Substances (NPS) and precursors (Section 4.1);
- cooperation with third countries (Section 4.2);
- controlled deliveries (Section 4.3);
- conflicts of jurisdiction (Section 4.4);
- financial investigations and asset tracing and recovery (Section 4.5);
- the European Investigation Order (EIO) (Section 4.6);
- drug trafficking in a digital environment (Section 4.7).

Obviously, other operational and legal challenges arose and needed to be addressed as well. The abovementioned list of issues should therefore not be considered exhaustive. To limit the scope of this report, as indicated before, a selection of the most commonly arising topics was made.

The generic information in this chapter is supplemented by several case illustrations that present particular Eurojust cases handled during the reference period.

4.1. New Psychoactive Substances and precursors

NPS and (pre-)precursors have become an area of increasing concern to national prosecution authorities. An NPS is defined as ‘a new narcotic or psychotropic drug, in pure form or in preparation, that is not controlled by the United Nations drug conventions, but which may pose a public health threat comparable to that posed by substances listed in these conventions’ (7). Drug precursors are chemicals that are primarily used for the legitimate (legal) production of a wide range of products, such as medicine, perfumes, plastics and cosmetics. However, they can also be misused for the illicit (illegal) production of drugs such as methamphetamines, heroin or cocaine.

In April 2018, Eurojust published the report *Current situation in judicial cooperation in new psychoactive substance and (pre)precursor cases*. Based on 24 Member States’ responses to a questionnaire about national experiences with NPS/precursor cases, the five most frequently mentioned challenges identified in that report were as follows.

- **Identification of the substance.** Difficulties related to the exact (chemical) identification of the substance make prosecution both more costly and more cumbersome. Often, establishing the quantity of the substance can be problematic, as the consistency and thus the purity changes in each production batch. In addition, the dosage of the substance is frequently unknown, and often there is no reliable and objective information on its effect on the human body or the overall level of danger it poses.

(7) EMCDDA, ‘New psychoactive substances (NPS)’ (https://www.emcdda.europa.eu/topics/nps_en).

- **Procedural and evidence admissibility issues.** See also case illustration I. The burden of proof of the perpetrators' knowledge of the illegality of the substance and of establishing the correct form of intent – intent, conditional intent or negligence – in relation to the objective dangerousness of the substance remain major obstacles in many states. Furthermore, proving the intent of the perpetrator to sell the substance and/or to use the substance as a narcotic is often problematic.
- **Different organisational structures in the distribution of NPS.** Drug trafficking networks typically have a hierarchical structure, but the distribution of NPS takes place more horizontally (thanks in part to the internet), which leads to new challenges in detecting the modus operandi of a criminal offence and obtaining evidence for law enforcement and judicial authorities.
- **Different legal provisions in Member States.** See also case illustration I. Legal regulations vary from Member State to Member State, as no harmonisation has (yet) been implemented. Investigating across borders remains cumbersome when some countries regulate NPS/precursors through criminal/narcotics laws whereas others apply only administrative regulations. Scope for using coercive measures is seriously limited in these cases. A lower level of punishment for the crime under investigation frequently leads to a lack of investigative measures and ultimately reduces the likelihood that a suspect will be surrendered.
- **Lack of legal basis.** See also case illustration I. One of the main challenges is the lack of a legal basis, which hinders investigations and prosecution. Suppliers and OCGs simply modify slightly the substance that they produce and sell, thus creating a new NPS/precursor that differs from that identified in law; as a result, an intensive verification procedure is required to establish whether the product is still covered by the relevant provisions. Perpetrators keep an eye on current legislation and adapt their products accordingly. They easily exploit legal gaps.

The above mentioned challenges continue to affect investigations. During the reporting period and in the casework analysed for the purpose of this report, these issues could be detected, and they remained a recurring topic of common interest during meetings at Eurojust.

As national and EU legislation continues to struggle with new developments in relation to (pre-)precursors and their legal regulation, particularly with regard to their criminalisation, this topic will remain an important issue in the near future and hence in Eurojust's casework.

Two examples of cases (case illustrations I and II) show the added value of Eurojust's involvement in these demanding circumstances.

Case illustration I. Overcoming differences in the regulation of substances (precursors)

In a complex cross-border investigation concerning large-scale drug trafficking, in particular of synthetic drugs, three parallel investigations into a criminal network were conducted in Bulgaria, the Netherlands and Belgium.

Investigators in Bulgaria anticipated a huge shipment of the chemical substance alpha-phenylacetoacetamide (APAA) from outside the EU to Bulgaria and from there on to the Netherlands and possibly Belgium. APAA is a newly detected substance/pre-precursor closely related to alpha-phenylacetonitrile (APAAN), which may be converted to benzylmethylketone (BMK) and eventually be used to produce amphetamine and methamphetamine in laboratories.

The possibility of organising a controlled delivery with the aim of locating the laboratories in the Netherlands and possibly also in Belgium was discussed in a coordination meeting. The legal obstacle to authorising the controlled delivery was that both at international level (Table 1 of the 1988 UN convention ⁽⁸⁾) and at EU level ⁽⁹⁾ APAA – unlike APAAN – had not yet been listed in, or added as a scheduled substance to, legislative acts on the criminalisation of precursors. The fact that the substance was not yet listed/scheduled prevented the Dutch authorities from granting the approval for a controlled delivery.

After discussing possible solutions and making use of Eurojust's legal expertise, the three National Members involved jointly issued a written recommendation ⁽¹⁰⁾ to the national authorities on a controlled delivery in the case. The opinion laid out the international and EU-level legislation and regulations concerning the substance, as well as analysing jurisprudence in the two destination countries. It concluded that the national authorities 'should consider [APAA] as a substance intended for the illicit manufacture of narcotic drugs or psychotropic substances'. As a result of this, it was also recommended that the national authorities should authorise, as a matter of urgency, the controlled delivery. Furthermore, it was suggested that at least the majority of the APAA should be replaced in Bulgaria with a similar-looking substance in order to safeguard the legal requirements in the two destination countries, Belgium and the Netherlands.

Following this opinion, the judicial authorities in the Netherlands authorised the controlled delivery.

Case illustration II. The best place to prosecute in case of national limitations

The case concerned a large shipment of the controlled substance APAAN (a precursor) from Vietnam to Bulgaria, with the Netherlands as its final destination. Following a request for assistance from the Bulgarian authorities, a case was opened at Eurojust and a coordination meeting was quickly organised.

At the meeting, the national authorities shared information on the ongoing parallel proceedings. They also discussed the options available in their national legislation for how to proceed with the case, and limitations such as lack of criminalisation of precursors. In conclusion, the Bulgarian and the Dutch authorities agreed that in this particular case the Netherlands was the best place to prosecute, as an investigation against the recipients of the shipment was already under way, and that therefore the proceedings should be transferred to that country. They also agreed that the Dutch authorities would translate the case file at their expense and that Bulgaria would provide the Netherlands with a sample of the substance, including the official report from the chemical laboratory, and dispose of the rest.

Eurojust continued to assist both national authorities by facilitating the transfer procedure (involving the respective ministries of justice) and keeping the national authorities informed on progress.

⁽⁸⁾ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

⁽⁹⁾ See, for example, Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, Art. 1(2).

⁽¹⁰⁾ Based on Art. 6(1)(a)(vi) of the former Eurojust decision (now Art. 4(2)(b) of the Eurojust regulation).

After the *NPS judgment by the Court of Justice of the European Union* (C-358/13 and C-181/14), Eurojust and EMCDDA released their first joint publication, in 2016, as a response to the need to consider challenges in judicial cooperation and to explore creative solutions to address problems relating to the prosecution of NPS cases.

It was entitled *New Psychoactive Substances in Europe – Legislation and prosecution: Current challenges and solutions*. Eurojust continued to work on approaches to judicial cooperation on cases involving NPS and precursors and published the aforementioned report *Current situation in judicial cooperation in new psychoactive substance and (pre)precursor cases* in April 2018.

The problems are being tackled at EU level with the issuance of new EU legislative instruments on the inclusion of NPS in the definition of ‘drug’ (Directive (EU) 2017/2103) ⁽¹¹⁾ as well as on information exchange on, and an early warning system and risk assessment procedure for, NPS (Regulation (EU) 2017/2101) ⁽¹²⁾.

To remedy this recurring issue of a gap in the legal basis regarding precursors/NPS, the European legislature regularly updates the list of scheduled substances, allowing national judicial authorities to actively fight trafficking of these new products. These updates enable investigations, prosecutions and judgments to run more smoothly (and indeed ultimately make them possible), by removing any uncertainty about the criminalisation of the particular substances in question.

Establishing new rules on information exchange on NPS and the modernisation of the existing early warning system and risk assessment procedures enables the EU to step up its efforts to liberate the European drug market from the most dangerous substances. Deadlines have been shortened and procedures further streamlined. Following a risk assessment procedure, it will be determined at European level whether the NPS in question in a given case should be included in the definition of ‘drug’, which may ultimately lead to updates to the abovementioned lists and legislation¹³.

4.2. Cooperation with third countries

As crime is borderless, judicial cooperation across borders is essential. Eurojust plays a key role in facilitating judicial cooperation between Member States and a growing number of third (non-EU) countries.

Considering most drugs’ provenance and the international business model of OCGs, not surprisingly third countries are involved in more and more cases at Eurojust. During the reporting period, a total of **428** drug trafficking cases were registered at Eurojust involving at least one third country: Norway (**114**), Switzerland (**105**), the United Kingdom (**36** in 2020) Serbia (**33**), Albania (**29**) and Ukraine (**14**) being the countries most frequently involved (see also Chapter 3). Other non-EU countries with which Eurojust cooperated during the reporting period were the United States (10), North Macedonia (8),

⁽¹¹⁾ Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/JHA (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L2103>).

For precursors see also, most recently, Commission Delegated Regulation (EU) 2020/1737 of 14 July 2020 amending Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances (including, for example, red phosphorus and APAAN) (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R1737&from=EN>).

⁽¹²⁾ Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2101>).

