



# Second JIT Evaluation Report

Evaluations received between: April 2014 and October 2017

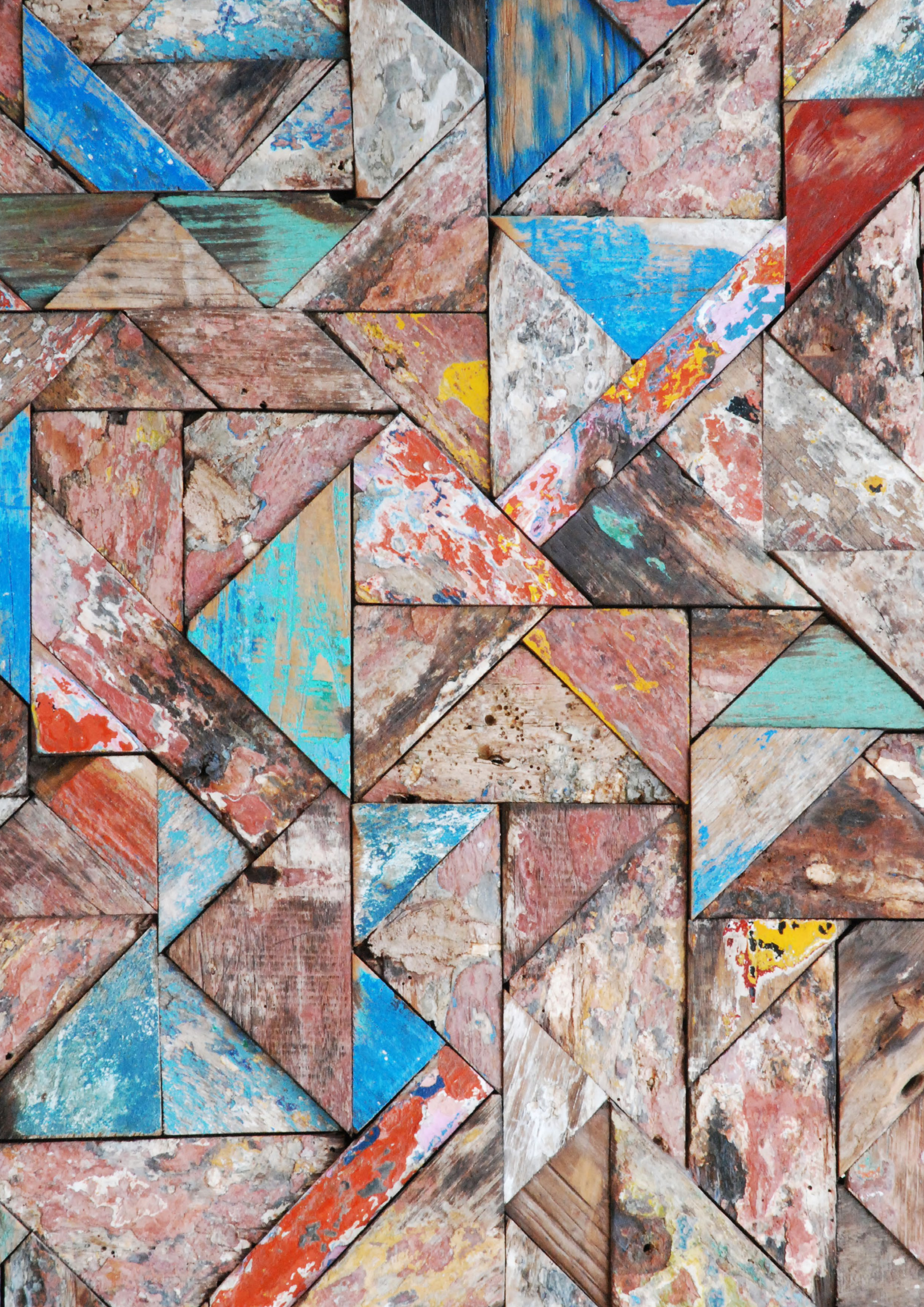






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# Main findings for practitioners

The following section summarises – particularly for the attention of judicial and law enforcement authorities – the main practical findings of this report in terms of lessons learned and best practice identified.

## Findings from the evaluation of JITs

### (a) Setting up of the JIT

*JITs in the absence of domestic investigation opened in all States involved.* No uniform practice is followed among Member States concerning whether the opening of a domestic investigation should be regarded as a prerequisite to the involvement in a JIT. Some Member States consider that the wording of Article 13 of the 2000 EU MLA Convention allows for the setting up of JITs to support demanding investigations, even in the absence of ongoing proceedings in the Member State concerned. In such situations, the JIT agreement serves (only) as a legal framework to carry out investigative measures needed, which may require regular updates of its scope.

#### *JITs and triggering of domestic investigations*

After authorities involved are convinced of their common investigative interest, various means may be used to trigger the opening of domestic investigations: spontaneous exchange of information or letter of request (including key information/evidence enabling the receiving authority to start an investigation).

#### *Specific challenges identified*

- ▶ difficulties in circumscribing the case and defining and limiting the scope of the JIT in cybercrime cases;
- ▶ uncertainty of domestic rules relating to the appointment of JITs leaders or change in roles during the investigation (prosecutor/investigative judge);
- ▶ identification of relevant partners and the feasibility/willingness of their participation as parties in a JIT;
- ▶ integration of new JIT partners and the possible adjustments of operational strategy that would follow; and
- ▶ length of internal procedures to obtain signatures, which might delay the setting-up phase.

#### *Best practice*

- ▶ facilitating role of liaison officers/magistrates posted in EU/third States in establishing early contacts between national authorities;
- ▶ specific clauses:
  - allowing the sharing of information obtained via MLA with the other JIT parties;

- allowing the sharing of information obtained before the JIT was established;
- foreseeing an evaluation meeting.

These clauses are now part of the revised version of the JIT model agreement.

- ▶ overview of domestic disclosure requirements attached to the agreement;
- ▶ use of spontaneous exchange of information during coordination meetings, which may constitute a valuable alternative to the participation of a specific State in a JIT; and
- ▶ drafting techniques to define the scope of the JIT agreement: reference to a list of targets, to a specific *modus operandi* and/or to domestic proceedings reference numbers.

### (b) Operational phase

#### *Exchange of information/evidence*

JIT practitioners emphasized the importance of a single point of communication in JITs involving more than two partners (e.g. a secure tool in which both law enforcement and judicial authorities can post documents, in conditions facilitating the traceability and the admissibility of the evidence exchanged).

#### *JITs and jurisdiction issues*

Jurisdiction issues need to be anticipated and discussed by the JIT partners, preferably before coordinated operations. However, thanks to the flexibility offered by the JIT, initial arrangements can be reconsidered in view of developments in the investigations (e.g. change of location of suspects).

An additional benefit of the JIT is the possibility to reach an agreement on the jurisdiction to which to transfer prosecution to better reflect the organised crime group dimension of the case. This possibility needs to be assessed on a case-by-case basis, since ‘centralisation’ of prosecution may be resource-consuming for the State concerned.

#### *JIT seconded members*

Although not systematically used, support of seconded members can be helpful, particularly during the operational phase (coordinated arrest and searches of premises). In addition, the presence of seconded members may prevent the unnecessary duplication

of interviews (children or vulnerable victims) or allow for additional support when investigating a major international incident (e.g. airplane crash).

#### Challenges identified

- ▶ advisability and timing of sharing of information with States not involved in the JIT; and
- ▶ cooperation needs arising after the closure of the JIT.

#### Best practice

- ▶ solutions to translation/interpretation issues: use of a common working language, facilitating role of liaison officers or investigators with knowledge of other languages, financial support, translation of documentary evidence into a common language;
- ▶ use of the JIT as an ‘informal platform’ for discussion of various aspects of the case (e.g. admissibility, jurisdiction, disclosure, handling of sensitive information/situations);
- ▶ possibility to establish/maintain a JIT during and after the trial phase (e.g. to facilitate enforcement of confiscations);
- ▶ coordination of MLA towards States not involved in the JIT (e.g. division of tasks between JIT partners, inclusion of needs of all JIT partners in the request issued by one of them);
- ▶ joint strategy regarding protection of victims of THB;
- ▶ ability to swiftly adjust operational plans, and to make decisions in real time (e.g. unexpected change of route during controlled delivery);
- ▶ cooperation with private sector (e.g. non-governmental organisation in a cybercrime case); and
- ▶ continued cooperation during the prosecution phase, particularly to guarantee compensation to victims.



## Findings from Eurojust's experience in JITs

### (a) Setting up of the JIT

- ▶ Eurojust assists national authorities in identifying **suitable cases to set up a JIT**, clarifying legal and formal requirements, and discussing and drafting **the JIT agreement**.
- ▶ Eurojust supports the national authorities in swiftly **identifying ongoing parallel investigations**, including by liaising or requesting the support of Europol liaison bureaux and analytical projects.
- ▶ **Factors to be taken into consideration when suggesting the establishment of a JIT**: existence and stage of investigations in the involved countries; number of potential JIT partners; urgency of actions; estimated required timeframe to finalise the JIT agreement; available resources in the involved Member States.
- ▶ **Identified obstacles or impediments to the establishment of JITs**: ‘fear for the unknown’ or assumption that JITs are only suitable for high-profile cases; differences in operational priorities; lack of ongoing investigations or different stages of the investigations in the countries of relevance; parallel investigations carried out by several judicial authorities within the same State; impact of domestic authorisation processes.
- ▶ Eurojust promotes the use of the [Updated Model Agreement](#), which contributes to simplifying discussions in the setting-up phase. Eurojust facilitates the drafting and negotiation of JIT agreements in a common working language. Whenever possible, translations (if needed) are produced only after agreement is reached on the content of the JIT agreement.
- ▶ **Experience with JITs with third States** has increased in Eurojust's casework. In practice, the involvement of third States in JITs could require specific issues to be addressed (e.g. guarantees on the non-imposition of the death penalty, data protection, specific confidentiality regime, identification of legal basis). The possibility of involving representatives of third States in coordination meetings greatly facilitates the setting up of JITs between EU and non-EU States. In addition, the presence of the Swiss and Norwegian Liaison Prosecutors at Eurojust has led to the successful establishment and development of JITs with Switzerland and Norway.

### (b) Operational phase

- ▶ In the operational phase, **Eurojust supports** discussions and agreements on operational objec-



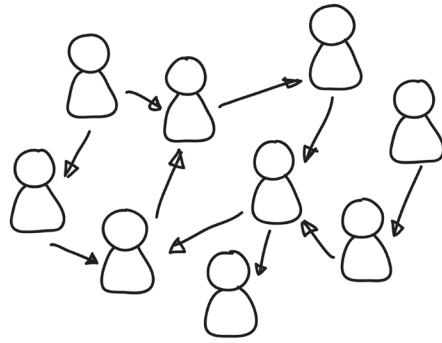
tives, communication and coordination methods within the team, as well as issues related to admissibility of evidence and jurisdiction, often in the framework of coordination meetings. Coordination meetings also facilitate cooperation with States not participating in the JIT.

- ▶ A need for coordination often arises in the final stage of the operational phase, when involved authorities need specialised advice on legal issues (transfer of proceedings, EAWs and conflicts of jurisdiction), compare investigative results and/or agree on final plans such as simultaneous operations.
- ▶ **Eurojust National Desks facilitate** the extension(s) or amendment(s) of JIT agreements, provide assistance concerning JITs funding, help coordinate the execution of Letters of Request towards States that are not members of the JIT, or assist in the use of other cooperation instruments (EAW, EIO).
- ▶ **Common action days** are on a regular basis supported by the setting up of coordination centres at Eurojust to facilitate cooperation during simultaneous operations and to ensure appropriate

follow-up (such as temporary surrender, asset freezing, and transfer of proceedings).

- ▶ **Eurojust's financial support** has played a key role in the development of JITs among Member States. Best practice identified in relation to JITs funding includes:
  - anticipation of financial needs and timely submission of applications;
  - appointment of a JIT member to coordinate funding aspects and to submit applications; early involvement of budget/finance units in Member States to facilitate reimbursements; and
  - specialisation of an identified contact point at the domestic level to support the funding process.
- ▶ Eurojust's support may also be requested **after the conclusion of the JIT**, whenever cooperation needs remain, including during prosecution and trial phases. Eurojust also supports with the evaluation of the JIT by organising and/or financing JIT evaluation meetings.

# Teamwork



# General introduction

## Background information

The project on the evaluation of JITs was initiated in 2013 with the following objectives:

- ▶ first, to assist practitioners in evaluating JIT performance in terms of results achieved, added value and possible shortcomings to improve future cooperation;
- ▶ second, to enhance knowledge of JITs by facilitating the identification of the main legal and practical challenges experienced and solutions found.

The evaluation of JITs provides valuable information for JITs practitioners and stakeholders, since it contributes to assessing the relevance and effectiveness of this tool in the fight against serious cross-border crime and terrorism.

Following the adoption – during the ninth meeting of national experts on JITs (27-28 June 2013) – of a first version of the JITs evaluation form, an ‘interactive’ version was developed and made available in April 2014.

## Scope and approach

### (a) Feedback from national authorities

The objective of JIT evaluation reports is to provide an overview of the content of the JIT evaluation forms received by the Secretariat over a certain period of time.

**This report does not itself constitute a basis for a comprehensive assessment of the use of JITs within the European Union or relevant material to compile statistics on the topic. Any finding included in this document must be considered in view of its limited scope, i.e. the analysis of evaluations performed over a given period.**



The JIT evaluation reports will look at both quantitative (measurable data inserted in the PDF as well as data resulting from the closed-ended questions of the PDF) and qualitative data (descriptive data from open-ended questions and unstructured observations inserted in the PDF).

### (b) Relationship between the first and the second evaluation report

This report provides an update of the first JIT evaluation report – published in December 2015 – and is based on evaluations received since then.

The quantitative part (see Annex I) is based on consolidated data (i.e. data from evaluation forms received between April 2014 and October 2017).

The qualitative part contains, for ease of reading, relevant paragraphs from the first report and findings from recent evaluations directly integrated in the text.

### (c) Eurojust’s experience with JITs

Strengthening the pivotal role of Eurojust in JITs constitutes a strategic objective for the period 2016-2018<sup>1</sup>.

For this second report, close interaction was ensured between Eurojust and the JITs Network, the Secretariat of which is hosted at Eurojust, enabling the promotion of the evaluation of JITs supported by Eurojust and the inclusion within the scope of the project of an analysis of cases for which a JIT was envisaged, but eventually not established.

Using available statistics, a list of Eurojust cases with JITs that expired in 2014, 2015 and 2016 was used as a basis for the analysis. In relation to these cases, information was gathered from the National Desks’ manual files or from the Case Information Form (CIF) database and feedback received from the Eurojust National Desks.

In addition, a College thematic discussion on JITs took place on 7 November 201, in the framework of which different aspects were discussed in relation to the setting up of the JIT, operational phase and closure of a JIT. The report reflects the outcome of this discussion.

The chapter of this report on ‘Eurojust’s experience with JITs’ offers a complementary perspective to the evaluation of JITs by national authorities and contributes to enhancing knowledge of the practicalities of the tool.

<sup>1</sup> [Objectives 2.2 of Eurojust Multi-Annual Strategy 2016-2018](#)



# CHAPTER 1: Findings from the evaluation of JITs

**Note:** The findings presented in this chapter are based on evaluations forms collected by the Secretariat. For an overview of the data analysed from a quantitative perspective, please refer to Annex I of this report.

## 1. General trends<sup>2</sup>

### 1.1. JIT evaluation process

As pointed out in the first report, the JIT evaluation form has been used to support a number of evaluations of JITs established between a large number of States and covering a broad geographic area. In practice, the form provides for a useful checklist to assist JIT practitioners throughout the evaluation process.

JIT national experts (NE) continue to play a key role in the evaluation process, since they represent the main source of completed evaluation forms for the Secretariat. Moreover, NE very often initiate and support the evaluation process themselves.

Although some unilateral evaluations were received during the second evaluation period, the majority were performed jointly. As a tool to facilitate law enforcement and judicial cooperation, the evaluation of a JIT requires an exchange of views between partners, and joint evaluations are those that include the most valuable findings. In this respect, the evaluations analysed in this report demonstrate a good understanding of the added value of such a coordinated process.

Two main approaches to carrying out joint evaluations can again be observed: either one of the JIT parties takes the lead in filling in the evaluation form and the other party/parties supplements it afterwards, or dedicated meetings are organised to allow face-to-face discussion. In several evaluation meetings, direct support was provided by the JITs Network Secretariat and/or Eurojust.

If a dedicated evaluation meeting is not possible due to the unavailability of national authorities, the evaluation can be carried out during the last operational meeting of the team, allowing for a 'wrap-up' of pending issues (coordination of prosecutions, seized assets, exchange of evidence, etc.) and sometimes even to consider future cooperation (e.g. a 'spin-off' JIT, as reported in one evaluation).

The evaluation carried out during these meetings proves to be rather informal and flexible, deviating from the structure of the form itself, which is usually filled in after the meeting with the support of the JITs Network Secretariat and/or Eurojust.

Further effort should be made to promote the evaluation of JITs. Since the first report, the terms and conditions of Eurojust's funding programme have been amended to indicate that beneficiaries of financial support should perform an evaluation, thus linking clearly JIT funding and JIT evaluation. In addition, Eurojust's financial assistance to JITs could be used to cover the costs of evaluation meetings.

Furthermore, since 2016, the updated JIT model agreement includes a clause inviting national authorities to evaluate the JIT at the end of the operational phase.

As emphasized in the first report, evaluation data included in Section 5 of the evaluation forms (i.e. follow-up to the JIT) are inconsistent and incomplete, since most of the evaluations are performed either during the closure of JITs or shortly afterwards. In this respect, the JIT evaluation form does not provide a meaningful and reliable assessment of the effectiveness of JITs before national courts. The project on JITs case law, initiated during the [thirteenth meeting of national experts on JITs](#) (17-18 May 2017), and currently carried out jointly by Eurojust and the JITs Network may be able to collect more information on this aspect.

### 1.2. Use of JITs

Although JITs<sup>3</sup> are still predominantly used in bilateral cases, one in almost every five evaluated JITs was set up between more than two countries, thus showing that the tool successfully supports complex investigations with a multinational dimension<sup>4</sup>. Furthermore, no clear tendency has been seen in the establishment of JITs between neighbouring States only: JITs have been equally used between neighboring and non-neighboring States.

<sup>2</sup> In examples provided in this chapter, all details allowing identification of specific cases have been removed, except in situations in which these details had already been included in public documents (e.g. Eurojust annual reports).

<sup>3</sup> This proportion increased significantly between the first and the second report (only one JIT in every six JITs at the time of the first report).

<sup>4</sup> See Annex I, Figure 4.

The majority of evaluated JITs were supported by Eurojust and almost half of all evaluated JITs received support from both Eurojust and Europol, therefore confirming that EU practitioners value the services offered by the two agencies<sup>5</sup>.

Eurojust and, to a lesser extent, Europol, are usually involved as participants in the JIT agreement. The formalisation of the participation of Europol via the signature of a separate annex sometimes delayed its effective contribution to the JIT. In this respect, in the future, the impact of Article 5 of Europol Regulation<sup>6</sup> – which simplifies Europol’s participation in JITs – and the Annex of the updated JIT model agreement, which was revised in light of this new legal framework, would be worth analysing.

Not surprisingly, JITs are mostly used to support investigations of trafficking cases (drugs, THB, migrant smuggling) and other forms of serious organised crime, thus providing a key contribution to the implementation of the EU Policy Cycle on the fight against organised crime. Evaluated JITs cover a wider range of crime areas (MTIC fraud, online distribution of child abuse material, cybercrime (computer fraud, botnet))<sup>7</sup>.

Many evaluations reported that MLA is used towards States that are not involved in the JIT. This finding indicates that JITs do not always comprise all States involved in or impacted by complex cross-border cases, and other forms of cooperation may also be required with States remaining ‘outside’ the JIT. In addition, direct involvement in JITs might not be feasible for a variety of reasons: for non-EU States, an adequate legal basis and/or legal safeguards may be lacking; for EU Member States, in some instances, involvement in a JIT is not perceived as needed to provide the expected cooperation, or the case is not given priority.

Between JIT partners, while the tool responds to most operational needs in terms of collection and exchange of information and evidence, a JIT may be combined, in practice, with other instruments of police and judicial cooperation with a different purpose or scope (European arrest warrant, Convention implementing the Schengen Agreement, Prüm decision (Council Decision 2008/616/JHA on the stepping up of cross-border co-

operation), Council Framework Decision 2003/577/JHA on enforcement of freezing orders).

### 1.3. Findings related to the setting up of the JIT

#### 1.3.1. General overview

Bilateral contacts still appear to play a prominent role in the identification of the need to set up a JIT<sup>9</sup>. Compared to the first years of implementation, JITs are now better known by practitioners, who proactively contact potential partners to suggest the use of the tool in cross-border cases.

However, the facilitation role of Eurojust and/or Europol is equally important<sup>10</sup>. Several evaluated JITs emphasized the added value of the early involvement of Eurojust and/or Europol in the setting-up phase and their advisory role, during operational and coordination meetings, in ascertaining the suitability of the case, agreeing on the scope and objectives of the JIT and determining the legal and practical steps to be taken.

*‘The key is to meet! Operational meetings at Europol and coordination meeting[s] at Eurojust enable discussions between all involved authorities, and to agree on targets and the way forward’ was reported by one JIT.*

In a small number of cases, Eurojust National Members actually requested the setting up of JITs by exercising their powers under Article 6 of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust.

After contact is established, the formal submission of a request to set up a JIT is still required in more than half of the evaluated JITs. Given the fact that, in all the analysed cases, national authorities meet face-to-face and discuss the suitability of a JIT as a first step, this formality – foreseen by Article 13 of 2000

<sup>5</sup> For quantitative data related to Eurojust’s and Europol’s support, see Annex I, Figures 18-22.

<sup>6</sup> [Regulation 2016/794](#) of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), which entered into force in May 2017.

<sup>7</sup> See Annex I, Figure 6.

<sup>8</sup> See Annex I, Figure 7.

<sup>9</sup> See Annex I, Figure 8.

<sup>10</sup> See Annex I, Figure 18; for more details on Eurojust’s support and experience in JITs, see Chapter 2.

Convention and the 2002 Framework Decision – may not really respond to a practical need<sup>11</sup>.

In the majority of cases, parallel proceedings were already in place in all States participating in the JIT or were initiated prior to its setting up<sup>12</sup>. In the few situations in which this situation did not prevail at the time of the first contacts between national authorities, the opening of an investigation was triggered either by issuing a letter of request, spontaneous exchange of information<sup>13</sup> or, more exceptionally, by the request of a Eurojust National Member.

*In spring 2013, the authorities (of State A and third State B) contacted police (of State C) regarding suspicions that child abuse materials (CAM) produced (in A) had spread (to B) and other States through an intermediary (in C). Preliminary investigations were opened regarding aggravated child pornography and participation in the aggravated sexual exploitation of children for pornographic purposes. The investigation uncovered suspects in C (and a few months later in Member State D). The ongoing investigation (in A) focused on child pornography and THB and the investigation (in B) focused on possession of CAM seized from a buyer. Against this background, a coordination meeting took place at Eurojust on 9 July 2013, at which participants agreed to set up a JIT.*

*As soon as links (to D) materialised, an LoR was used to trigger the opening of an investigation in this country. This resulted (in D) signing the JIT at a later stage, following the opening of their own investigation.*

No uniform practice is followed among Member States concerning whether the opening of a domestic investigation should be regarded as a prerequisite to the involvement in a JIT. Some Member States consider that the wording of Article 13 of the 2000 EU MLA Convention allows for the setting up of JITs to support demanding investigations, even in the absence of ongoing proceedings in the Member State concerned. In such situations, the JIT agreement serves (only) as a legal framework to carry out investigative measures needed by the JIT partner(s) in the Member State concerned.

<sup>11</sup> See Annex I, subsection 1.2.3.

<sup>12</sup> See Annex I, subsection 1.2.2.

<sup>13</sup> Article 7 of [2000 EU MLA Convention](#).

<sup>14</sup> See Annex I, Figure 9.

In relation to non-EU States and in line with the conclusions of the [tenth annual meeting of national experts on JITs](#), an important trigger for the setting up of the JIT is the need to initiate proceedings in a non-EU State, in the absence of extradition of nationals. Indirectly, the possibility of the JIT facilitates the starting of domestic proceedings in non-EU States and enables effective prosecution of suspects, who might not otherwise be prosecuted.

One JIT provided detailed information to illustrate the setting-up process, including Eurojust's and Europol's support, as well as the flexibility of the JIT tool to accommodate developments in a complex investigation involving multiple partners:

*'At the time of registration of this case at Eurojust, investigations were ongoing at a judicial level in AT and DE. Following a coordination meeting (CM) at Eurojust on 19.07.2010, the former Yugoslav Republic of Macedonia opened its own national proceedings [...]. A second CM took place in Vienna on 25.10.2010.*

*Coordinated investigations resulted in the arrest and conviction of the main suspects and several other perpetrators. Subsequently, the criminal organisation rebuilt its network and a third CM (14.11.2011) was held at Eurojust to discuss how to foster cooperation. The meeting allowed an in-depth debate to take place on how to overcome legal issues and all involved parties agreed that they would consider the legal possibilities and usefulness of setting up a JIT. After consultation and agreement at national level, a fourth CM at Eurojust (05.09.2012) resulted in the setting up of a JIT between AT, DE, NL and the former Yugoslav Republic of Macedonia. The setting up of the JIT triggered approval for initiating criminal proceedings in NL.'*

Evaluations reveal the high expectations of practitioners towards JIT cooperation, and the almost equal importance given to all potential benefits of the tool<sup>14</sup>. JITs are almost always seen as an instrument to join efforts towards a common goal: *'[Only] one of the involved countries cannot investigate and ensure prosecution of the whole criminal network alone'*, was stated in one of the evaluations.