⁽¹³⁾ The latest delegated act is the one on ‘isotonitazene’ (Commission Delegated Directive (EU) 2020/1687, OJ L 379, 13.11.2020, p. 55).

Iceland (7), Montenegro (7), Argentina (6), Brazil (6), Moldova (5), Morocco (4), Colombia (4), Peru (4), Australia (3), Canada (3), Turkey (3), Bosnia and Herzegovina (2), Panama (2), New Zealand (2), Israel (2), Russia (2), Uruguay (2), and Bolivia, Cape Verde, China, Ecuador, Egypt, Hong Kong, Lebanon, Liechtenstein, Monaco, Nigeria, Tanzania, Thailand, the United Arab Emirates, Vietnam and the British Virgin Islands (1 each).

Representatives from third countries can participate in a coordination meeting. One or more third countries participated in **94** coordination meetings during the reporting period ⁽¹⁴⁾. Of the **74** JITs established during the reporting period, Albania was a participant in 7, Switzerland in 5, Serbia in 4, Norway in 3, the United Kingdom and Moldova in 2, and Argentina, Brazil, Bosnia and Herzegovina, and Ukraine in one each. In **5** coordination centres a third country was involved (Iceland, the United Kingdom, Albania and Ukraine) ⁽¹⁵⁾.

These figures are increasing rapidly, as cooperation with third countries, both with police and judicial authorities, evolves and intensifies constantly. As EU law enforcement and judicial authorities take note of more and more operational successes with third countries involved, the demand for enhanced cooperation with such countries continues to rise, including at Eurojust and in particular in drug trafficking cases. Eurojust therefore strives to strengthen and expand its worldwide network of cooperation partners. An increase is also already noticeable and expected to continue in the future with the arrival of more liaison prosecutors at Eurojust and the appointment of contact points encouraging their national judicial authorities to refer more cases to Eurojust. In January 2021, the first liaison prosecutor for Albania took up her duties at Eurojust ⁽¹⁶⁾. Albania is the 10th country to have a liaison prosecutor at Eurojust, showing the increasing recognition of the advantages of seconding a liaison prosecutor from a non-EU country to Eurojust. This will have a significant and beneficial impact on Eurojust's casework in the near future.

⁽¹⁴⁾ Again, including the United Kingdom in 2020, in 10 cases.

⁽¹⁵⁾ All numbers relate to drug trafficking cases only.

⁽¹⁶⁾ Eurojust, 'First Liaison Prosecutor for Albania starts at Eurojust' (<https://www.eurojust.europa.eu/first-liaison-prosecutor-albania-starts-eurojust>).

Overview of Eurojust's external cooperation partners



4.2.1. Cooperation agreements

Eurojust may also assist in investigations and prosecutions concerning a particular Member State and a non-EU country (third State) with which a cooperation agreement has been signed or when there is an 'essential interest' in providing such assistance (Article 3(5) of the Eurojust regulation).

A cooperation agreement allows the exchange of data, including personal data, and the participation of authorities in coordination meetings at Eurojust. In other words, it enables operational cooperation. Eurojust has cooperation agreements with the United States, Iceland, Norway, Switzerland, Liechtenstein, Moldova, Montenegro, North Macedonia, Ukraine, Albania⁽¹⁷⁾, Georgia⁽¹⁸⁾ and Serbia⁽¹⁹⁾.

Cooperation agreements allow a liaison prosecutor to be posted to Eurojust. Currently, there are 10 liaison prosecutors at Eurojust, namely from Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States. Posting a liaison prosecutor to Eurojust has many advantages for the sending state, the EU Member States and Eurojust itself. For example, liaison prosecutors can register cases at Eurojust. The co-location of liaison prosecutors with their EU counterparts at Eurojust premises facilitates quick and easy interaction. In addition, liaison

⁽¹⁷⁾ The cooperation agreement with Albania was signed on 5 October 2018 and entered into force on 1 November 2019.

⁽¹⁸⁾ The cooperation agreement with Georgia was signed on 29 March 2019 and entered into force on 27 July 2019.

⁽¹⁹⁾ The cooperation agreement with Serbia was signed on 12 November 2019 and entered into force on 11 December 2019.

prosecutors can organise coordination meetings or coordination centres at Eurojust, and they can provide support for the establishment of a JIT and apply for funding from the JIT Secretariat. Furthermore, a presence at Eurojust enables access to in-house databases such as the Case Management System and Case Information Forms mentioned in Section 2 and the full use of the expertise gathered at Eurojust.

Case illustration III. Intense cooperation with Norway to dismantle a Europe-wide OCG

A Norwegian investigation into domestic gangs led to an investigation of an international OCG trafficking drugs to several European countries. The Norwegian authorities acknowledged that dismantling the entire OCG would not be possible without intensive international cooperation, not least because they lacked jurisdiction over the OCG's top layer.

The Norwegian authorities turned to the Norwegian Liaison Prosecutor posted to Eurojust for assistance with judicial cooperation between the states involved. Eurojust organised five coordination meetings over a period of 1 year. The meetings were attended by participants from, in addition to Norway, Denmark, Germany, Spain, Italy, the Netherlands, Sweden and the United Kingdom. Based on the information shared in the meetings, parallel investigations into the same OCG were discovered, investigations initiated and assistance provided: To ensure efficient investigation and prosecution, Eurojust assisted in overcoming legal obstacles by advising on jurisdictional issues and reaching an agreement on the best place to prosecute to avoid later *ne bis in idem* issues. The participants agreed on the transfer of proceedings to Norway. During the coordination meetings, trust between the participants was built, making further investigations swifter and easier. In the end, it was agreed to organise a joint action day.

With the (drafting) assistance of Eurojust, Norway and Denmark established a JIT, which was later joined by Sweden. In addition to legal and practical advice, Eurojust provided financial support to the JIT ⁽²⁰⁾.

Future possibilities may also arise in this regard: recently, Eurojust has submitted to the European Commission a list of priority non-EU countries for the negotiation of further cooperation agreements. The Council of the European Union will now have to decide whether to mandate the Commission to enter into negotiations with these countries. Many of them are relevant to the field of drug trafficking (e.g. countries in the Balkans and South America), and it can be reasonably expected that this would foster and enhance judicial cooperation with even more non-EU countries around the world, particularly in the fight against organised drug trafficking.

4.2.2. Eurojust's network of Contact Points

Eurojust has built, and continuously works to extend, a worldwide network of judicial Contact Points in third States. This network improves cooperation between the judicial authorities of the Member States and third States as it builds, maintains and strengthens a relationship of trust and cooperation. More

⁽²⁰⁾ For further reading, see the Eurojust press release 'Coordinated arrests of international drug trafficking group' (<http://www.eurojust.europa.eu/press/PressReleases/Pages/2019/2019-12-06.aspx>).

Another example of a successful JIT with a Third State – Serbia – in 2019–2020 is described in the Eurojust press release 'International drug trafficking network dismantled' (<https://www.eurojust.europa.eu/international-drug-trafficking-network-dismantled>).

specifically, a Contact Point can help prosecutors to quickly get in touch with the competent counterpart or assist in obtaining accurate and up-to-date information on the judicial system in a particular state.

In early 2021, Eurojust was actively connected through the network to 56 third States around the world. Eurojust has, for example, contact points in five western Balkan states.

Case illustration IV. Contact Points facilitate cooperation

Judicial cooperation between Italy and Albania became necessary in a case concerning trafficking of multiple types of drugs. The (then) Contact Point in Albania was involved in the case from the beginning, initially to identify the competent Albanian judicial authorities. She also acted as a 'bridge' between the Albanian authorities and the European national authorities throughout the case.

Eurojust and the Contact Point also assisted the national authorities in drafting a JIT agreement. In addition, once the JIT was established, Eurojust provided funding to it.

To facilitate judicial cooperation, Eurojust organised coordination meetings. At the meetings, the parties also discussed financial aspects of the case, namely the transfer of proceeds of crime to Albania and the laundering of the proceeds there. The possibility of and procedure for seizure of property in Albania were also discussed.

Example of a successful case with the involvement of the Albanian judicial authorities ⁽²¹⁾



Eurojust's network of contact points is not limited to the EU's neighbouring countries but extends all over the world. In a recent, very successful, cooperation between Romanian and Serbian authorities within a JIT, Eurojust facilitated the execution of a mutual legal assistance request to Brazil, relying on the support of the Eurojust contact point there. This enabled the direct exchange of information between the Romanian authorities and their counterparts in Brazil, and they were able to carry out the hearings and other investigative activities promptly ⁽²²⁾.

4.2.3. Countries without a formal form of cooperation

Even in the absence of a formal form of cooperation, Eurojust can, on an ad hoc basis, cooperate with a non-EU country should a specific case require it and the Member States involved agree. This is mostly done by making use of and providing to the requesting national authorities informal contacts established through personal relations, former cases, or networks such as the Ibero-American Network

⁽²¹⁾ For more information, see the Eurojust press release 'Joint investigation team leads to dismantling of one of Europe's most active Albanian-speaking networks trafficking cocaine into Europe' (<https://www.eurojust.europa.eu/joint-investigation-team-leads-dismantling-one-europes-most-active-albanian-speaking-networks>).

Another international coordination effort supported by Eurojust led to the dismantling of a major Albanian-Italian drug trafficking network during a joint action day in May 2020; see the Eurojust press release 'Major Albanian-Italian drug trafficking network dismantled' (<https://www.eurojust.europa.eu/major-albanian-italian-drug-trafficking-network-dismantled>).

⁽²²⁾ For more information, see the Eurojust press release 'International drug trafficking network dismantled'

(<https://www.eurojust.europa.eu/international-drug-trafficking-network-dismantled>).

See also the Eurojust press release 'Huge cocaine bust in Italy with support from Eurojust', on a case involving judicial cooperation among Colombia, France, Italy, Spain and the United States (<https://www.eurojust.europa.eu/huge-cocaine-bust-italy-support-eurojust>).

of International Legal Cooperation (IberRed) ⁽²³⁾ or the International Association of Prosecutors (IAP) ⁽²⁴⁾, among other sources.