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

*Tax fraud schemes have evolved in the last years and almost always include an international component. In such investigation of financial crime, operational needs are very often not compatible with the timeframe of execution of LoRs: it may leave enough room to the (usually experienced) suspects to even restructure entirely the net of front companies. Real-time cooperation is the only way to cope with the rapid evolution of criminal activities. The ability of JIT partners to quickly adapt and react was noticed and acknowledged even by the perpetrators during the arrest phase.'*

*In a THB case, 'mutual legal assistance was considered too slow taking into account the mobility of the criminal organisation: targets were identical but very often moving from one place to another. Linked to this, the need to carry out a coordinated operation (within a short timeframe) was considered, as well as the special needs of the victims of trafficking'.*

*In a case of drug trafficking in a border area, 'the setting up of a JIT was quickly envisaged when both parties realized they had the same interests and goals. The investigations started (in A) where a criminal network trafficking drugs between (A and B) was identified in March 2014. The investigators realized the network had an intensive cross-border activity and very quickly the need for mutual legal assistance between the States involved was identified. The investigating judge decided to send a letter of request to B. The judge (in B) opened a case based on this LoR and parallel investigations were conducted for a couple of months. Soon it was confirmed that both countries had common interests in this case. The main objective was to entirely dismantle the network and to achieve this goal the co-operation needed to go further'.*

In one JIT, the potentials of the tool for the exchange of information were utilised to their full extent to devise a joint investigative strategy against the organised crime group.

<sup>15</sup> See Annex I, Figure 10.

<sup>16</sup> See Annex I, Figure 11.

*'To make progress in their investigation, authorities [of State A] needed to cooperate closely with [State B], which had extended information concerning the suspect and its activities; from the side [of State B], investigation [in State A] also offered a golden opportunity to substantiate the suspect's involvement in criminal activities.*

*Therefore, the intention with the JIT was [...] to offer a flexible framework for supplying information, which was crucial to bring evidence against the main suspect in the proceedings [in State A].'*

In the analysed cases, the standard duration to establish a JIT is between one and three months. In approximately 20% of the cases, the duration exceeded six months<sup>15</sup>. Whether the duration of the discussions is linked to the time needed to agree on the basic principle of using a JIT or to the discussion related to the JIT agreement itself remains uncertain. The impact of domestic authorisation processes was pointed out on several occasions. Issues that may delay the setting-up process should be further examined, since practitioners cannot 'afford to invest so much time to set up a JIT for the sake of efficiency', as was stated in one evaluation. Specific factors that may – in Eurojust's experience – hinder the setting-up process can be found in Chapter 2 of this report. In a number of cases, the setting-up phase lasted less than one month. One JIT highlighted the expeditious process of signing the JIT agreement, which was linked to specific domestic arrangements (signature by Eurojust National Member as member of the General Prosecution Office, signature by the prosecutor in charge of the case, without specific authorisation required). In one evaluation, only one day was required to establish the JIT.

Moreover, the evaluations confirm the usefulness of JIT supporting tools<sup>16</sup>. The JIT model agreement is systematically used by practitioners and helps to shorten discussions on the content of the draft agreement. The JITs Network will continue to assess whether the JIT model agreement, which it revised and adopted in 2016, still reflects the latest developments in the field, and to update it as necessary.

### 1.3.2 Challenges encountered and solutions found

In the majority of cases, no specific challenges were reported. Identified issues are reflected in the table below.

#### Challenges at setting-up stage

Identification of the JIT legal basis in the event of involvement of a non-EU State: lack of ratification of the 2nd additional protocol to the 1959 MLA >>



Convention by certain Member States, leading in some instances to the use of a combination of legal instruments.
Different approaches to the level of detail to be included in the JIT agreement: scope of the JIT defined widely, to facilitate the extension to other offences vs. more specific wording, to ensure a clear focus to the investigation. Various approaches in this respect may be linked to national disclosure regimes.
Difficulty to 'map' the case and to define clearly (and limit) the scope of the JIT in cybercrime cases.
Differences in procedural law, particularly with regard to admissibility of evidence, disclosure of information, the powers of seconded members and the secrecy of proceedings.
Uncertainty of domestic rules in relation to the appointment of JIT leaders or change in respective roles during the investigation, reflecting domestic procedural requirements (prosecutor/investigative judge).
The identification of relevant partners and the feasibility/willingness of their participation as parties to the JIT.
Integration of new JIT partners, which could trigger discussions to adjust the operational strategy and/or not bring the expected added value.
Length of internal procedures to obtain signatures.
Lack of awareness regarding Eurojust and JITs.

Use of a common working language for the discussion of the draft agreement.
Specific clauses: <ul style="list-style-type: none"> <li>– On special consideration/protection of vulnerable victims in THB cases,</li> <li>– allowing the sharing of information obtained via MLA with the other JIT parties,</li> <li>– allowing the sharing of information obtained before the JIT was established, and</li> <li>– foreseeing an evaluation meeting.</li> </ul> <p>The best practice identified in the three last indents above is now included in the <a href="#">revised version of the JIT model agreement</a>.</p>
Overview of domestic disclosure requirements attached to the agreement (e.g. use of telephone intercepts).
Drafting techniques to define the scope of the JIT agreement: <ul style="list-style-type: none"> <li>– Reference to a list of targets (nicknames) or a specific modus operandi (reference to a specific 'forum' in a cybercrime case); and</li> <li>– Reference to domestic proceeding reference numbers.</li> </ul>
The use of spontaneous exchange of information during coordination meetings, which may constitute a valuable alternative to the participation of a specific State in the JIT. <i>('(State A) had finalized the investigation and prosecution of a driver which had direct relevance for the investigations. By this approach participation (of A) in the JIT was considered not needed since all relevant evidence was made immediately available for JIT partners.'</i> )

### 1.3.3. Best practice identified

The following best practice was identified.

Best practice at setting-up stage
Previous experience between States/national authorities to be involved in the JIT.
Facilitation role of liaison officers <sup>17</sup> posted in third States in establishing early contacts between national authorities.

<sup>17</sup> Liaison magistrates posted to Member States or third States do also contribute to these contacts. See Chapter 2, Section 2.1.1.

<sup>18</sup> See Annex I, Figure 12.

<sup>19</sup> See Annex I, Figure 13.

## 1.4. Findings related to the operational phase

### 1.4.1. General overview

Most evaluated JITs operated for a duration of one to two years, indicating that, in the majority of cases, JITs are used in relation to investigations of a certain complexity/duration<sup>18</sup>.

In the majority of cases, investigative measures were coordinated between JIT partners via face-to-face meetings, fully in line with the clear tendency to value direct contacts and communication between JIT parties<sup>19</sup>. In that respect, Eurojust's JIT funding scheme – which covers cross-border travel costs – appears to serve the needs of practitioners rather well.

In situations in which meetings did not take place, parties still relied on direct, often informal, contact and used telephone communication or e-mail to coordinate actions. Use of videoconferencing facilities was rarely

reported. In only a few cases did the parties to the JIT use videoconferencing to plan and coordinate investigative measures, although, as acknowledged by one JIT, *'face-to-face meetings are time and resource-consuming'*. As a practical suggestion, the availability of a *'workstation-to-workstation videolink'* was suggested to facilitate communication between JIT leaders/members.

In line with the findings of the first report, a relatively limited use of the OAP to coordinate JITs activities has been documented (only half of the JITs with an OAP confirmed its use for coordination purposes).

A clear preference for informal relations regarding the exchange of information and evidence has been noted, since a large number of JITs rely on e-mail and other telecommunication tools or meetings. In this respect, the limited use of secure channels (SIENA or Eurojust's dedicated equipment and secure e-mail) may raise some concerns in terms of data security and call for an additional awareness-raising effort.

Conversely, some evaluations identified the problem, and practitioners themselves recommended facilitating the accessibility of encrypted channels:

*'Due to the limited size of mailboxes (linked to an official e-mail address) and technical difficulties, some members of the JIT were at times difficult to reach (failure notices were received) [...] A problem was seen in the lack of secure encrypted lines (outside SIENA) between the JIT partners.'*

In two cybercrime cases, for which large amounts of data needed to be exchanged, Europol's LFE ('Large File Exchange') solution was used, which partly addressed the issues of sharing large files and ensuring data security (via encryption). As observed by one JIT, *'LFE helped a lot, however transferring big amounts of data obtained from house searches still requires "transfer by travel", with data copied to [an] external hard drive.'*

Another JIT stressed the importance of a **single point of communication** in JITs involving more than two partners. The suggestion was made that *'JIT members are guaranteed access to a secure network [accessed] through the equipment lent by Eurojust. Another option is to make available a "secure cloud" in which*

*the different JIT partners can post documents, which would make the consultation of large files easier'*.

This finding echoes the discussions between experts during the [thirteenth meeting of national experts on JITs](#). Participants suggested assessing the feasibility of an *'operational online collaborative environment'*, enabling law enforcement and judicial authorities involved in a JIT to securely 'post' information and evidence, in conditions facilitating the traceability (and thus, further admissibility) of the evidence exchanged.

In relation to the use of SIENA, agreement from the outset between JIT partners on the application of handling codes for the exchange of information within the JIT was highlighted as a best practice by practitioners.

*'In JIT X, all information was exchanged via SIENA. The respective handling code to be used was discussed by all JIT members in the frame of a coordination meeting. A combination of handling code H0 (...) and H3 (H3 clarification: for JIT X only) was used. SIENA messages were considered legal requests. For example SIENA messages with the request from State A to State B to image a server.'*

Legal issues and practical challenges were encountered by fewer than half of the evaluated JITs<sup>20</sup>. More difficulties, however, were reported during the operational phase than during the setting-up phase. Such an outcome may indicate that JIT agreements do not provide solutions to all possible developments encountered during the operation of a JIT. More details about specific challenges are provided in subsection 1.4.2.

Special arrangements relating to disclosure of information were made in a limited number of cases<sup>21</sup>. Without being addressed in specific arrangements, disclosure issues seem to be anticipated and discussed between JIT partners to prevent any possible impact on the operations.

Similarly, very few JITs reported formal arrangements in relation to jurisdiction<sup>22</sup>. However, agreements on sharing of jurisdiction or transfer of prosecution from one jurisdiction to another are often mentioned. Several JITs also provided useful information in relation to the criteria used to decide on the forum to prosecute: location of the arrest, place in which (most of the) offences were committed, location/nationality of a main suspect, suspects' and/or victims' origin. The prospects of the case in a given jurisdiction – particularly in view of the evidence collected, admissibility standards and applicable sanctions – are also taken into consideration.

<sup>20</sup> See Annex I, subsection 1.3.4.

<sup>21</sup> See Annex I, subsection 1.3.5.

<sup>22</sup> See Annex I, Figure 17.

One JIT provided detailed information on this aspect and emphasized the ‘need to consider the issue at the earliest stage possible’, since jurisdiction arrangements could impact the operational phase, particularly the execution of European arrest warrants:

*‘A lack of coordination and of common understanding in this matter may impact the execution of European arrest warrants, as the existence of domestic proceedings may be invoked to refuse the surrender.’<sup>23</sup>*

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

*‘Before the operational phase, JIT partners agreed to arrest and prosecute targets that could be found in their respective territory, taking into account their frequent changes of location. After the operational phase, transfer of prosecution from (a Member State) to (a third State) had to be envisaged due to the absence of extradition of nationals.’*

As emphasized in several evaluations, an additional benefit of the JIT is the possibility to reach an agreement on the jurisdiction to which to transfer prosecution to better reflect the organised crime group dimension of the case.

*‘Centralisation of prosecutions in one jurisdiction, which was facilitated by the JIT, enabled to reconstruct the actual scope of the OCG’s activities and to streamline prosecution. From the perspective of State A, evidence standards >>*

*would not have allowed to bring charges against all suspects who were eventually prosecuted in State B (admissibility of intercepts was uncertain).’*

However, such centralisation is not always possible for practical reasons, taking into account the resources needed for the State taking over the prosecution.

*‘Though such solution (centralisation of prosecution) could have resulted in homogeneous and possibly higher sentences, this proved not to be the best way forward for practical reasons (time and resource-consuming for the country which would prosecute all suspects). Due to the specifics of the crime (online distribution of CAM) and modus operandi (suspects acting remotely from various jurisdictions, using electronic transfers of money, e-correspondence, different roles for the suspects located in different jurisdictions), it may at times make it difficult to show the level of organisation beyond individual participation in the criminal activities.’*

As already pointed out in the first evaluation report, JITs clearly appear to facilitate a common approach to communicating with the media, with two main options identified: either no communication took place or a coordinated approach was agreed upon between the JIT partners<sup>24</sup>. Relations with the media adversely affected the confidentiality of the procedure in only one reported case.

At the time of the setting up of JITs, a significant proportion of JITs had high expectations concerning the potential of the seconded members of the JIT to join investigative efforts<sup>25</sup>. In contrast, during the operational phase, 45% of JITs actually benefitted from the involvement of seconded members in investigative measures<sup>26</sup>. However, during the second evaluation

<sup>23</sup> [Council Framework Decision 2002/584/JHA](#) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States:

‘Article 4 Grounds for optional non-execution of the European arrest warrant. The executing judicial authority may refuse to execute the European arrest warrant: [...] 2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;’

‘Article 24 Postponed or conditional surrender. 1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.’

<sup>24</sup> See Annex I, Figure 15.

<sup>25</sup> See Annex I, Figure 9.

<sup>26</sup> See Annex I, Figure 16.

period, half of the JITs reported the involvement of seconded members at least at a specific moment in the investigation.

In cases in which seconded members were present, they proved to make valuable contributions to the investigations, participating mostly during the operational phase (arrests, interrogations and searches of premises).

*[...] Investigators [from one Member State] went to [the other State involved] each time it was necessary to meet their [...] counterparts as well as the judicial authorities in charge. Information was shared and strategies to collect more evidence [were agreed upon at this occasion]. [...] Three interviews of two important suspects by the judge were prepared with the presence and support of a [foreign] police officer. This investigator attended the interviews and proposed questions to be asked. Investigators [of the two involved countries] came together in [a State outside the JIT] to attend an important house search, immediately after the arrest of the main suspect.'*

The presence of seconded members may also prevent unnecessary duplication of interviews. In one case in which the challenge faced was to secure statements from child victims and to avoid multiple interviews, the presence of counterparts during the interviews allowed compliance with specific domestic requirements and prevented reiteration of the interviews before the national courts of all JIT partners.

Support from seconded members can also be helpful to join forces when investigating a major international incident, such as an airplane crash. In the JIT established between the Netherlands, Belgium, Ukraine, Australia and Malaysia in relation to the crash of Flight MH17 on 17 July 2014, the participation of seconded members (Dutch and Australian officers) greatly facilitated the interviewing of witnesses in Ukraine, as well as the analysis of evidence, a significant part of which was also located in Ukraine. Trust built via the JIT also facilitated a common approach toward victims that was coordinated by the Dutch authorities.

All in all, the level of satisfaction with the use of JITs is extremely high, with almost all evaluated JITs indicating that the use of JITs made an effective contribu-

tion to the investigation. One JIT elaborated further on this topic, particularly highlighting the positive effect of JITs on mutual trust and sharing of professional practice:

*'We could investigate our cases [in a] more effective way [...]. It helped us also to learn more about the way of working in other countries and clearly helped us to continue the cooperation in the future.'*

#### 1.4.2. Challenges encountered and solutions found

In more than 50% of the JITs evaluated, no legal issues/practical challenges were reported during the operational phase .

Among the practical challenges identified, language difficulties (with the risk of *losing momentum and context*) were often mentioned and addressed by various means: use of a common working language, facilitating role of liaison officers or investigators with knowledge of other languages, interpretation provided during coordination meetings, or translation covered via Eurojust's financial assistance. One JIT established between multiple partners suggested translating documentary evidence into a common language (e.g. English), while each party was responsible for translating this evidence into a language required/acceptable according to its domestic procedural law.

With the mutual trust gained in a JIT, consultation on any matter relevant to the operations occurs on a regular basis. Potential admissibility issues could be discussed and anticipated, so that domestic requirements are taken into account during the gathering of evidence. *'Coordination meetings were essential to study the requirements of admissibility of each legal system and to anticipate/overcome any issue'*, emphasized one of the JITs.

This 'informal consultation platform' enables sensitive situations to be handled efficiently, such as diplomatic immunity of a suspect, as reported by one JIT.

*'In the course of the investigation a diplomat (of State A) was suspected of bribery (facilitation of obtaining of travel documents for trafficked victims). The trust acquired thanks to JIT cooperation allowed to deal with this sensitive matter with caution and efficiency: it was agreed to arrest the suspect in State A to avoid a delicate lifting of his immunity in State B. After the arrest, it was eventually necessary to urgently lift the >>*

<sup>27</sup> See Annex I, subsection 1.3.4.

*immunity of the individual to conduct a search at his residence in State B.'*

Another challenge often discussed between JIT partners is the possibility/timing of sharing of evidence originating from one of the JIT parties with States not involved in the JIT, especially when the risk of compromising ongoing investigations is present.

*'During a coordination meeting, State A noted that they have received a LoR from (a third State) regarding evidence available concerning one of the targets. Therefore A asked all JIT partners for approval to forward the information gathered within the JIT on this suspect to the third State. In State B this possibility depends on the source of information, in particular when data were gathered on the basis of a domestic Court decision. Another JIT partner noted that if in this case the third State asks for that material, it could only be provided as intelligence. To be able to use it as evidence, permission to use it has to be sought.'*

JIT members agreed on sharing information which may indicate future (cyber) attacks and damage non-JIT members. However the information shared should be very restrictive. In case of sharing too much information, they might risk to hinder their own investigation, to create a time pressure and trigger the possibility for new States to join the JIT.<sup>28</sup>

Several JITs reported specific difficulties linked to the different deadlines for national proceedings. For example, in one case, at the time of the evaluation, a conviction for the predicate offence had been achieved in one country, while the indictment for money laundering had not yet been issued in the other country, necessitating an additional coordination effort.

Different mandatory deadlines for the investigation might also interfere with operations, as reported by another JIT. This situation may also generate the obligation for one of the JIT partners to conclude its investigation and leave the JIT, despite the fact that

cooperation needs may still exist (particularly the further exchange of information or evidence).

Consultation between JIT partners prior to the closure of domestic proceedings is therefore crucial to prevent such an adverse effect. In several instances, however, the JIT is signed for a limited period, primarily to support a coordinated operation, and the cooperation required as a follow-up to the operation may be overlooked.

To address these situations, solutions needed to be found to enable further cooperation after the closure of the JIT. In one case, national authorities agreed that their former JIT partner should informally examine evidence before issuing an additional MLA request to obtain the relevant evidence. One evaluation stated that JIT partners have agreed that evidence 'obtained as a result of the JIT' would still be exchanged without the requirement of a letter of request, even after the expiry of the JIT.

In other jurisdictions, however – as reported in one evaluation – the cooperation framework after the conclusion of the investigation does not raise a specific issue, since establishing (or maintaining) a JIT during and after the trial phase, for example to facilitate the execution of court orders (financial investigations/confiscations, victim protection measures), is possible.

#### 1.4.3. Best practice identified

Most of the best practice reported refers to the possibility to establish close contacts between JIT members, which enable good communication, better planning and efficiency of the operational activities.

In a complex investigation involving multiple suspects, one JIT used an overview template to keep track of the progress made in separate investigations:

*'[...] Especially when the investigations/proceedings covered by the JIT are extensive and/or multilateral entailing a high number [of] suspects, a template is of an added value providing an overview: in JIT X, a document "Overview – suspects and state of proceedings [in States A and B]" was filled in and periodically updated by JIT members. The template provides an overview of all suspects, the file reference of the proceedings, the state of the proceedings, information [on] whether the judgment is final or not, the imposed penalty and concerned >>*

<sup>28</sup> In this case, the number of States involved was considerable and the involvement of new partners therefore needed to be considered carefully.

*offence (specifying whether the suspect was prosecuted for drug trafficking or money laundering).'*

When cooperating with States not participating in the JIT, several evaluations indicated that the JIT facilitated a coordinated approach.

*(1) One JIT reported that 'to coordinate JIT activities and the investigative steps vis-à-vis States outside the JIT, it was decided to organise coordination meetings at Eurojust. In practice, coordination meetings were organised the day before the meeting scheduled between the JIT parties, which enabled a) to have a joint approach toward non-JIT States, b) to review the progress made within the JIT and plan subsequent steps'.*

*(2) In another case, State A had requested cooperation via MLA with State B, in which the main suspect had links, but without success. The establishment of the JIT with State C gave 'more strength and weight, which proved to be crucial for the arrest of the (main) suspect at a later stage'.*

*(3) Another JIT reported that 'several times requests issued by authorities of State A included needs of the JIT partner and the execution could be carried out on behalf of both JIT[s] partners.'*

*(4) In a computer fraud case, the JIT was used to streamline mutual legal assistance. The needs (vis-à-vis third Parties) were identified by the JIT partners together and based on their connections/procedures, the JIT partners decided who would be best placed to send an LoR (e.g. the country with the best connections to a specific provider sent an LoR including the requests from all other JIT partners). This approach enabled avoiding the duplication of requests'.*

More specific best practice was identified, as reflected in the table below.

Best practice at operational stage
Use of common/shared investigative methods between law enforcement of States involved.
Visibility of the teamwork to the arrested suspects.

Joint strategy regarding support/protection of victims of trafficking (support of UNODC protection protocol in a THB case involving Roma community).

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

Ability to swiftly adjust operational plans (e.g. unexpected change of route during a controlled delivery). Decision made in real time, having the overall interest of the investigation in mind

Innovative coordination methods in a multilateral case: investigative needs listed and tasks distributed between JIT partners during bi-weekly conference calls.

Cooperation with private sector (non-governmental organisation in a cybercrime case).

Clarification of respective requirements related to access to evidence by private parties (victims).

Continued cooperation during the prosecution phase, particularly to ensure compensation to the victims.

## 1.5. Findings related to Eurojust's and Europol's support

The evaluations show that both Eurojust and Europol provide support to JITs during the setting-up and operational phases, offering a wide range of supportive tools, i.e. mobile offices, cross-match and analytical reports, coordination/operational centres, dedicated meetings, coordination of prosecutions and funding.

### 1.5.1. Eurojust's support

Detailed findings on Eurojust's experience with JITs are included in Chapter 2 of this report.

From the perspective of national authorities, Eurojust's expertise in the field is recognised and the intention to establish a JIT is often a triggering factor for national authorities to refer the case to Eurojust.

During the operational phase, Eurojust is perceived as an actor that facilitates a good level of interaction between JIT partners, particularly via coordination meetings and coordination centres, as well as cooperation between the JIT and third parties (Member States or third States not participating in the JIT), particularly by facilitating LoRs toward these countries and inviting them to coordination meetings at Eurojust.

In almost all evaluated cases, Eurojust's financial sup-

port is also valued<sup>29</sup>. This financial support particularly enables more frequent face-to-face meetings between JIT partners and the exchange of investigators during simultaneous operations in several countries. A majority of JITs emphasized the importance of financial support for translation, with one JIT remarking that *'without EJ's support for translation, it would not have been possible for the JIT to achieve its objectives'*.

However, difficulties were identified in relation to the funding procedure, which is considered burdensome and – despite the improvements introduced over the years – too rigid to deal with urgent operational needs or activities that are uncertain by nature (e.g. arrests).

Difficulties may also be experienced at the reimbursement stage. To facilitate the process and overcome possible challenges, one JIT highlighted that *'there should not only be a coordination of the JIT members in the application for JITs funding, but also at the stage of reimbursement'*. Involvement of budget officers at national level is a key factor in the reimbursement process.

### 1.5.2. Europol's support

Europol's support to JITs was also acknowledged, particularly through cross-checks of information and data analysis. In one of the evaluated JITs, a cross-check of information resulted in a hit linking two national proceedings that actually triggered the setting up of a JIT between competent authorities. In the same case, to better assist the JIT, *'Europol managed to adapt its analysis to the needs of the investigation (tailor-made approach)'* and provided direct support to the analysis of the relevance of large amounts of telephone data.

In a cybercrime case, the specific expertise and prominent role of Europol's European Cybercrime Centre (EC3) was described as *'invaluable'* by the JIT partners (digital forensics, dynamic malware analysis, analysis of jabber communication and money mule-related activities, coordination of JIT activities via periodic online meetings, support during actions). In the same case, given the number of partners involved, Europol played a prominent role in facilitating the identification of investigative needs in each Member State and the distribution of tasks between them (bi-weekly conference-calls).

In cases in which a JIT received financial support from both Eurojust and Europol, the complementari-

ty of such funding was emphasized (reimbursement of both prosecution and law enforcement costs).

However, one JIT pointed out the difficulty of using Europol's analytical reports in support of the prosecution phase:

*'Europol analysis can give valuable input as regards contacts, individuals or roles and thus add information that may be very useful in this early phase of the investigation, perhaps information valuable for decisions on coercive surveillance measures. A reason for not requesting an analytical report is related to the difficulties that such a report will contain information that may not be disclosed, unless the provider specifically so approves. If the analytical reports contain information from a number of countries and all providers have decided on handling codes that prohibit disclosure, it becomes difficult and time consuming to request approval from all countries.'*

## 1.6. Findings related to the follow-up to the JIT

JIT evaluation forms will, in most cases, be filled in at two different moments in time: Sections 1-4 at the closure of the JIT and Section 5, dealing with the *'follow-up of JITs'*, at a later stage, after the last trial in the involved countries has ended. As a consequence, the data is mixed and difficult to analyse.

In most cases for which a judicial follow-up took place, effective convictions were the result<sup>30</sup>. Concerning control by national courts over JIT activities, evidence obtained via the JIT was only challenged in nine cases. In all cases, such evidence was finally declared admissible.

However, one JIT reported that, before the trial stage, one suspect challenged the *'fairness of the proceedings (that would allegedly be the consequence of JIT cooperation) and requested [to obtain] communication of the whole file [of the other Party]. He claimed that authorities [of that Party] had "selected" the evidence provided, thus avoiding submitting material that would play in his favor. This argument was rejected (by the competent court)'*.

## 1.7. Recommendations received

In the course of JIT evaluations, practitioners addressed several recommendations concerning the setting up and operation of JITs, some of which may be useful for future JITs. Several of them have already been considered and solutions implemented accordingly:

<sup>29</sup> See Annex I, subsection 1.4.5.