Just recently, in the summer of 2020, Eurojust and IberRed signed an implementing arrangement, supplementing their 2009 memorandum of understanding, to improve exchange of information and Eurojust's communication with judicial authorities in Latin America through greater access to the Iber@Secure Communication System. This enables safe, real-time communication with the contact points of IberRed in Latin America, who are experienced judges, prosecutors and central authorities with competence in international legal cooperation matters in their countries ⁽²⁵⁾. This constitutes yet another step towards closer cooperation without the need to refer to a legal framework to exchange operational personal data.

For example, in drug trafficking cases, Eurojust has cooperated with, inter alia, Australia, Morocco, New Zealand, Panama and Vietnam. Establishing contacts with competent judicial authorities in these countries often remains impossible for national prosecution services in the EU, and this can be greatly facilitated by Eurojust's Contact Points even without a formal form of cooperation.

Eurojust's support in cases involving Third States without a cooperation agreement is, however, currently restricted as a result of the limited possibilities for transferring operational personal data under these circumstances. Several layers of prerequisites need to be met before personal data may be exchanged with such a state ⁽²⁶⁾.

4.3. Controlled deliveries

Article 2(i) of the 2000 UN Convention against Transnational Organized Crime (UNTOC) ⁽²⁷⁾ defines a controlled delivery as 'the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities'. The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ⁽²⁸⁾ had already recommended the use of controlled delivery to combat trafficking in drugs (Article 11). It is therefore a common method used by many prosecution services to map the structures of OCGs dealing with drug trafficking. Controlled deliveries involve the use of other special investigative techniques such as physical and electronic surveillance, undercover operations and the use of informants.

In EU legislation, specific reference to controlled deliveries is made in Article 28 of the directive on the EIO (see also Section 4.6). However, Article 28(1)(b) only increases the grounds for non-recognition and non-execution, and Article 28(2) leaves practical arrangements to the authorities involved. This legal provision contains, then, no particular prerequisites for a controlled delivery, which increases the relevance of the national laws regulating such operations.

⁽²³⁾ IberRed, created in 2004, is a cooperation tool in civil and criminal matters, made available to all legal agents from the 22 Ibero-American countries and the Supreme Court of Puerto Rico. IberRed is a network comprising contact points with judges and prosecutors, along with representatives of central authorities (i.e. liaison officers). See the IberRed website (<https://www.iberred.org>).

⁽²⁴⁾ See the International Association of Prosecutors (IAP) website (<https://www.iap-association.org/>).

⁽²⁵⁾ For more information see Eurojust press release, 'Eurojust improves information exchange with Latin America' (<https://www.eurojust.europa.eu/eurojust-improves-information-exchange-latin-america>).

⁽²⁶⁾ See Arts 56–59 of the Eurojust regulation. The different layers are an adequate level of data protection, as assessed by the European Commission; appropriate safeguards and finally, derogations.

⁽²⁷⁾ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

⁽²⁸⁾ <https://www.unodc.org/unodc/en/treaties/illicit-trafficking.html?ref=menuside>

When considering a cross-border controlled delivery, national judicial authorities need to cooperate with authorities from other jurisdictions. Eurojust assists in identifying the competent authorities and who needs to receive the mutual legal assistance request (usually in the form of an EIO) if authorisation is to be obtained, as well as in facilitating the request. In recent years, a significant rise in the number of cases referred to Eurojust concerning controlled deliveries has been observed (from two in 2016 and one in 2017 to ten in 2020), showing the need for coordination on this topic.

Organising a controlled delivery will inevitably require coordination between different legal regimes. Once a judicial authority reaches out to its national desk for support, a meeting at Eurojust among the representatives of the national desks involved may help in finding a suitable solution at an early stage. These meetings often lead to a subsequent coordination meeting, with the national authorities participating as well. Such a meeting with the affected countries – prior to the planned delivery – is an ideal platform for finding legal and practical solutions to overcome legal and operational difficulties with regard to, for example:

- the legal requirements for mutual legal assistance;
- the admissibility of evidence;
- the legality of substitution or partial substitution of drugs;
- the use of undercover officers;
- limits and conditions, preconditions, etc.

Coordination meetings also enable the synchronisation of investigative activities and prosecutorial strategies. Sitting at the same table, the national authorities can discuss tactical solutions or alternative investigative strategies. Particularly when the controlled delivery affects more than two jurisdictions, the assistance of Eurojust has proven valuable, as it saves crucial time in establishing the competent authorities and removes language barriers.

A thoroughly discussed and jointly agreed aim for the investigations and a corresponding strategy also help to reduce the urge to seek an immediate result, such as seizure of the consignment, which has been identified as one of the barriers to the use of controlled deliveries.

Moreover, Eurojust can offer assistance during the execution phase of a controlled delivery. A coordination centre at Eurojust covers the entire span of the activity, from planning and exchange of information to execution, including judicial aspects. This is an excellent tool to ensure real-time coordination and monitor the simultaneous execution of operational activities in several countries. Last but not least, a coordination centre is an information hub that makes possible on-the-spot adaptation of the strategy to accommodate unforeseen circumstances.

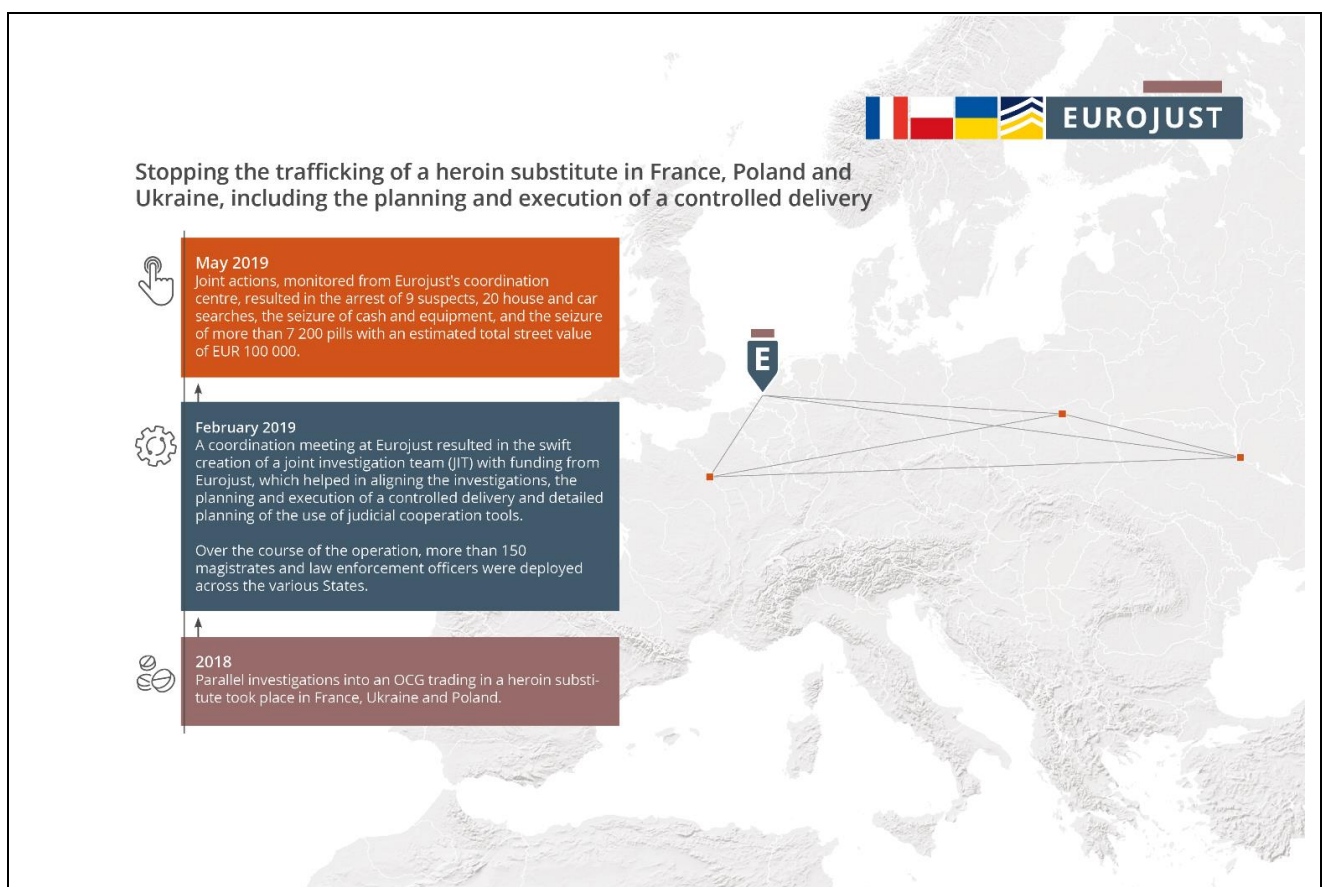
Case illustration V. A coordination centre ⁽²⁹⁾

Eurojust helped to align and fine-tune parallel investigations in France, Poland and Ukraine targeting a major European cross-border drug trafficking operation involved in trafficking of a heroin substitute. Working closely with the national authorities involved, Eurojust organised a coordination meeting at its premises and helped to set up, fund and facilitate a JIT.

⁽²⁹⁾ See also the Eurojust press release 'Eurojust helps stop international trafficking of heroin substitute' (<http://www.eurojust.europa.eu/press/PressReleases/Pages/2019/2019-05-29.aspx>).

The intense and fast-paced cooperation within the framework of the JIT enabled the authorities involved to agree upon a controlled delivery, with which Eurojust assisted by activating a coordination centre. The coordination centre lasted for several consecutive days, including the weekend. The centre helped in resolving judicial issues – such as the urgent need to ensure the (digital) transmission of security camera recordings to the Ukrainian authorities before the arrests were made – and assisted in coordinating the simultaneous execution of operational activities.

In this way, Eurojust helped to centralise and coordinate the exchange of information, providing a platform for the authorities involved to share evidence quickly and efficiently. Working in close cooperation, the authorities coordinated the arrests of suspects as well as house and car searches. In addition to cars, cash and equipment, drugs were seized (see the infographic below).