<sup>30</sup> See Annex I, Figure 23.

Recommendations received from practitioners	Implementation/comments
Inclusion of financial aspects of investigations as part of the purposes of the JIT. <sup>31</sup>	✓
Extension of Eurojust's funding to costs of third States. <sup>32</sup>	✓
Extension of Eurojust's funding to costs related to the follow-up to the JIT. <sup>33</sup>	✓
Short training sessions/presentations on JITs funding during coordination meetings.	✓
Flexibility in the use of funds to be offered in relation to urgent operational needs. A 'contingency' fund to finance urgent operations would be useful.	✓ <i>Several measures have already been implemented (transfers between cost categories, exceptions in the event of deviation from planned activities).</i>
Creation of permanent translation team at Eurojust.	
At the closure of each award, Eurojust to send overview of reimbursements made to all JIT partners to allow them to learn from experience, and, if needed, to adjust their next submission.	<i>Under consideration</i>
Amendment of the standard clause on press communication to make it applicable to JIT participants. <sup>34</sup>	✓
Adjust evaluation of funding applications to ensure that financial support is secured as the case develops.	<i>Providing support to newly formed JITs encourages the use of the tool</i>
Address admissibility/disclosure requirements at the earliest stage possible/develop summaries of national legislations in the field. <sup>35</sup>	✓
The JIT agreement to include a clause on sharing information with non-JIT countries/third parties.	
The JIT agreement to include a specific provision on co-operation with the private sector.	
Simplification of the procedure in the event of a replacement of a signatory to the agreement.	

<sup>31</sup> See section 2 of the [revised JIT model agreement](#).

<sup>32</sup> See section 7 of [terms and conditions applicable to Eurojust's financial support to JITs activities](#).

<sup>33</sup> See section 18 of [terms and conditions](#).

<sup>34</sup> Section 15 of the [revised JIT model agreement](#).

<sup>35</sup> 'Fiches espagnoles' available on the JITs restricted area.



# CHAPTER 2: Eurojust's experience in JITs

## Facts and Figures

Recently, Eurojust's support to JITs has developed significantly, as shown by the increase in the number of JITs established with Eurojust's support (see figure 1 below). This trend is also reflected in the growth in the number of JITs financially supported by Eurojust.

Thanks to its enhanced role, Eurojust has developed specific expertise in the field, also facilitated by the fact that since 2011 it has been hosting the Secretariat of the JITs Network. This chapter provides an overview of Eurojust's experience in this area, based on an analysis of its casework.

### Overview of Eurojust's support to JITs

Year	JITs receiving financial assistance from Eurojust	JITs set up with Eurojust assistance
2010	25	20
2011	34	33
2012	62	47
2013	53	42
2014	67	45
2015	68	46
2016	90	69
2017	128	87

## 2. Eurojust experience with JITs

### 2.1. Setting-up process of a JIT

In the setting-up phase of a JIT, the main support activities at Eurojust's level are to help identify suitable cases to set up a JIT and to assist in drafting and finalising the JIT agreement. Eurojust also provides assistance in relation to the clarification of legal and formal requirements, particularly within the framework of Eurojust level II meetings and coordination meetings.

In addition, Eurojust and the JITs Network Secretariat provide background information on JIT funding rules to national authorities. Eurojust is also engaged in raising awareness among the national authorities of the JIT tool as such; for example, one National Desk

created a promotional video outlining the services of Eurojust and the benefits of JITs in THB cases.

#### 2.1.1. Timely identification of suitable cases and ongoing parallel investigations

One important prerequisite for the successful establishment and running of JITs is the timely identification of relevant cases, which presupposes that national authorities involve Eurojust at an early stage of the investigations.

The Eurojust legal framework establishes mechanisms facilitating the referral of cross-border cases to Eurojust. In accordance with Article 13(5) of the Eurojust Decision, the national authorities shall inform Eurojust of their intention to set up a JIT in a specific case. In addition, the JITs experts participate in the Eurojust National Coordination System (ENCS).

However, in practice, Eurojust's involvement is largely based on informal contacts with the national authorities; the National Desks engage in discussions with their home authorities on the suitability of a case for a JIT after they refer a case to Eurojust, or the case is already registered at Eurojust and the need for a JIT is identified at a later stage.

To streamline this process, one National Desk reported having developed a specific template to be filled in by the requesting national authority, which includes all information on the investigation that will be necessary in subsequent steps (e.g. case summary, identified connections to other Member States, existence of parallel investigations).

In the next step, the relevant partners need to be identified. One of the main issues at this early stage is therefore whether linked parallel investigations are pending in other countries. Eurojust supports the national authorities in swiftly identifying ongoing parallel investigations.

In doing so, Eurojust maintains privileged relations with the national judicial and law enforcement authorities, the Liaison Bureaux and Analytical Projects at Europol, the JIT national experts, and liaison magistrates in Member States and third States. Europol plays a particularly important role in the identification of parallel investigations by conducting searches in the Europol database to establish possible cross-matches with other pending investigations.

To ensure efficient cooperation, regular contacts between Eurojust National Desks and Europol Liaison

Bureaux are essential. Attendance by Eurojust National Desks at operational meetings taking place at Europol also facilitates the identification of suitable cases<sup>36</sup>.

The role of the ENCS in facilitating the referral of cases suitable for a JIT to Eurojust was also suggested.

### 2.1.2. *Methods and criteria for advising JITs*

Recently, Eurojust National Desks have developed specific expertise in assisting their home authorities in assessing the advisability and feasibility of a JIT in a given case (as opposed to other forms of judicial cooperation, particularly traditional MLA). However, in Eurojust's experience, criteria for suggesting the establishment of a JIT may vary from one Member State to another.

When assessing the suitability to set up a JIT in a particular case, the following aspects are, inter alia, taken into consideration:

- ▶ the existence and stage of investigations in the involved countries;
- ▶ the number of potential JIT partners (e.g. JITs involving a limited number of/multiple partners);
- ▶ the urgency of actions;
- ▶ the estimated required timeframe to finalise the JIT agreement (this particularly applies to multilateral JITs and/or JITs with Member States that require a certain authorisation process on national level); and
- ▶ available resources in the involved Member States.

As reported in several cases, if an investigation has not (yet) started in one of the involved Member States, Eurojust can play a decisive role in accompanying and supporting the initiation of investigations at national level, e.g. by facilitating the initial transmission of necessary information and evidence<sup>37</sup>.

In an online distribution of child abuse material case, the involvement in the JIT of the Member State in which one of the main 'customers' was located was reported, which proved to be key for the successful dismantling of the organised crime group. The location information was obtained thanks to the support of the National Desks. As soon as links to this Member State materialised, a letter of request was used to trigger the opening of an investigation, which resulted in this Member

State eventually joining the JIT. The entire extension process – from issuing and transmitting the LoR to the drafting of the JIT amendment – was facilitated by the involvement of the relevant National Desks.

### 2.1.3. *Involvement in a JIT in the absence of domestic investigations*

As already pointed out (see Chapter 1, subsection 1.3.1.), no uniform practice is in place among the Member States regarding whether, according to the national legal systems, the opening of a domestic investigation is a prerequisite to involvement in a JIT.

When such an option exists, Eurojust contributes to ensure that domestic legal requirements are met, so that the JIT can effectively serve as a framework for the cooperation needed. In one THB case, for example, the liaison between Eurojust National Desks ensured, by a regular updating of its scope, that the JIT agreement allowed the investigative measures to be carried out in the Member State that had not initiated a separate investigation.

Apart from (differences in) legal provisions, consideration should be given, in Eurojust's experience, to this issue from a practical perspective as well, particularly concerning the effectiveness of a JIT without ongoing investigations in all involved Member States.

When a JIT is being set up between Member States, and not all of them have pending investigations, ensuring the effective involvement of the parties is essential. Cooperation in a JIT should be based on an equal footing, and a common investigative interest is an important success factor.

### 2.1.4. *Obstacles or impediments to the establishment of JITs*

From Eurojust's experience, several obstacles or impediments to the establishment of JITs were identified. Among the experienced issues are:

- ▶ 'Fear for the unknown': even though JITs are no longer a new tool, Eurojust occasionally encounters reluctance on national level to set up JITs due to a feeling of uncertainty regarding what can be expected from a JIT. Another assumption is that JITs are only suitable for high-profile cases, although JITs established in smaller cross-border cases have proved to be successful and useful.

<sup>36</sup> In the context of one evaluation, the inclusion of liaison officers posted at Europol as members of the JIT was also emphasized as a useful tool.

<sup>37</sup> This transmission is sometimes carried out on the basis of Article 7 of the [2000 EU MLA Convention](#).

- ▶ Challenges when dealing with Member States with diverging operational priorities (e.g. based on the nationality of suspects, or the type or geographical origin of drugs).
- ▶ A lack of ongoing investigations or different stages of the investigations (preliminary stage vs advanced stage) in the countries of relevance; in such situations, Eurojust assists national authorities in identifying the most relevant partners for a JIT, while making use of other judicial cooperation tools in parallel.
- ▶ Risk of duplication, when the objectives of domestic investigations partially overlap. In such a situation, Eurojust facilitates discussions and agreements on the focus of the respective investigations<sup>38</sup>.
- ▶ Involvement of several authorities at national level (parallel investigations pending at several judicial authorities in one Member State), resulting in the need to coordinate the different investigations at national level; from Eurojust's experience, different approaches may be taken in such cases. While the involved authorities sometimes opted for one JIT covering all related proceedings (occasionally combined with a national coordination mechanism within the respective Member State), in other cases the involved authorities decided on the setting up of separate JITs.
- ▶ Formal requirements in relation to JIT agreements could negatively influence the length of the setting-up process. A requisite domestic authorisation process by central authorities sometimes may lead to slowing down of the process of setting up a JIT. However, in some Member States, the advisory role of central authorities and/or JIT experts may contribute to streamlining the setting-up process of JITs. In this context, the empowerment of the Eurojust National Member to sign the JIT agreement on behalf of his national authority, as seen in several Member States' legislation, was perceived as adding value (e.g. by ensuring that the National Member is part of the General Prosecution Office).

#### 2.1.5. Drafting and signing of JIT agreements

Eurojust's support in the drafting of the JIT agreement is often instrumental in the successful establishment of the JIT. However, the level of its involvement may vary depending on the specific circumstances. In some

cases, the national authorities partially 'delegated' the drafting to the National Desk(s), with the support of the administration, if requested. Conversely, when experienced JIT partners decide to set up a JIT, they may need less support and even at times sign JIT agreements with limited involvement from Eurojust.

In relation to the drafting process and the signing of JIT agreements, several examples of best practice were identified in the framework of JIT cases supported by Eurojust, as outlined below:

- ▶ Eurojust promotes the use of the [Updated Model Agreement](#), which proves to be an excellent basis for the drafting exercise and contributes to simplification of discussions.
- ▶ The drafting process is swifter when the agreement is drafted and negotiated in a common working language; whenever possible, translations (if needed) should be produced only after agreement is reached on the content of the JIT agreement.
- ▶ If a JIT agreement exists in more than one language version, it sometimes includes a clause indicating the language version(s) that will be binding.
- ▶ If the agreement cannot be signed during a dedicated meeting, signatures on separate pages allow the process to be accelerated and lengthy transmissions between Member States, which delay the entry into force of the JIT, to be avoided.
- ▶ Various approaches to the content of the agreement are possible (particularly the scope and purpose of the JIT), but, in most cases, both keeping the content as concise as possible and preferably not including personal data or detailed information on facts are advisable<sup>39</sup>.
- ▶ The JIT drafting process benefits from previous experience and becomes much shorter and efficient over time. If national authorities have personal experience with JITs, they tend to set up JITs again in other cases.

Despite the progress made, the drafting of a JIT agreement sometimes is a time-consuming process, while national authorities involved may have urgent cooperation needs. In this context, for the main crime areas

<sup>38</sup> In one JIT established between three Member States, one of them took over the trafficking of drugs dimension of the case, while the two other focused on the money laundering and participation in a criminal organisations aspects, respectively.

<sup>39</sup> In the specific case in which the JIT agreement serves as a direct basis for cooperation (see section 1.3.1), it may be used as a procedural document in court to support a request to issue judicial orders. In such situations, the content of the agreement provides a valuable source of information and may need to be more detailed.

(e.g. cybercrime<sup>40</sup>, migrant smuggling, terrorism), taking as a basis the JIT model agreement, it was agreed that Eurojust develops targeted working documents to be used if an urgent need to establish a JIT arises, for example in the course of a coordination meeting.

### 2.1.6. Involvement of third States in JITs

Recently, experience in JITs with third States has increased in Eurojust's casework. In 2016, Eurojust supported 14 JITs involving third States, three of which were set up in 2016 (Bosnia and Herzegovina (2), Moldova (2), Norway (3), Serbia (3), Switzerland (2), USA (1) and Ukraine, Australia and Malaysia (co-participating in 1 JIT)).

The casework in 2017 shows an even more remarkable increase of newly set up JITs involving third States, from three in 2016 to 11 in 2017 (Norway (4), Switzerland (2), Ukraine (2), Albania (1), Moldova (1) and Serbia (1)).

In practice, however, the involvement of third States in JITs could require specific issues to be addressed (e.g. guarantees needed from the third State that the death penalty will not be imposed; challenges if evidence is based on plea-bargaining; data protection; or specific confidentiality requirements).

The identification of the appropriate legal basis to establish the JIT with the participation of a third State needs to be considered. In this respect, Eurojust supported several JITs that were set up in accordance with a *combination* of international instruments (not all the States involved had implemented the same legal basis allowing the participation of the third State).

For Eurojust, the possibility to involve representatives of third States in coordination meetings facilitates the setting up of JITs between EU and non-EU States. In addition, the presence of the Swiss and Norwegian Liaison Prosecutors at Eurojust was crucial for the successful establishment and development of JITs with Switzerland and Norway.

Eurojust's experience shows that, in relation to specific third States, the JIT may be required to adapt the 'EU approach' and adjust to the specific legal requirements in the countries concerned<sup>41</sup>. Despite such adjustments, however, the JIT would still benefit from the added value of JITs.

### 2.1.7. Cases in which a JIT was discussed but not set up

Information was extracted from Eurojust's databases on cases for which a JIT was discussed but not set up.

The following reasons were highlighted for considering but eventually not setting up a JIT:

- ▶ The investigations were in too preliminary a stage to decide on the setting up of a JIT and the involved national authorities decided to await future developments or agreed upon a reflection period.
- ▶ Possible change of national authorities in charge of the investigation due to operational developments: in one case, as a result of new evidence collected, an assessment needed to be made in one State as to whether the charges of money laundering would be maintained or changed to participation in an OCG. A change in charges would subsequently result in a transfer of the proceedings to a Specialised Prosecution Office, which would be competent to decide on participation in the JIT. The involved countries agreed to keep each other informed and, for the time being, to continue to cooperate via MLA, including through Eurojust. In another case, one country was still deciding whether all pending investigations should be centralised in one national authority and therefore could not yet commit to a JIT.
- ▶ No ongoing investigation/prosecution was being carried out in one or more country/countries and the existence of a domestic investigation was a prerequisite to the involvement in a JIT.
- ▶ Different stages of investigations/prosecutions in the involved States and preference to continue parallel investigations while using other cooperation tools. In some cases, a JIT was not considered suitable due to the advanced state of the concerned investigations/prosecutions in one or more States; in other cases, the national authorities involved were still in the phase of secret investigations and had concerns related to a risk of disclosure in the other States involved.
- ▶ In one case, the national authorities involved agreed upon the setting up of a JIT but due to unexpected and rapid operational developments resulting in the successful execution of coercive measures, the establishment of a JIT was no longer necessary.

<sup>40</sup> In this area, a similar suggestion was made in the context of the 7th round of mutual evaluations.

<sup>41</sup> For Switzerland, a specific clause is usually inserted in the agreement, allowing the requirements of Swiss legislation on MLA to be reconciled with the (smooth) operation of the JIT.

- ▶ The involved authorities did not see added value in setting up a JIT in a case and were of the opinion that the desired objectives could be achieved without recourse to a JIT. The provision of MLA by way of LoR was deemed sufficient.

## 2.2. Operational phase of a JIT

### 2.2.1. Eurojust's role in the operational phase of a JIT

Whereas in the setting-up phase, Eurojust's role is almost always referred to, its support during the operational phase is not always called for. In several analysed cases, Eurojust was not involved by the national authorities after a JIT agreement was signed (with the exception of JIT funding requests).

Since JITs enable direct interaction between national authorities, further support from Eurojust may not be required. However, in some cases, JIT cooperation proved not to be optimal for various reasons, such as communication issues or a lack of coordination, and the desired outcome was not achieved. If needed, Eurojust organises coordination meetings to facilitate discussion and agreement on operational objectives, communication and coordination methods within the team, issues related to admissibility of evidence and jurisdiction.

Coordination meetings also facilitate cooperation with States not participating in the JIT. One best practice emphasized in this respect was to use the framework of a two-day coordination meeting to combine a meeting between JIT partners on the first day with a meeting on the second day involving Member States and third States from which cooperation would be requested via MLA.

In several cases, Eurojust coordination meetings were also preceded, on the day before, by a meeting at Europol to foster the exchange of information at law enforcement level. This practice is usually valued by JIT practitioners; however, to prevent duplication of effort, its added value needs to be considered on a case-by-case basis.

A coordination need often arises at the end of the operational phase, when involved authorities need specialised advice on legal issues (transfer of proceedings, EAWs and conflict of jurisdiction), compare investigative results and/or agree on final plans, such as common action days.

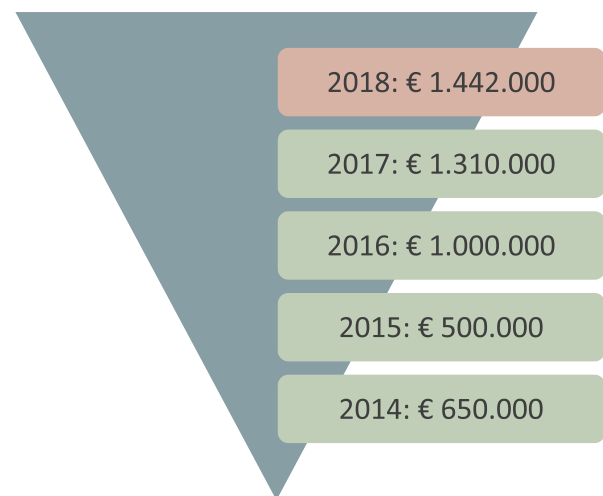
In addition, Eurojust National Desks facilitate the extension(s) or amendment(s) of JIT agreements, provide assistance concerning JITs funding and help coordinate the execution of Letters of Request towards States that are not members of the JIT or the use of other cooperation instruments (EAW, EIO).

Common action days are supported by the setting up of coordination centres at Eurojust to facilitate cooperation during simultaneous operations and to ensure an appropriate follow-up (e.g. temporary surrender, asset freezing, and transfer of proceedings).

### 2.2.2. Eurojust JITs funding

Recently, Eurojust's financial support has played a key role in the development of JITs among Member States. Common practice in JITs is for national authorities to anticipate and back up costs of cross-border activities as part of their operational planning. EU budget authorities have acknowledged this positive evolution, and therefore approved an increase in the budget allocation to JITs grants in the Eurojust budget, as shown below.

*Evolution of budget allocation to JITs funding*



As already pointed out<sup>43</sup>, feedback was also received that the JITs funding rules, such as the planning of time slots, submission of applications and reimbursement processes, might be challenging for practitioners primarily engaged with the progress of their cases. Recently, numerous efforts have been undertaken to adjust the rules and - to the extent possible - to bring

<sup>42</sup> As a relevant indicator of this trend, more than 85% of JITs set up with the support of Eurojust in 2016 also applied for and obtained financial support.

<sup>43</sup> See Chapter 1, subsection 1.5.1.

them in line with operational needs<sup>44</sup>. In January 2018, the JITs Portal was launched to simplify and improve the security of the (online) submission of funding applications. Continuous efforts are required to limit overestimates by applicants, improve the implementation of JIT grants and speed up reimbursement. In this respect, Eurojust identified best practice that could contribute to facilitating the funding process:

- ▶ anticipation of financial needs of JIT partners, to ensure a timely submission of applications<sup>45</sup>;
- ▶ appointment of a JIT member to coordinate JIT funding aspects and to submit applications on behalf of the JIT;
- ▶ early involvement of budget/finance units in the Member States to assist in the reimbursement phase; and
- ▶ designation of a contact point at national level (*e.g.*

national JIT expert, contract agent, etc.) to support the preparation and transmission of applications and monitor reimbursement.

### 2.3. After the expiry of the JIT

Eurojust's support does not necessarily end with the closure of the JIT. A Eurojust case often remains open after the conclusion of the JIT.

After the expiry of a JIT, Eurojust supports the evaluation of the JIT by organising a JIT evaluation meeting, providing assistance in filling in the JIT evaluation form and/or providing funding for the evaluation exercise.

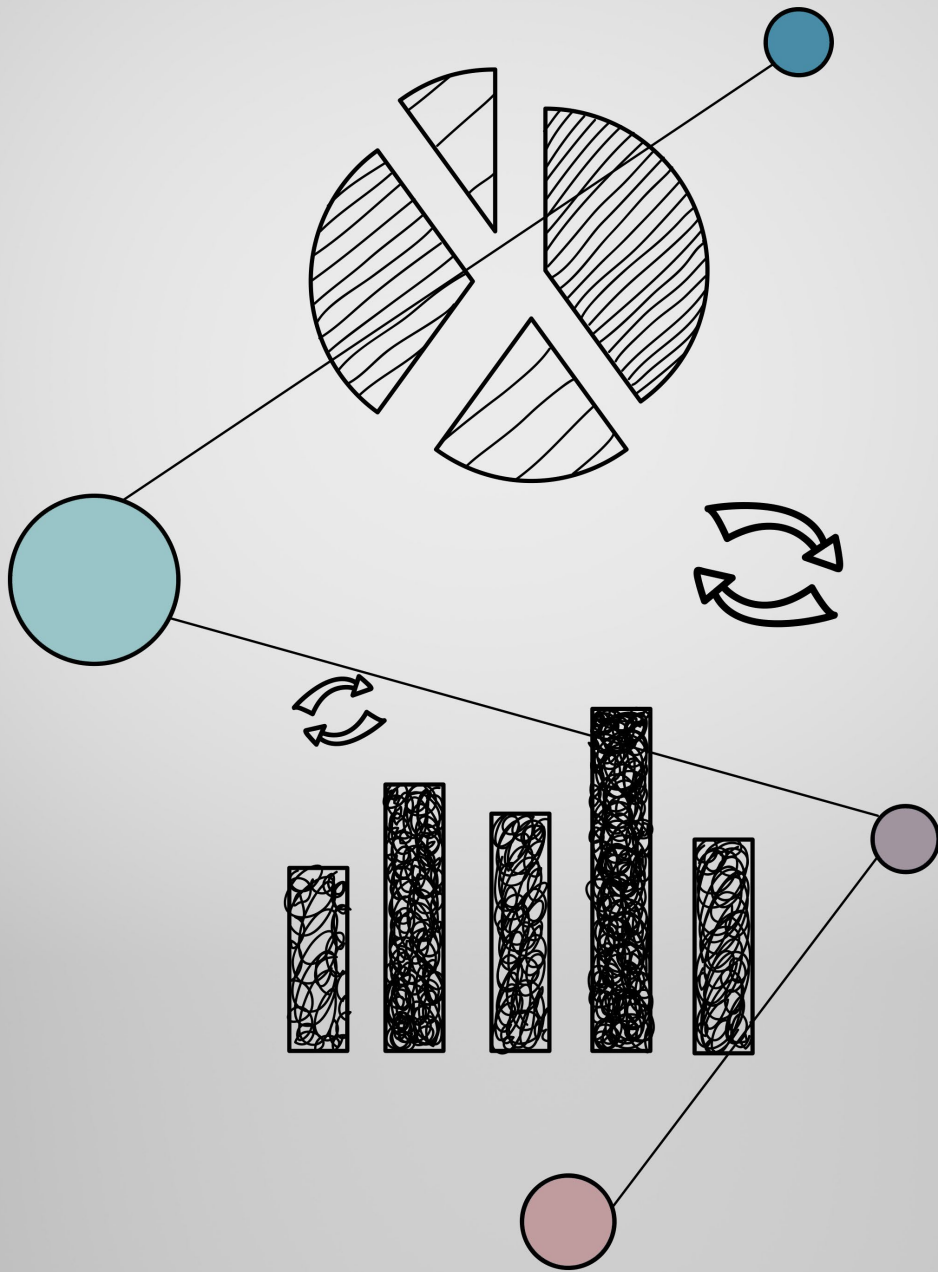
In addition, Eurojust continues to provide case-related support, such as facilitating LoRs, because the expiry of a JIT does not necessarily coincide with the finalisation of the investigation in all States involved in the JIT, and further support may also be needed during the prosecution and trial phase.

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<sup>44</sup> Particularly annual planning of calls; improvement of the application form (automatic calculation functionalities); introduction of unit costs for travel and accommodation; implementation of budget-differentiated appropriations to gain flexibility in using and re-using released funds; and simplification of supporting documents.

<sup>45</sup> Currently, 65 % of applications are received by Eurojust on the last two days of the application period







# ANNEX I: Quantitative overview of data extracted from JIT evaluation forms

This annex provides a quantitative overview of the data analysed for the purposes of Chapter 1. References to figures in Chapter 1 should be considered in conjunction with this annex.

## 1. Facts and figures: quantitative analysis

**Note:** In the charts presented in this section, percentages are used to reflect the responses to a question in the evaluation form that includes only one possible answer. In contrast, numbers are used to reflect the responses to a question allowing multiple choices and should then be compared to the total number of evaluations received.

### 1.1. General information on data analysed

#### 1.1.1. Number of evaluation forms received and period covered

By 31 October 2017, the Secretariat had received a total of **74** JIT evaluation forms<sup>46</sup>, 70 of which contained information in relation to the follow-up of the JIT (Section 5 of the evaluation form). The report covers evaluations received between April 2014 and October 2017<sup>47</sup>.