Eurojust can also assist Member States in controlled deliveries with repercussions for a third state.

Case illustration VI. Cooperation with third countries on a controlled delivery

In a case concerning trafficking of drugs, mostly marijuana, ecstasy and cocaine, from the Netherlands to Czech Republic and on to Moldova, the Eurojust Contact Point in Moldova assisted in establishing a connection with the authorities in Moldova. To deepen their cooperation and to uncover the structure of the criminal organisation in its entirety, Czech Republic and Moldova set up a JIT. Eurojust assisted in drafting the JIT agreement.

Eurojust also assisted in organising a controlled delivery from Czech Republic to Moldova by acting as the main hub for the distribution of the letters requesting approval for the controlled delivery. The consignment travelled in a regular bus, which passed through Slovak Republic, Hungary and Romania, so the controlled delivery needed to be approved by all of these countries. The controlled delivery was executed successfully, as the bus was stopped and searched and the drugs discovered in Moldova. The Moldovan authorities provided a forensic sample from the seized drugs to the Czech authorities to be used as evidence in the subsequent trial.

In January 2012, Eurojust published the report *Enhancing the work of Eurojust in drug trafficking cases – Final results* and in January 2015 it published *Implementation report of the action plan on drug trafficking – Strategic project: Enhancing the work of Eurojust in drug trafficking cases*.

This report included an addendum, 'Issue in focus number 1', entitled '*Cross-border controlled deliveries from a judicial perspective*', which focuses on the role and experience of Eurojust in controlled deliveries and on ways of improving its operational capacity to support national authorities in this context.

Eurojust also contributes to the Council of Europe's drug policy network – the Pompidou Group – which leads a project to compile a *handbook on controlled deliveries*. This handbook provides information to practitioners on the national and international legal frameworks on controlled deliveries, as well as the practicalities of planning and executing controlled deliveries. The handbook contains contact details for single contact points for controlled deliveries in each participating state. Furthermore, it specifies the documents required when requesting cooperation from another state on a controlled delivery and the information that needs to be submitted in such a request. The handbook is accessible via national contact points ⁽³⁰⁾.

4.4. Conflict of jurisdiction

Parallel investigations are very common in the EU, particularly in cases involving drug trafficking, as OCGs do not limit their operations to one country but need to organise purchasing, transport and distribution, generally on a large scale, across several countries. While coordinated parallel proceedings are rightfully considered to be beneficial in combating crime more effectively, uncoordinated parallel investigations may have the opposite effect and lead to:

- waste of time and resources;
- duplication of work;
- risk of mutually jeopardising each other's investigations;
- *ne bis in idem* issues.

The first milestone to be reached is the actual detection of parallel proceedings. These can ideally be identified at an initial meeting between national representatives / liaison prosecutors after Eurojust has received requests for assistance from the national authorities. They might also be identified during a coordination meeting with the relevant national authorities. By assessing the status of proceedings at these meetings, the possible existence of a conflict of jurisdiction and the potential violation of the *ne*

⁽³⁰⁾ See also Europol's announcement of 6 June 2018, 'Streamlining cross-border cooperation: a new online tool for law enforcement' (<https://www.europol.europa.eu/newsroom/news/streamlining-cross-border-cooperation-new-online-tool-for-law-enforcement>).

bis in idem principle, Eurojust is able to assist the national authorities in deciding, at prosecutorial level and by common agreement, whether to start, continue or transfer proceedings or to concentrate them in one state.

Depending on the respective competencies of each National Member, one very useful and important tool in this context is a written joint recommendation by the National Members involved, on the basis of Article 4(2)(b) of the Eurojust regulation (formerly Article 6 of the Eurojust decision; see also case illustration I).

Case illustration VII. Conflict of jurisdiction – joint recommendation I

An OCG had allegedly been committing international drug trafficking and related crimes such as money laundering, operating (at least) in France, Germany, Italy and Spain. According to the investigations, the drugs, mainly hashish, entered the EU via Spain and from there were smuggled into and sold in other Member States. Several suspects were identified in the various ongoing proceedings in the countries involved.

At one coordination meeting, the need to urgently coordinate the ongoing proceedings in Spain, Germany and Italy in order to proceed in the best interest of justice and avoid a possible *ne bis in idem* violation emerged. In particular, the Spanish and German competent authorities discussed in detail the issue of which jurisdiction should prosecute the three suspects, who were being investigated by both Member States. On the basis of the discussion, the Spanish and German National Members decided to issue a joint recommendation. Considering a number of factors – including the much greater extent of the German investigation; the nationality, location and position of the suspects; the amount of relevant evidence gathered and readily available in Germany; and the more advanced stage of the proceedings in Germany – it was agreed that Germany was the jurisdiction better placed to prosecute the three suspects common to the German and Spanish proceedings.

Case illustration VIII. Conflict of jurisdiction – joint recommendation II

In a similar case, one of the members of an OCG travelled from the north of Spain to Huelva in south-western Spain to pick up a hashish package. On the way back, the suspect, warned by his accomplice that he was being monitored by the Spanish police, decided to remain in Portugal. As a result of the information provided by the Spanish police to the Portuguese authorities, the suspect was arrested and, consequently, a drug trafficking investigation was opened in Portugal. A 94-kg package of hashish was seized by the Portuguese authorities. The Spanish court issued a European Arrest Warrant for the surrender of the suspect arrested in Portugal. A Portuguese court granted the execution of the warrant but postponed the surrender of the suspect because of the pending Portuguese proceedings concerning the same person and the same facts.

Evidently, a possible *ne bis in idem* issue had arisen, and a decision on who would be best placed to prosecute the suspect had to be agreed on. The Spanish and Portuguese National Members issued a joint recommendation. It was agreed that, for several reasons, the Spanish authorities were better placed to handle the proceedings and that Portugal should transfer the proceedings to Spain, surrendering the suspect. The Portuguese authorities agreed with the recommendation and the proceedings were transferred to Spain.

Case illustrations VII and VIII demonstrate the importance of a coordinated approach, preferably as early as possible, among the countries potentially affected by a conflict of jurisdiction. Particularly when a European Arrest Warrant or even several has or have been or is or are going to be issued, the need for collaboration becomes very urgent in order to avoid legal ramifications and ultimately *ne bis in idem* issues. As these questions regularly involve a close analysis of not only the criminal and constitutional law of the Member States but also the jurisprudence of the Court of Justice of the European Union, the legal expertise and opinion of Eurojust are frequently requested, for example in the form of dedicated coordination meetings.

Drug seizures on the high seas are particularly instructive examples of the challenges faced by judicial authorities in the fight against highly mobile OCGs smuggling drugs via international waters. Not only has the apprehending state to apply international maritime law, but it also has to focus on EU legal provisions and cooperation with other judicial authorities to avoid negative ramifications for the proceedings and to ensure that no procedural errors are made (see case illustration IX).

Case illustration IX. Parallel proceedings after seizure on the high seas

The Portuguese authorities had received information about an Italian-registered yacht crossing the Atlantic Ocean towards Portugal with a possible haul of drugs on board. The intelligence suggested that, via an intermediary, the drugs were ultimately intended for an Italian Mafia-style OCG and that the drop-off would be unloaded in international waters to avoid Portuguese intervention.

In general, in these situations, according to the international law of the sea, the nationality of the ship is defined by the flag flown, and that country has exclusive jurisdiction (Articles 91 and 92 of the 1982 United Nations Convention on the Law of the Sea, the so-called UNCLOS – Montego Bay Convention). Using the cooperation mechanism set out in the convention (Article 108), a request was sent to the competent Italian authority for authorisation to take specific actions (including search, seizure, taking of the vessel into a Portuguese port and possible arrests of crew on board), pursuant to Article 17 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Without renouncing Italian jurisdiction, permission was granted by Italy; during the raid, 400 kg of cocaine were seized on the yacht in international waters, and two suspects of Italian and Montenegrin nationality were arrested. Both became suspects in Portuguese proceedings, remained in pre-trial detention and were ultimately charged with drug trafficking and participation in a criminal organisation.

At the same time, the Italian judicial authorities initiated investigations into the same allegations against several members of the OCG, as they operated on Italian soil and could be linked to the drug seizure on the yacht. As a result of this, Italy issued European Arrest Warrants concerning the two arrested suspects. However, the competent court in Lisbon refused the execution of the Italian warrants because of the existence of a case in Portugal about the same facts, resulting in a conflict of jurisdiction.

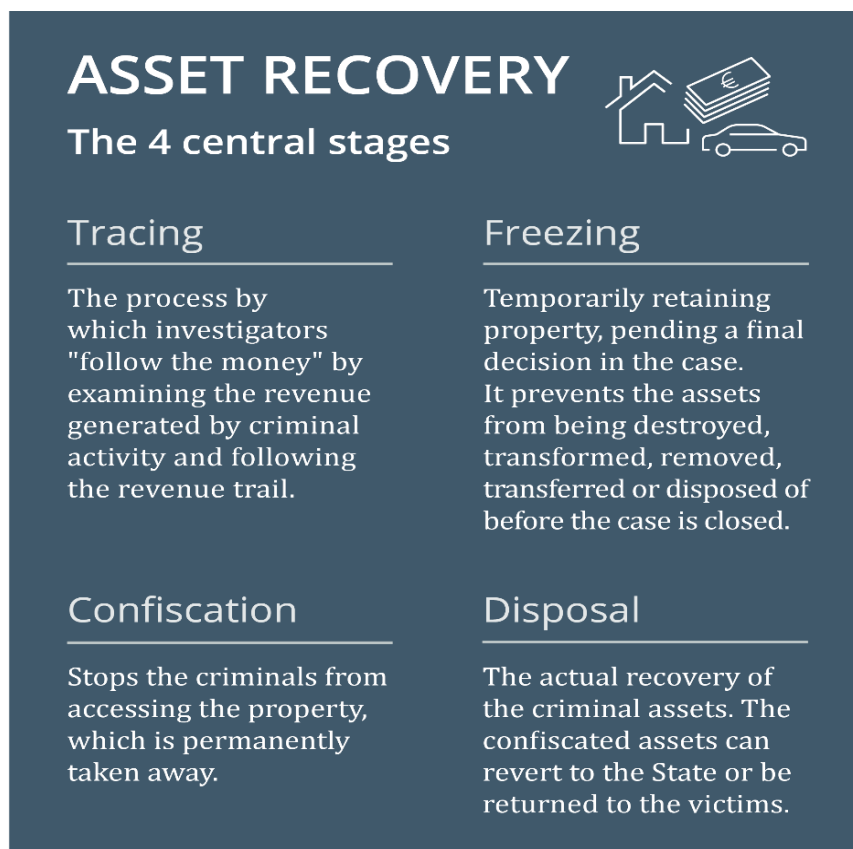
In order to agree on an effective prosecution strategy and to find a pragmatic solution, the two authorities agreed to refer the case to Eurojust. A coordination meeting was organised and, in addition, Eurojust's Operations Department drafted a case note assessing the legal basis and jurisdictional issues. The legal opinion was that a conflict of jurisdiction with consequent potential infringement of the *ne bis in idem* principle would arise if the parallel proceedings in Italy and Portugal led to a final decision. Following this analysis, it was decided that Italy – via its Ministry of Justice – would renounce its jurisdiction. Ultimately, the suspects were convicted on the charge of drug trafficking in Portugal.