#### 1.1.2. Approach to evaluation<sup>48</sup>

The Secretariat received 36 evaluation forms filled in by one of the JIT parties; 38 JIT evaluations were prepared jointly by the parties to the JIT. In addition, 14

JIT evaluations were directly supported by the Secretariat and/or Eurojust during dedicated meetings.

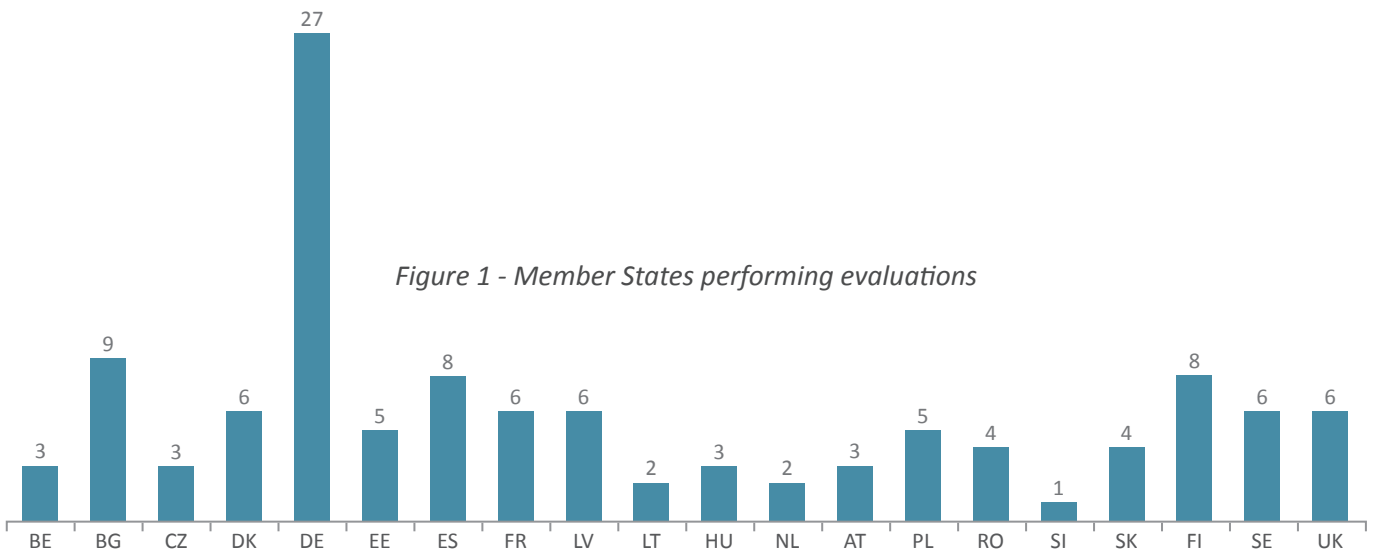
Twenty Member States and three non-EU States (Norway, FYROM and BiH) contributed to the submission of evaluations (see *Figure 1*).

#### 1.1.3. Means of transmission of the evaluations

The channels of transmission of the evaluations are summarised in *Figure 2*.

#### 1.1.4. Member States/non-EU States involved in the evaluated JITs

Twenty-two Member States, as well as three non-EU States (Norway, FYROM and BiH), were parties to

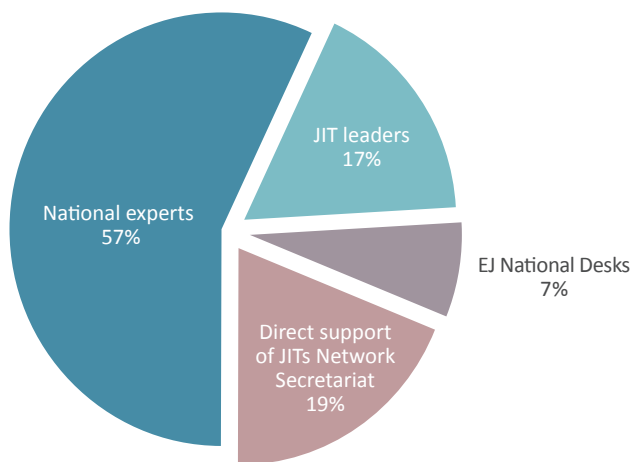


<sup>46</sup> Evaluations were received in two time periods: 42 were received between April 2014 and October 2015 and form the basis of the first JIT Evaluation Report, while an additional 32 were received between November 2015 and October 2017.

<sup>47</sup> The overview includes three evaluation forms filled in prior to this period as a part of the testing phase of the project.

<sup>48</sup> See [Practical steps on JIT Evaluation](#), pt. 5, 'How to Evaluate JITs'.

Figure 2 - Channels of transmission of JIT evaluations



the evaluated JITs. Figure 3 shows the breakdown of Member State involvement.

Most of the analysed JITs were bilateral (58). For a more complete overview, including the JITs set up between more than two States, see Figure 4.

In terms of geographical scope, 32 JITs were set up between neighbouring States; the other 42 were set up between non-bordering States.

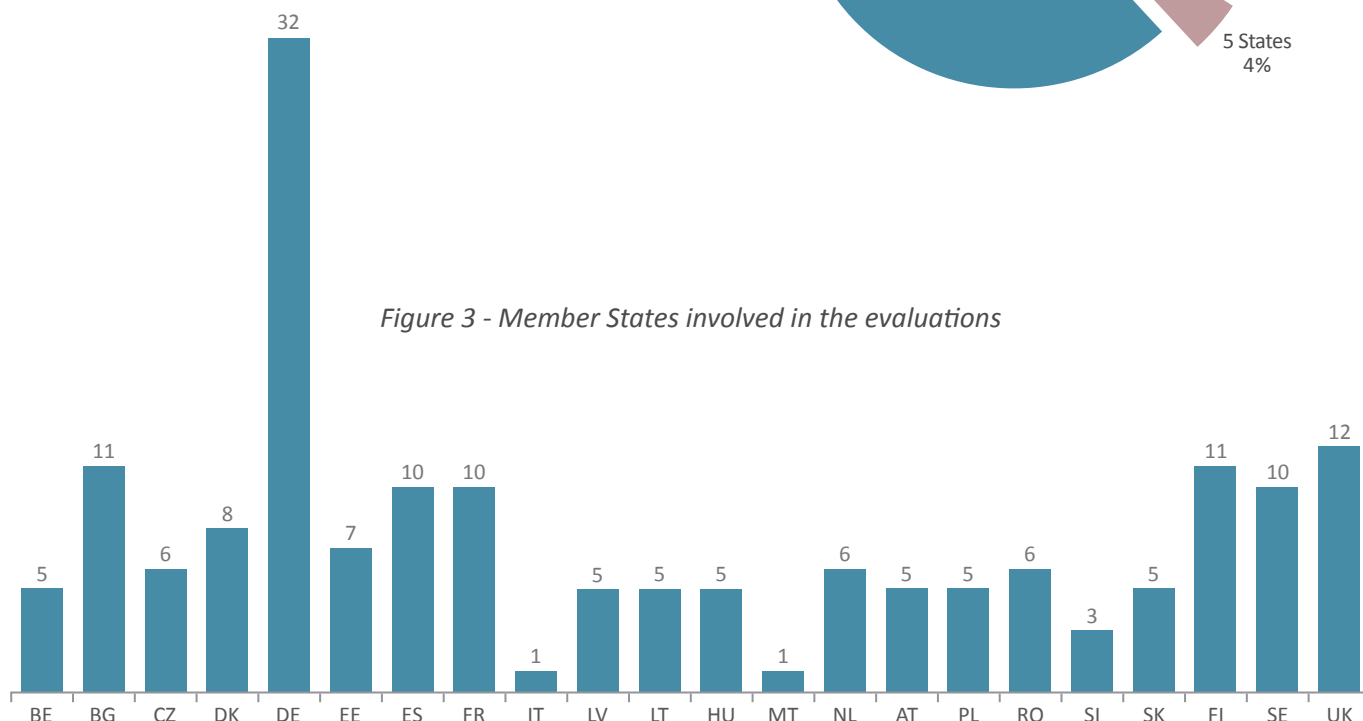


Figure 3 - Member States involved in the evaluations

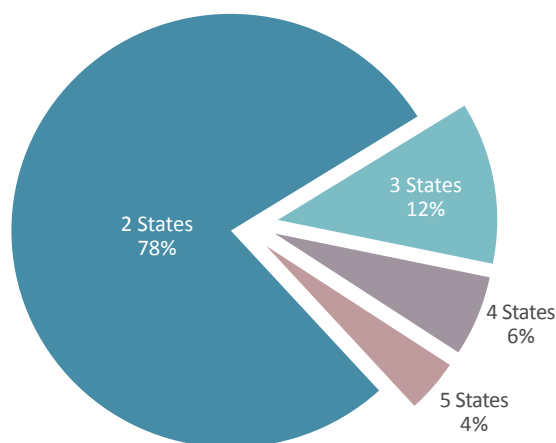
### 1.1.5. Date of establishment of evaluated JITs

The JITs cover a rather long period, as they were set up between 2006 and 2016, according to the breakdown shown in Figure 5. However, the majority (79%) of the analysed JITs were actually set up between 2012 and 2015.

### 1.1.6. Crimes investigated by the evaluated JITs

The crimes under investigation in the evaluated JITs are displayed in Figure 6. In 60% of the cases, these crimes fall within the priorities identified in the Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017<sup>49</sup>.

Figure 4 - Number of States involved in evaluated JITs



<sup>49</sup> Conclusions are available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/137401.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137401.pdf)

Figure 5 - Establishment of evaluated JITs

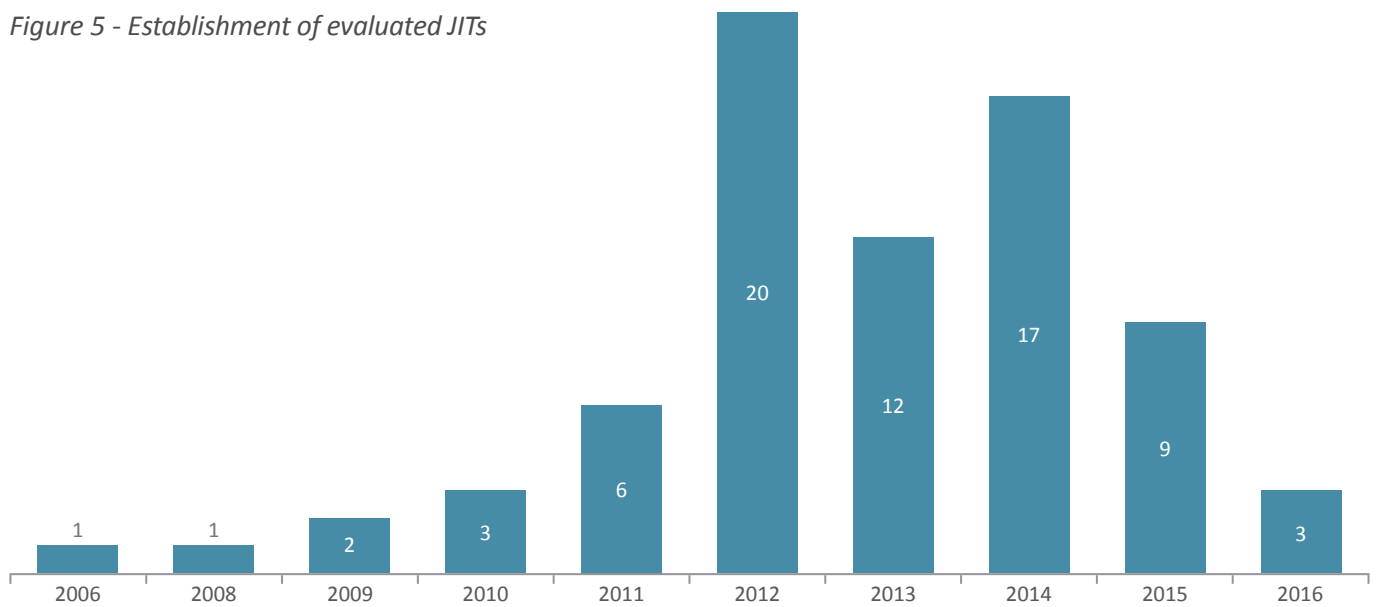
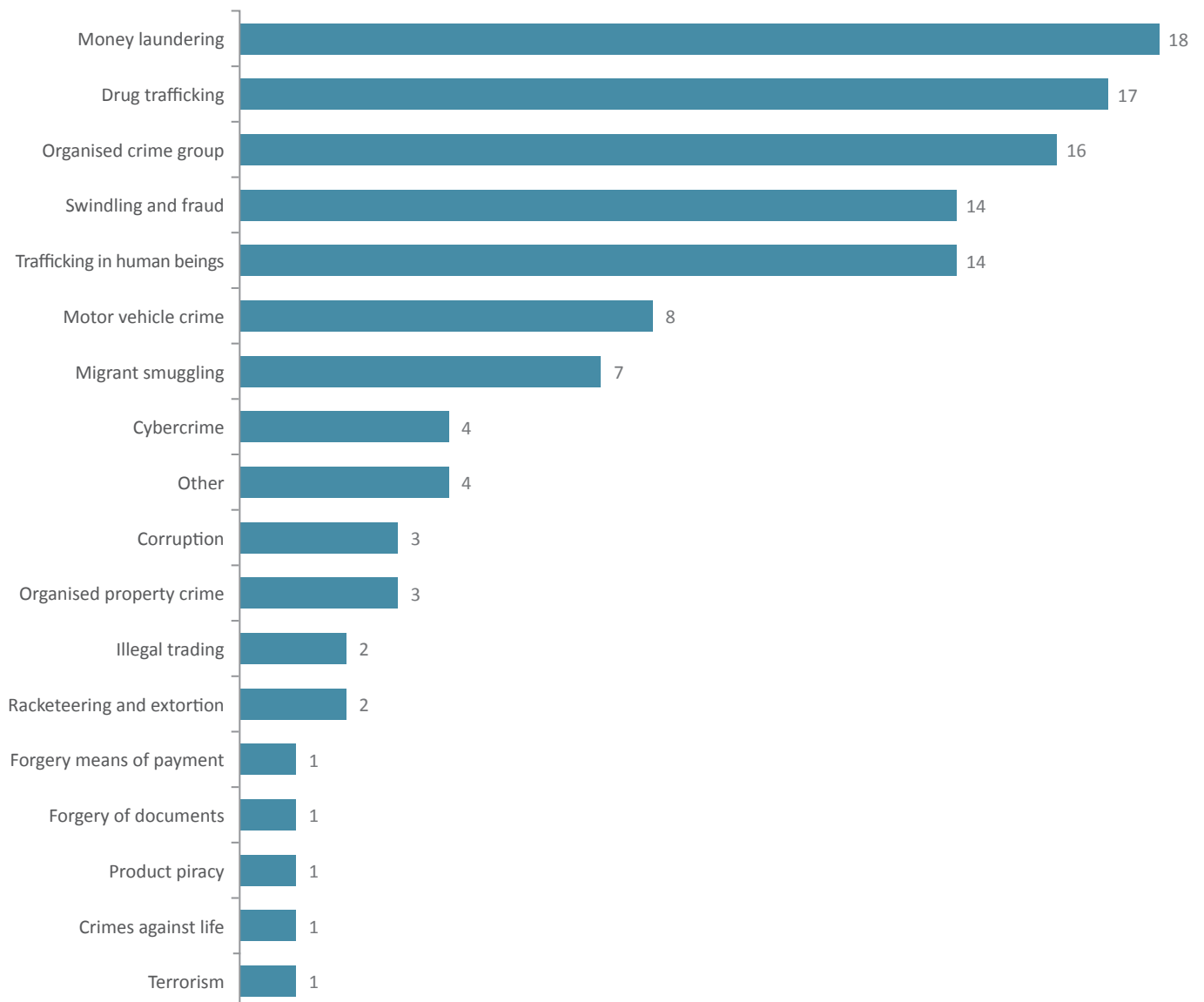