Eurojust issued in 2016 a [report concerning its experience in the field of prevention and resolution of conflicts of jurisdiction](#). An updated version of this report was published in 2018. The report addresses Eurojust's casework in the field of prevention and resolution of conflicts of jurisdiction from four different perspectives: identification and coordination of parallel proceedings, jurisdictional issues and decisions on which jurisdiction should prosecute, transfer of criminal proceedings, and the principle of *ne bis in idem*. This analysis is of importance for drug trafficking cases.

One of the report's conclusions is that, thanks to its advisory and coordinating role, in most cases supported by Eurojust issues are settled between the competent national authorities and consensus is reached through dialogue and the building of mutual trust ⁽³¹⁾.

See also the 2020 [overview of the case-law of the Court of Justice of the European Union regarding the *ne bis in idem* principle in criminal matters](#).

4.5. Financial investigations and asset tracing and recovery



Earning money is still at the core of drug trafficking. It is a crime motivated by profit, and criminals need resources to finance their activities. Tracing, freezing and subsequently confiscating profits stemming from drug trafficking is a crucial tool in the fight against this type of criminal activity and to disrupt the business model of an OCG.

⁽³¹⁾ For more detail, see the conclusions to the updated report, p. 15.

Money flows potentially provide evidence of criminal activity and the relationships between members of a criminal group (the ‘follow the money’ approach). To avoid detection, criminals try to obscure the traces of their money, for example by moving and spreading it across different countries. Therefore, it is not uncommon for parallel investigations to be going on in various countries. So, to be successful, many financial investigations must have a cross-border element.

As figures from Eurojust’s casework clearly demonstrate, drug trafficking crimes in particular are regularly associated with money laundering activities: Between 2017 and 2021, money laundering was the second most frequently identified associated type of crime in drug trafficking cases (after organised crime), with 127 registered cases. However, whereas in some states money laundering can be prosecuted jointly with crimes such as drug trafficking and/or participation in an OCG, other states consider money laundering to be a subsidiary crime. This, together with the need to prove drug trafficking as the predicate offence in some legal systems, frequently leads to intense discussions on how to cooperate in cross-border cases.

Case illustration X. Cross-border OCGs and asset recovery

A Lithuanian investigation into a cross-border OCG had resulted in prosecutions of the leaders and main organisers as well as lower-level members. The OCG operated in Northern Ireland and Ireland but originated from Lithuania. Most of the proceeds of the criminal activities were invested in business, property and high-value cars in Lithuania, hence laundered. In addition to the criminal offences, the Lithuanian authorities were pursuing (extended) confiscation of the assets of the OCG members.

The Lithuanian authorities approached Eurojust for assistance. Several coordination meetings were organised at Eurojust to assist the Lithuanian, Irish and UK authorities in the coordination of these large-scale investigations. At Eurojust, the parties discussed the undermining and dismantling of the OCG, gathering evidence against the top layer of the OCG, seizure of real estate and other proceeds of crime, and protection of vulnerable victims. The parties also discussed differences in qualifying criminal offences stemming from different approaches to forensic research (amount of pure substance versus market value), as well as organising a joint action day, including setting up a Eurojust Coordination Centre and the practicalities involved.

The parties agreed that the cross-border elements of the respective investigations, including the identification, exchange and transmission of relevant information and evidence, to tackle the highly mobile international OCG in its totality, would be significantly enhanced with the support of Eurojust and by the establishment between themselves of a joint investigation team. The terms of that agreement were drafted at Eurojust and elements necessary to that agreement were financed with the assistance of Eurojust.

In August 2020, a coordinated judicial and law enforcement action, supported by Eurojust in real time through a coordination centre, resulted in the arrest of 18 suspects, 65 searches and the seizure of assets with an estimated value of EUR 700 000.

In some EU Member States, financial investigations are sometimes conducted separately from investigations of the predicate offence, in parallel or consecutively. Eurojust’s assistance is available in both situations.

Case illustration XI. Separate financial investigations

The British authorities requested Eurojust's assistance in coordinating activities relating to asset tracing and confiscation in proceedings following the conviction of a Dutch national in the United Kingdom for importing cocaine. A British court had authorised a confiscation order for almost EUR 500 000. The British authorities received information on possible assets of the convicted person in Germany and the Netherlands.

Eurojust organised a coordination meeting with the main aim of discussing financial investigations and asset recovery. The differences in the Dutch, German and UK legal systems required a discussion on the time frame for the confiscation. The authorities also updated each other on the state of play, shared information and evidence, and discussed how best to cooperate on this particular case. The national authorities continued to use the assistance of Eurojust by sending letters of request via Eurojust. Eurojust's follow-up clarified pending issues and sped up the execution of the confiscation order.

The analysis of the drug trafficking cases reviewed shows that a financial investigation's first stage – asset tracing – in particular frequently poses a significant problem in cross-border investigations into OCGs active across Europe. To facilitate the tracing and identification of proceeds of crime and other crime-related property that may become the object of freezing, seizure or confiscation order made by a competent judicial authority in the course of criminal proceedings, the EU has obliged its Member States to set up or designate one (or maximum two) Asset Recovery Office(s) (AROs) ⁽³²⁾. However, from Eurojust's casework, it becomes apparent that not all EU judicial authorities are aware of the existence of an ARO in their country. In this context, the AROs' legal and operational potential remain untapped.

Eurojust is therefore raising awareness of the existence and of possibilities offered by AROs among practitioners and – when necessary – recommending that practitioners consult them and take advantage of their expertise. Cross-border asset recovery cases, particularly in relation to drug trafficking, can potentially benefit from a coordinated approach involving police and customs officers, Financial Intelligence Units and AROs. Eurojust supports these complex cases if it is requested to do so by a judicial authority.

AROs may also play a decisive role in asset management, for example in the maintenance of valuable seized objects or in the early sale of assets at risk of quick reduction in value.

Eurojust's previous reports on drug trafficking mentioned above in Section 2.1 have sections relating to financial aspects of drug trafficking. The 2014 *Report on Eurojust's experience in the field of asset recovery, including freezing and confiscation* explains the many ways in which Eurojust can assist national authorities in this area. The February 2019 report *Eurojust's Casework in Asset Recovery* is an extensive practical guide for prosecutors and investigative judges, explaining how to follow the money and subsequently seize, freeze, confiscate and recover assets, as well as the judicial cooperation instruments and tools that are available. More case illustrations and examples of drug-related cases can be found in this report. *Eurojust's Casework in Asset Recovery at a Glance* is a compact version of it.

It is worth mentioning here that on 19 December 2020 [Regulation \(EU\) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders](#) entered into force. It replaces

⁽³²⁾ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007D0845>).

the provisions of Framework Decision 2003/577/JHA as regards the freezing of property between Member States bound by the regulation, as well as the provisions of Framework Decision 2006/783/JHA as regards confiscation orders between the Member States bound by it.

Important changes and improvements to be taken into account in the future by practitioners include ⁽³³⁾:

- a regulation (not a directive) on freezing and confiscation orders, making it directly applicable;
- a principle of mutual recognition and the introduction of time limits, similarly to under the EIO regime;
- a wider scope of confiscation, including new instruments, such as non-conviction based confiscation;
- standardised forms for freezing and confiscation certificates;
- enhanced protection of witness rights.

Eurojust has published a [note on the new regulation](#) to bring key aspects that are new to the attention of practitioners.

Another important milestone in the EU's efforts to harmonise the criminalisation of money laundering is the implementation by Member States in national law of [Directive \(EU\) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law](#), due to have taken place by 3 December 2020.

This new instrument will complement the existing anti-money laundering framework by introducing a harmonised repressive framework. In particular, the sixth anti money laundering directive establishes minimum rules on criminal liability for money laundering by, among other things, (1) harmonising the definition of money laundering and the predicate offences, (2) imposing minimum sanctions and (3) extending criminal liability to legal persons ⁽³⁴⁾.

⁽³³⁾ For further details see, for example, eucrim, 'Regulation on freezing and confiscation orders' (<https://eucrim.eu/news/regulation-freezing-and-confiscation-orders>).

⁽³⁴⁾ For further details, see eucrim, 'New directive on criminalisation of money laundering' (<https://eucrim.eu/news/new-directive-criminalisation-money-laundering>).

4.6. The European Investigation Order

LIFE CYCLE OF AN EIO



The EIO was established by [Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters](#) (the EIO directive). As of 22 May 2017, it replaced the corresponding provisions of the European Convention on Mutual Assistance in Criminal Matters ⁽³⁵⁾. The EIO aims to simplify and accelerate cross-border criminal investigations by creating a single, comprehensive instrument with a large range of investigative measures, strict deadlines for gathering requested evidence and clear limits on refusing such requests.

Although direct contact between judicial authorities is a core general principle of the EIO, Eurojust supports both the issuing and the executing Member States, for example in the drafting of the EIO and by facilitating communication between Member States' judicial authorities.

While the EIO has since become a standard and widely recognised tool for mutual legal assistance across the EU, this was not the case after the introduction of this new instrument a few years ago.

Not surprisingly, whenever new legal instruments are launched in the EU, both prosecution services and courts need time to get accustomed to these new measures during a certain transitional period. In this time of uncertainty arising from different approaches to the interpretation of the (then) very new EIO directive and its implementation in national law, many national judicial authorities referred to Eurojust to benefit from the agency's expertise and experience. This, of course, is not limited to drug trafficking cases, but, because of the large amount of such cases, the issue of the use of the EIO arose particularly frequently in drug-related cases.

⁽³⁵⁾ Art. 34(1) of the EIO directive.

Case illustration XII. A new judicial cooperation tool

In a case relating to an OCG trafficking cocaine, the Dutch authorities requested Eurojust's assistance, as they had sent several letters of request and EIOs to Spain. The Netherlands wanted to cooperate with Spain, where the main suspect lived. The aim was to gather evidence for prosecutions linking the main suspect to drug trafficking and money laundering, as well as to identify, trace and seize assets.

The Dutch and Spanish national authorities learned about each other's parallel investigations. Therefore, at the request of Dutch representatives at Eurojust, several coordination meetings were organised in which the participants also discussed the need for a new EIO and agreed to transmit it via Eurojust. To ensure effective cooperation, they also agreed on preparing an overview of the requests sent so far and sending it, again, via Eurojust. As the cooperation intensified, the national authorities concluded that the EIOs were no longer sufficient and agreed to establish a JIT. The agreement was drafted during a coordination meeting and later extended.

At the coordination meetings, both parties also discussed issues relating to conflicts of jurisdiction, the confidentiality of the investigations and time frames. Eurojust assisted the national authorities in developing a full picture of the different ongoing investigations by preparing an overview of the suspects. The main suspects were surrendered by Spain to the Netherlands.

It is to be expected that a similar pattern will be detected whenever a new EU legal instrument (in the area of criminal justice) is adopted. One example is the new model certificate to be implemented from December 2020, when Regulation (EU) 2018/1805 of 14 November 2018 on mutual recognition of freezing orders and confiscation orders entered into force (see Section 4.5).

Not only the interpretation of the new directive but also the possible content and scope of an EIO at different stages in proceedings were repeatedly (and still are) discussed during an initial meeting between representatives of the respective national desks and/or liaison prosecutors or at a (subsequent) coordination meeting at Eurojust in the presence of the judicial authorities. Whether the case was bilateral, a more complex case involving several Member States (or even Third States) or a case involving a JIT needing to conduct investigations in a third country, coordination meetings helped to advance investigations.

Case illustration XIII. A JIT needing support from a country not a member of the JIT

In a case involving an OCG importing large amounts of cannabis from Morocco via Spain and France to Belgium, the Belgian and French authorities agreed to set up a JIT during a coordination meeting at Eurojust. The Spanish authorities did not think there were sufficient grounds for opening their own investigation, so they proposed supporting the JIT's investigations through EIOs. A first draft of the EIO to Spain was discussed at the meeting, which proved to be very useful, as the Spanish delegation indicated a number of issues that would need to be remedied to ensure the successful execution of the EIO. After the meeting, the Belgian authorities therefore issued a tailor-made EIO and thus avoided the risk of a temporary rejection of the EIO in Spain owing to insufficient or unclear content.

After the competent judicial authority in the issuing Member State has drafted the EIO, it is transmitted to the competent authority of the executing Member State. If the executing Member State decides to recognise the EIO, it is its responsibility to execute the EIO. Eurojust assists the Member States involved in overcoming legal and/or practical difficulties.

Case illustration XIV. EIOs during an action day / coordination centre ⁽³⁶⁾

In March 2018, a large OCG involved in drug trafficking in Finland and the Netherlands was dismantled with the help of Eurojust. The drugs were trafficked via Germany and Sweden. Drugs with an estimated value of EUR 2.8 million were seized as a result of the action. Eurojust facilitated the simultaneous execution of EIOs and European Arrest Warrants and assisted in the development of coordinated strategies for the joint operations of the Finnish, Dutch, German and Swedish national authorities via a coordination centre established at Eurojust. During the action day at the coordination centre, the Finnish prosecutor issued and signed on-the-spot EIOs. These were immediately transmitted to the Netherlands. The coordination centre thus provided the necessary judicial support to the investigation.

Case illustration XV. Legal issues

In a large-scale Italian drug trafficking case with links to Germany and the Netherlands, a coordination meeting was organised to discuss important and urgent legal topics concerning both the Italian and the Dutch investigation. At this meeting, the importance of keeping the information provided in the EIOs as confidential as possible in order to not jeopardise the Italian investigation was discussed, as was the possible inadmissibility of the information intercepted by Italy if it did not receive assistance from the Dutch authorities (an Annex C notification under the EIO directive was required).

At the conclusion of the meeting, the Italian prosecutor issued an Annex C notification under the EIO directive also to Germany (with help from Eurojust) in order to notify the German authority of the interception of an Italian phone number. To speed up the process, Eurojust facilitated the accurate drafting of the EIOs, to ensure that they would be accepted, and their final transmission.

Because of its relevance and potential in fighting transnational crime, including cross-border drug trafficking cases, Eurojust has sought to enhance and encourage the implementation of the EIO.

In September 2018, Eurojust organised plenary sessions and workshops to discuss potential problems and challenges related to the functioning of the EIO, for practitioners from the EU Member States and representatives of the EU institutions and academia. The outcomes of the meeting were documented in an [outcome report](#). In addition, Eurojust hosted a meeting of the Consultative Forum of Prosecutors General in October 2018, in which the effective implementation of the EIO was discussed.

To further assist Member State authorities in the application of the EIO, Eurojust and the European Judicial Network published a document entitled '[Joint note on the practical application of the European Investigation Order](#)', which, for example, elaborates on the corresponding provisions mentioned in the EIO directive and highlights issues and challenges, possible solutions and best practice. This document offers practical guidance for practitioners in their daily use of the EIO.

In November 2020, Eurojust published [Report on Eurojust's casework in the field of the European Investigation Order](#). It outlines the main difficulties encountered in the practical application of the EIO on the basis of Eurojust's casework and highlights, where relevant, the role that Eurojust has played in overcoming such difficulties. The report also covers particular recurring issues in drug trafficking cases,

³⁶ See the Eurojust press release 'Joint operation against drug trafficking in Finland and the Netherlands' (<http://eurojust.europa.eu/press/PressReleases/Pages/2018/2018-03-08.aspx>).

such as covert investigations and interceptions of telecommunications, in relation to the use of this judicial cooperation tool.

Further information can be found in the [dedicated section of the Eurojust website](#).

4.7. Drug trafficking in a digital environment

As societies become increasingly digitalised, criminal networks focus more and more on the internet as a tool or platform. OCGs actively involved in large-scale drug smuggling and trafficking have shown that they are able to adapt quickly to changing environments and to technological progress and developments and also that they are able to profit from exceptional circumstances such as the COVID-19 pandemic. Secure communication channels, crypto phones, cryptocurrencies and darknet markets have become ideal tools and platforms to enable traditional criminal networks to continue and even strengthen and widen their drug-related activities. Contacts with, for example, drug suppliers on other continents are facilitated, shipped goods can be tracked and at the same time supervised, couriers can be instructed anonymously and traces of the operations can be minimised. In addition, the distribution and selling of drugs have changed: customers can now order via the darknet, pay in cryptocurrency and subsequently receive their delivery via post to an anonymised postbox.

All these new developments affect to an increasing extent drug investigations, often adding a cross-border element to proceedings, as, for example, the main server for a darknet marketplace might be hosted in a state outside the EU. Nevertheless, as recent successful operations illustrate well, law enforcement and judicial authorities are still able to keep pace with developments and seriously interfere with, disrupt and dismantle OCGs involved in drug trafficking via cyberspace.

Consequently, Eurojust's casework in recent years clearly indicates that national judicial authorities are allocating additional resources to fighting drug trafficking online, for instance by involving specialised police units or even specialised cybercrime public prosecution offices, cybercrime contact points in the Member States and [the European Judicial Cybercrime Network \(EJCN\)](#). This leads to an increasing number of referrals to Eurojust. The aforementioned circumstances have an enormous effect on the activities of OCGs, and also on those of law enforcement and judicial authorities; however, the ramifications are rather limited as regards available potential judicial cooperation instruments in drug trafficking cases with a cyber element. In contrast to many classic cybercrime cases such as those involving cyberattacks, use of malware and phishing⁽³⁷⁾, in which other legal provisions and conventions may be of use and investigations are less straight forward, drug trafficking cases mostly still adhere to important traditional aims and strategies such as seizure of drugs, interception of telecommunications and physical surveillance methods. In addition, the toolbox of judicial cooperation instruments is still limited to the various options mentioned repeatedly in the preceding sections. One additional important factor is the need for technical (cyber-)expertise in drug trafficking cases, not only in classic cybercrime cases.

More in-depth examples of (classic) cybercrime cases and best practices identified in Eurojust's casework in this particular area of crime can be found in the recently published [Overview Report – Challenges and best practices from Eurojust's casework in the area of cybercrime](#)

⁽³⁷⁾ For more information on Eurojust's work in cybercrime cases, see Eurojust, 'Cybercrime' (<https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/cybercrime>).

Case illustrations XVI and XVII exemplify typical cases involving new distribution and payment methods but in which traditional cooperation has been used.

Case illustration XVI. A darknet marketplace

The Swedish authorities initiated investigations in 2017 into a darknet platform selling heroin, cocaine, amphetamines and cannabis to more than 17 000 buyers in Sweden. The suspects' communications went through encrypted networks, communications channels and computers. All these transactions were encrypted and paid for in bitcoin, with the illicit drugs delivered to the buyers by post. The payments were channelled through an advanced money laundering scheme involving decoys, bank accounts and bitcoin exchanges all over the world. In total, the suspect of Swedish origin is supposed to have made profits of around EUR 1 million. He was arrested in late 2018.

During the investigation, the police cooperated with 25 countries, including Germany, Hong Kong, and Panama. Eurojust supported the Swedish authorities in sending EIOs and rogatory letters to Germany and the Netherlands as well as third countries including New Zealand and Panama. The Spanish desk at Eurojust assisted by connecting the Swedish and Panamanian authorities and by providing judicial advice on the case.

With help from German and Dutch prosecutors and police, some of the servers containing the data from the marketplace were located and seized and the marketplace was shut down. In 2020, for the first time ever in Sweden, an administrator of an illicit marketplace on the darknet was charged with offences such as particularly gross drug trafficking, money laundering and falsification of documents.

Case illustration XVII. A JIT to tackle a darknet platform selling drugs ⁽³⁸⁾

German and Dutch law enforcement and judicial authorities worked closely together in 2018–2019 to dismantle an OCG active in trafficking drugs and using postal services for distribution purposes. The orders were made online through a vendor site on the darknet, using cryptocurrency such as bitcoin and paysafecard. The Dutch-based OCG used couriers to transport the pre-packed parcels across the border to Germany, where parcels and envelopes were posted to customers all over the world.

To facilitate mutual legal assistance, which would clearly be needed on a recurring basis, a JIT was set up. Eurojust provided financial support to the JIT and facilitated judicial and operational cooperation between the national authorities.

During a joint action day in 2019, large amounts of drugs were seized and 12 suspects were arrested.

As outlined above, Eurojust's support in the setting up of a JIT, as well as its worldwide contacts, may be particularly useful in drug trafficking cases with a cyber component. Judicial authorities might also consider reaching out to their national contact points at the EJCEN. Eurojust supports the network and ensures close cooperation. The objective of the EJCEN is to help practitioners handle challenges such as those described above through an enhanced exchange of best practices and legal expertise, including

⁽³⁸⁾ See the Eurojust press release 'International drug trafficking network disrupted' (<https://www.eurojust.europa.eu/international-drug-trafficking-network-disrupted>).

expertise in relevant national case-law. The network organises meetings and seminars and offers its support to all prosecutors and judges requesting assistance.

5. Best practices identified

The analysis of the casework, of the case illustrations provided above and of Eurojust's overall exhaustive experience in facilitating cross-border cooperation on a large number of international drug trafficking cases has led to the identification of best practices for improved judicial cooperation.

The following list is non-exhaustive and may not be applicable to every case but offers a general overview of best practices identified ⁽³⁹⁾.

- When cooperating within a JIT or similar joint venture, it is paramount to formulate a clear aim and targets from the very beginning. This enables efficient cooperation, better planning of allocation of resources and achievement of the best possible results.
- It should be ensured that investigations in Member States have the same starting point and the same level of investigation. When law enforcement and later judicial authorities share intelligence information with other Member States, separate investigations/proceedings may be opened. In this case, coordination from the very beginning is extremely important.
- The 'bigger picture' must be kept constantly in mind to avoid inefficiencies.
- Different competences of national judicial and law enforcement authorities may affect the investigation and information sharing. This needs to be taken into account at an early stage.
- Regular and frequent face-to-face meetings (operational meetings at Europol and coordination meetings at Eurojust) have been shown to help in building mutual trust.
- The practice of sharing information and/or evidence first informally and then more formally at a later stage is not always the best way to operate. For example, it may be difficult to process and translate the material in time. If this model is applied, subsequent formal requests must be precise and also set out the context of the request. Establishing a JIT should be considered and may a better solution.
- Differences in judicial systems must be considered and discussed from the beginning (e.g. different competencies of law enforcement and judiciary, admissibility of evidence, disclosure of evidence, procedures for forming a JIT).
- The relevant authorities must consider options for information exchange and align judicial strategies as early as possible, especially when this is for judicial purposes (evidence).
- Among the best practices identified in this report, one aspect deserves particular mention: to ensure the most effective support to cross-border investigations, the early involvement of Eurojust is crucial. This will not only facilitate future cooperation but also prevent potential conflicts and obstacles to the respective national proceedings. Involving Eurojust in a case early on will facilitate, for example, finding the relevant counterpart in another state and receiving information on the



⁽³⁹⁾ These best practices partly originate from an evaluation conducted at Eurojust in 2019 of an initially intelligence-led project investigating an OCG involved in large-scale drug trafficking and transport of substances such as cocaine, heroin, amphetamines, MDMA and hash between several Member States including the Netherlands, the United Kingdom, Sweden and Denmark. A (law enforcement) task force was set up and its work resulted in the opening of various investigations during the course of several years. As a consequence, different cases were opened at Eurojust by various National Desks and several coordination meetings were organised, with the same group of Member States focusing on the same group of criminals. A joint action day in 2018 in the Netherlands and Sweden led to a major operational success, including drug seizures and arrests. The evaluation therefore contains recommendations for both judicial and law enforcement authorities.

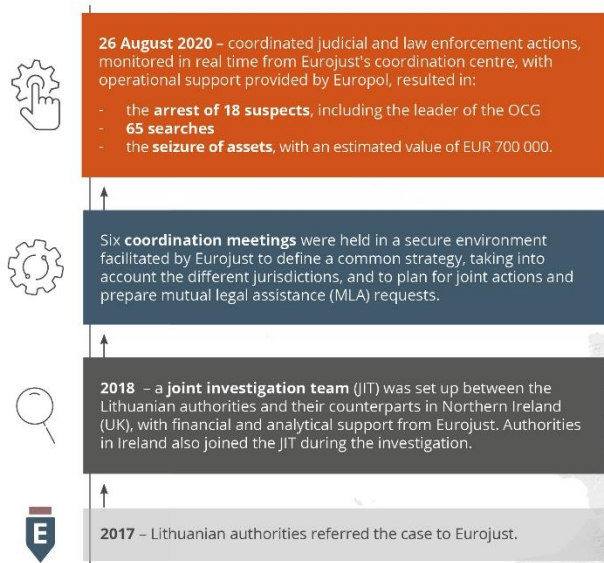
legislation of another state. Coordination meetings at Eurojust bring together the investigative and judicial authorities of the states involved to find solutions tailored to each specific case.

Best practice example of a successful case benefiting from the most important judicial cooperation tools and Eurojust's support ⁽⁴⁰⁾

The dismantling of a drug trafficking network exploiting vulnerable people as street dealers

An organised crime group (OCG) involving at least 20 individuals, led by a Lithuanian national, had been operating a complex transport and distribution network since 2015, selling heroin in Ireland and the United Kingdom. The OCG recruited at least 65 people, nearly all Lithuanians, from vulnerable social backgrounds or drug addicts themselves, to become street dealers. Some of these people had been trafficked with the specific intent to commit crime. The proceeds of the operation were laundered by purchasing various real estate properties and through other related financial transactions.




26 August 2020 – coordinated judicial and law enforcement actions, monitored in real time from Eurojust's coordination centre, with operational support provided by Europol, resulted in:

- the **arrest of 18 suspects**, including the leader of the OCG
- **65 searches**
- the **seizure of assets**, with an estimated value of EUR 700 000.

Six **coordination meetings** were held in a secure environment facilitated by Eurojust to define a common strategy, taking into account the different jurisdictions, and to plan for joint actions and prepare mutual legal assistance (MLA) requests.

2018 – a **joint investigation team (JIT)** was set up between the Lithuanian authorities and their counterparts in Northern Ireland (UK), with financial and analytical support from Eurojust. Authorities in Ireland also joined the JIT during the investigation.

2017 – Lithuanian authorities referred the case to Eurojust.



Today's result wouldn't have been possible without close cooperation between the Lithuanian, Irish and UK authorities, as well Eurojust's support in facilitating the judicial cooperation between all the parties involved. This shows that by working closely together we can ensure that drugs are kept off the streets and people are kept safe.

Margarita Sniutyte-Daugeliene
National Member for Lithuania at Eurojust

⁽⁴⁰⁾ For more detail, see the Eurojust press release 'Criminal network dismantled in Lithuania, the UK and Ireland' (<https://www.eurojust.europa.eu/criminal-network-dismantled-lithuania-uk-and-ireland>).

6. Conclusions and recommendations

This report describes the main issues detected in Eurojust's casework on drug trafficking.

Drug trafficking cases are one of the main types of cases dealt with at Eurojust. Therefore, Eurojust has gained invaluable expertise on judicial cooperation issues arising from this particular topic. A well-researched selection of these issues based on an analysis of Eurojust's casework has been presented in this report.

The following – non-exhaustive – **conclusions** can be drawn. Targeted **recommendations** are made where applicable.

1. Recent years have seen a **steady increase in drug trafficking cases** at Eurojust (from 279 cases in 2016 to 562 in 2020), and drug trafficking remains one of the top three main types of crime in cases dealt with by the agency. This bears out national judicial authorities' and Europol's reports and clearly indicates the importance of the fight against organised criminal activities in drug trafficking around Europe. The number of coordination meetings on drug trafficking cases has more than doubled since 2016 (from 41 to 87), clearly showing the international need and appreciation for Eurojust's coordination on this type of case. Not even the COVID-19 pandemic in 2020, with all its restrictions and difficulties for both law enforcement and criminals, resulted in any indication of reduced supply or demand for drugs.

Rather the opposite: owing to a still lucrative business model, ever-growing demand and the adaptability of criminal networks, a continuous rise in the number of cases was noted.

*As the number of drug trafficking cases at Eurojust has increased significantly since 2016, and not even the COVID-19 pandemic led to a reversal of the trend, **a further rise in the number of referrals can be expected in the coming years and should be taken into account in planning.***

2. **Cocaine and cannabis constitute the main drug types in Eurojust's casework.** However, the number of synthetic drug cases remains high, and these present specific difficulties for practitioners. Cases involving heroin seem to be less commonly referred to Eurojust for facilitation and cooperation.

In particular, cases involving **NPS** and (pre-)precursors present **enormous legal and operational challenges** for judicial authorities. Recurring legal gaps resulting from OCGs constantly changing synthetic drugs to substances not (yet) criminalised hamper prosecution. The EU proactively fights this problem by establishing innovative systems and procedures, complemented by regular updates to legislation.

*The EU's **efforts to tackle the legal challenges** regarding **NPS** and precursors **should be continued and enforced.** As long as judicial authorities still face operational challenges, Eurojust is the right organisation to support the judiciary.*

3. Increasingly, Eurojust's drug trafficking casework **includes third countries.** The number of cases involving countries outside the EU rises each year. This is primarily thanks to the numerous Liaison Prosecutors based at Eurojust's premises, who have helped to boost cooperation with their respective home authorities significantly. Furthermore, Eurojust's **outreach to other third**

countries – particularly outside Europe – has improved considerably, leading to more requests to establish contacts with judicial authorities even in less ‘known’ jurisdictions.

*Continuous and reinforced **cooperation with third countries** through Eurojust’s Liaison Prosecutors, Contact Points and other networks or means is highly beneficial in many drug trafficking cases, showing **clear additional potential for national investigations**.*

*In line with the recent [EU security union strategy](#) ⁽⁴¹⁾, the Commission’s [EU agenda and action plan on drugs 2021–2025](#) ⁽⁴²⁾ and the [Council’s EU drugs strategy 2021–2025](#) ⁽⁴³⁾, Eurojust welcomes and strongly supports the aim of fostering and enhancing cooperation with third countries, for example by concluding further Cooperation Agreements, extending the network of Contact Points, and widening cooperation with other institutions, agencies and networks. This will require an **extension of the cooperation possibilities available to judicial authorities in drug trafficking cases**, considering the adaptability and extent of OCGs’ drug trafficking business models.*

In addition, the recently launched [EuroMed Justice programme](#), hosted and implemented by Eurojust, is expected to develop mutual cooperation with southern Mediterranean states participating in the programme ⁽⁴⁴⁾. A [handbook on international cooperation in criminal matters](#) already provides useful guidance on judicial cooperation with North African and near Eastern countries.

4. **Cross-border controlled deliveries**, particularly through several European countries, still remain a somewhat **sensitive issue both from an operational and a legal point of view**. Executing law enforcement and judicial authorities need to take into account several sets of legal bases in different states en route. No harmonisation or specific regulation of this investigative measure has been incorporated into EU legislation so far. In addition, finding the competent recipient for any kind of approval request from executing law enforcement and judicial authorities often remains a major hurdle. Eurojust’s support in these circumstances, both before and during a controlled delivery (including liaison with Third States), has proven to be highly appreciated and efficient, as the increasing number of referrals of controlled delivery cases to Eurojust confirms.

*Eurojust’s assistance may be of particular added value in **cross-border controlled delivery** cases to help national judicial authorities to overcome obstacles arising from the fragmented European legal landscape that must be taken into account before and during the execution of a controlled delivery. **Greater harmonisation and specific regulation of this investigative measure at EU level** should be considered to facilitate judicial cooperation in this area.*

5. Owing to the frequent pan-European activities of OCGs, **parallel investigations** by different law enforcement and judicial authorities into the same organisation are rather common. Eurojust has found in its casework that uncoordinated proceedings present a serious risk of negative effects such as duplication of work, mutual jeopardy for the proceedings and ultimately *ne bis in idem*

⁽⁴¹⁾ See pp. 17 and 18.

⁽⁴²⁾ Priority area 1.3 and actions 3 and 17, Annex I.

⁽⁴³⁾ Strategic priority 9.3.

⁽⁴⁴⁾ See also ‘EuroMed Justice Programme launched with opening conference’ (<https://www.eurojust.europa.eu/euromed-justice-programme-launched-opening-conference>).

issues. Possible (negative and positive) **conflicts of jurisdiction** – for instance as a result of competing European Arrest Warrants – can be detected and resolved by a coordinated approach, including a referral to Eurojust. The legal expertise and opinions of Eurojust are frequently requested in such cases.

*To avoid negative repercussions in parallel investigations, such as ne bis in idem issues, Eurojust offers its expertise in cases where there may be a **conflict of jurisdictions**. A **joint recommendation (or request)** (on the basis of Article 4 (2)(f) of the Eurojust-regulation) may in some cases also be considered a valuable option that can be used to obtain an unbiased opinion on the way forward.*

6. Increasingly, law enforcement and judicial authorities recognise the importance of embedded or separate **financial investigations** when fighting drug trafficking. **Money laundering** goes hand in hand with the trafficking of drugs. Accordingly, money laundering is the second most frequently identified associated type of crime (after organised crime) in Eurojust's casework on drug trafficking. However, frequently, legal issues relating to the need to prove drug trafficking as the predicate offence for money laundering emerged in the cases analysed. The first step – **asset tracing** – in particular still poses a rather significant hurdle in cross-border investigation. **Asset Recovery Offices (AROs), Financial Intelligence Units (FIU)** and other entities of particular use in international cooperation are not always sufficiently known and used by practitioners, particularly in the judiciary. Eurojust's support was frequently requested during the reporting period in cases where **freezing and confiscation orders faced problems with acceptance** in another Member State for various reasons (e.g. incompatibility of the underlying legal regulation or differing views on the calculation of the amount to be confiscated). Because of differing legal systems, in some cases the continuation of a **financial investigation consecutively after the closure of a case** led to a referral to Eurojust, as this is an unknown concept in some Member States' legal frameworks.

*Financial investigation in drug trafficking cases and particularly asset freezing, confiscation and recovery have been shown to be of the utmost importance, considering their impact on OCGs. Relevant parties are encouraged to make full use of **Asset Recovery Offices (AROs), Financial Intelligence Units (FIU)** and other networks. Eurojust supports practitioners at all stages of financial investigations and in the practical implementation of the new **Regulation on freezing and confiscation orders** (Regulation (EU) 2018/1805).*

7. The **EIO** has become the standard judicial cooperation tool in drug trafficking cases (as in many other areas of crime). Eurojust provided significant assistance in a considerable number of cases at the beginning of the reporting period in 2017–2018. A **similar demand for support is to be expected** in the near future following the entry into force of the new **Regulation on freezing and confiscation orders** (Regulation (EU) 2018/1805). In spite of the widespread use of the EIO, the interpretation of the EIO directive, its content and scope, recognition / grounds for refusal, transmission and other legal and/or practical difficulties continued to constitute important issues in drug trafficking casework throughout 2019 and 2020, and still do so today. The recent [Report on Eurojust's casework in the field of the European Investigation Order](#) confirms this and suggests best practices for practitioners.

8. **Drug trafficking in a digital environment** is a rapidly growing phenomenon, not only from a cybercrime and law enforcement perspective but also from a judicial cooperation point of view. More and more drug trafficking cases referred to Eurojust have some link to digital marketplaces, darknet platforms or simply encrypted devices (e.g. EncroChat), or other issues in this regard. While investigations in cyberspace constantly require new methods and adaptation by every authority involved, developments in judicial cooperation tend to be somewhat slower. Eurojust's casework shows that these cases frequently require closer cooperation with a higher number of EU Member States (e.g. owing to the sending of drugs by post) and, in particular, Third States (e.g. regarding the location of administrators and servers). It is important to point out that, while significant technical progress can be observed in this type of crime, the toolbox of judicial cooperation instruments remains practically the same.

*The **EJCN** is an important actor and provides valuable support in the fight against drug trafficking on the darknet, on virtual platforms or using digital communication tools. As these investigations frequently require special knowledge not only at law enforcement level but also from among judicial authorities, particularly in a cross-border case, Eurojust also **encourages practitioners to approach their EJCN national contact points** in relevant cases.*

9. **JITs** have become an **increasingly important and highly appreciated tool in judicial cooperation** not only between EU Member States but also with third countries. In drug trafficking cases in particular, JITs simplify cross-border investigations enormously, given the often Europe-wide activities of OCGs trafficking drugs, for example by facilitating exchange of evidence.

*The setting up of a **JIT** is highly recommended in suitable drug trafficking cases. Contrary to widespread concern, establishing a JIT has never been simpler for judicial authorities, as **Eurojust offers support during all phases of a JIT**, providing help in negotiating, drafting, setting up, administering and financing a JIT.*

10. **Coordination centres** at Eurojust's premises have proven **to be an efficient tool to support the judiciary** during so called joint action days. Such a joint operation on an agreed date is quite often used in drug trafficking cases targeting OCGs active in several countries when simultaneous action is required. Whereas police-to-police cooperation during such action days mostly runs smoothly as a result of prior contacts, at judicial level this is not always the case. The organisation of a **coordination centre at Eurojust enables the strengthening of judicial cooperation in real time** by establishing for prosecutors and investigating judges a direct channel of communication. The results of this tool so far have been excellent.

*Despite the promising and successful outcome of Eurojust's **coordination centres** (e.g. during joint action days aimed at simultaneous and coordinated arrests, searches and seizures), national judicial authorities seem to be reluctant to request the setting up of coordination centres in drug trafficking cases. Eurojust therefore **invites and encourages judicial authorities to make more use of this powerful tool in this area of crime.***

12.

*The **added value of an early referral to Eurojust** ultimately strengthens the international part of any national drug trafficking case. Therefore, Eurojust **encourages the authorities involved in cross-border drug trafficking cases** to contact their respective National Members to discuss the possibilities available in the specific case as early as possible.*

13.

*Based on its experience in drug trafficking cases, Eurojust has identified a set of **best practices**, outlined in Chapter 5 of this report. They may be of help to practitioners in specific investigations.*



Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
www.eurojust.europa.eu • info@eurojust.europa.eu • +31 70 412 5000
Twitter & LinkedIn: @Eurojust

Print: Catalogue number: QP-02-21-402-EN-C • ISBN: 978-92-9490-575-8 • DOI: 10.2812/018805
PDF: Catalogue number: QP-02-21-402-EN-N • ISBN: 978-92-9490-574-1 • DOI: 10.2812/204889