Figure 6 - Types of crimes investigated



1.1.7. *Involvement of other States via mutual legal assistance*

In **44%** of the cases, the JIT partners needed the support of other Member States or non-EU States by way of MLA. Detailed figures are displayed in *Figure 7*.

Almost all EU Member States were involved at least in one JIT case via MLA: AT, BE, BG, CY, CZ, DK, EE, EL, ES, FR, HR, HU, LT,LU, LV, IE, IT, NL, PL, PT, RO, SE, SK, UK. Among non-EU states, Switzerland (7) and Russian Federation (7) were the most involved countries, followed by Norway and USA (3). Thailand (2), as well as Algeria, Philippines, Singapore, Ukraine, Moldova, Serbia, Israel, Kazakhstan, Mexico, Brazil and Turkey (all with one) were the other involved non-EU States.

1.2. **Information related to the setting-up phase**

1.2.1. *Identification of the need for a JIT*<sup>50</sup>

The parties identified the need to set up a JIT in one or more ways, as illustrated in *Figure 8*. In the majority of cases (**71%**), bilateral contacts allowed identification of the need for a JIT. In addition, Eurojust and Europol often contributed to ascertaining this need (50% and 27% of cases, respectively).

1.2.2. *(Pre-)Existence of parallel proceedings*

In the majority of cases (**86%** or 64 JITs), parallel investigations were taking place in the participating States prior to the JIT being set up. In six of the nine JITs in which that situation did not apply, an exchange of MLA requests followed, and, in one case, spontaneous exchange of information took place<sup>51</sup>. In most cases, the JIT was set up at an early stage of the national proceedings<sup>52</sup>.

1.2.3. *Requirement of an LoR for the setting up of the JIT*

In **55%** of cases (41 out of 74 JITs), an MLA request was required, whereas in 38% of cases (28 JITs), no formal request was needed to set up the JIT<sup>53</sup>.

Figure 7 - Involvement of other States via MLA

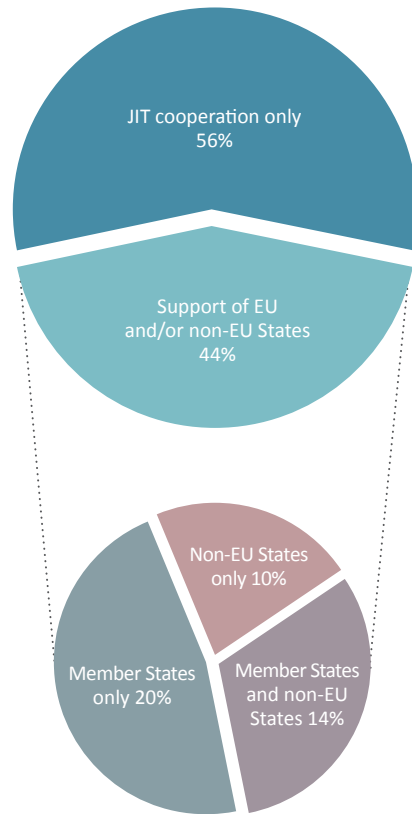
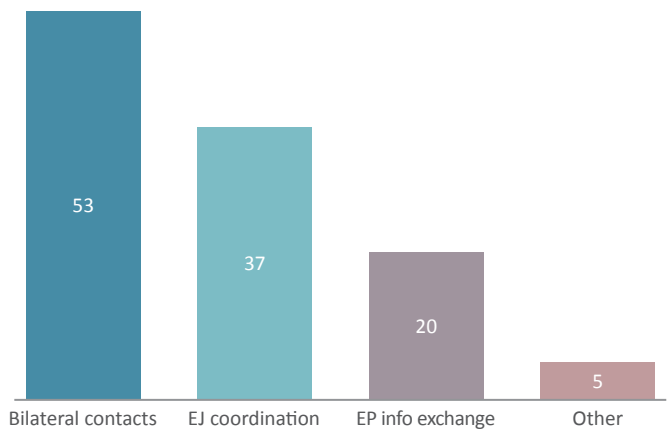


Figure 8 - Identification of the need for a JIT



<sup>50</sup> The total number of replies exceeds 74 because multiple responses could be given to this question. The total number of JITs was taken as a basis for the calculation of the percentages.

<sup>51</sup> No reply was received with regard to one case.

<sup>52</sup> Replies to the stage of the investigation in which the setting up of the JIT was envisaged are varied, and, thus, comparing them is difficult.

<sup>53</sup> No reply was received with regard to the remaining 7% of cases (five JITs).

#### 1.2.4. Added value expected from the JIT

A breakdown of the responses to this question is provided in *Figure 9*.

#### 1.2.5. Duration of the JIT setting-up phase

*Figure 10* shows that in **69%** of the cases (51), the duration of discussions prior to the signature of the JIT was six or fewer months. Of these 51 cases, a significant number of JITs (55%) were established within one to three months.

#### 1.2.6. Expertise received and use of supporting tools

The model agreement was used in **73%** of the evaluated JITs (54). An operational action plan (OAP) was drafted in only 30% of the cases (22).

For the 44 JITs (**59%**) that did require guidance/expertise, the tools/bodies used are indicated in *Figure 11*.

#### 1.2.7. Legal issues or practical challenges encountered during set-up of the JIT

In a majority of cases (53 JITs, i.e. **72%**), national authorities stated that they did not encounter any legal issue or practical challenges during the setting-up phase.

### 1.3. Information related to the operational phase

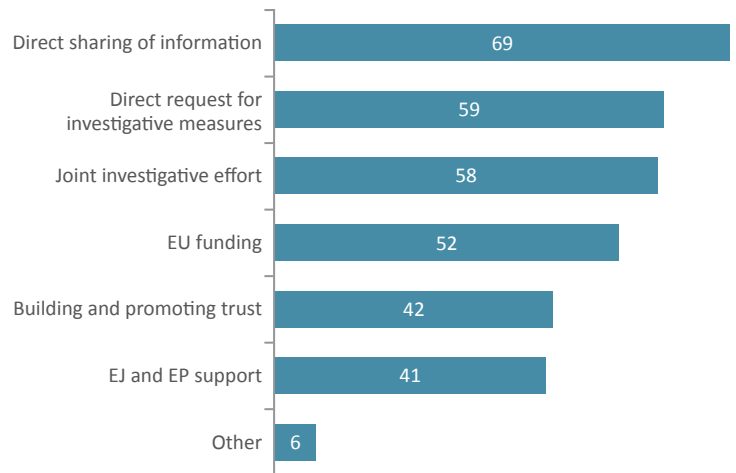
#### 1.3.1. Duration of the operational phase

*Figure 12* shows that most of the analysed JITs<sup>54</sup> (51, i.e. **69%**) carried out their operations for more than one year. In addition, 68% of those 51 JITs had an operational phase of 12 to 24 months.

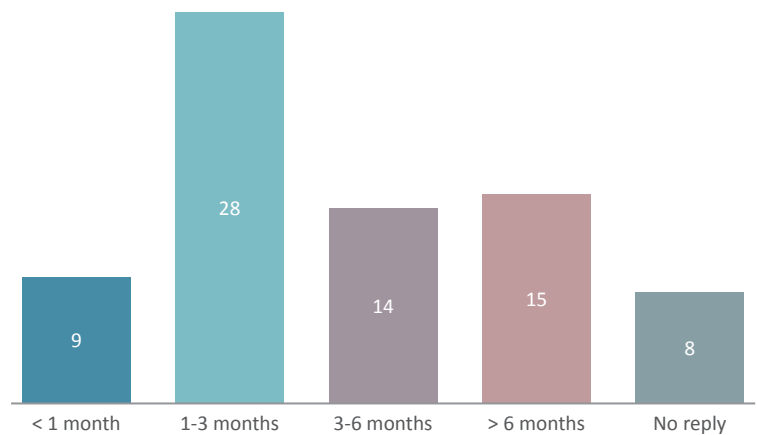
#### 1.3.2. Means of coordination of investigative measures in a JIT

*Figure 13* shows that investigative measures carried out by the team were primarily requested/planned/coordinated via periodic meetings between JIT partners (**92%** of the answers - 68 JITs), while the OAP was used for the abovementioned purpose in only 13 cases.

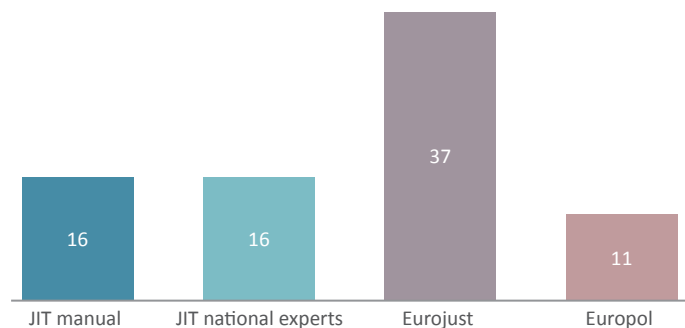
*Figure 9 - Identification of the need for a JIT*



*Figure 10 - Duration of the JIT set-up phase*



*Figure 11 - Expertise received and use of supporting tools*



<sup>54</sup> Four evaluation forms included no response to this question.

In the 27 cases in which alternative measures were employed, the respondents primarily indicated the use of telephone calls and e-mails, the use of videoconferences or the support of seconded members.

**1.3.3. Exchange of information and evidence**

Figure 14 illustrates the means used by JIT members to exchange information and evidence during the operational phase of the JIT. Use of SIENA<sup>55</sup> was reported in approximately 27% of the evaluated cases. A similar proportion of JITs reported the use of two other main channels, namely meetings (including coordination meetings) and personal contacts. In 30 of the analysed JITs, respondents indicated the use of other channels, which include the use of e-mails and other means of telecommunications.

**1.3.4. Legal issues or practical challenges encountered during the operational phase**

Forty-five of the 74 evaluations (60%) indicated that no legal issues or practical challenges were encountered during the operational phase of the JIT. Four evaluations (6%) included no answer, while in 25 cases (34%), challenges were reported.

**1.3.5. Arrangements related to disclosure**

Only 11 of the 74 JITs adopted special arrangements related to disclosure, while 60 JITs provided negative answers<sup>56</sup>.

Thirty-six JITs reported having included the JIT agreement/OAP in the national proceedings, 33 JITs did not and five JITs did not respond to this question.

**1.3.6. Media strategy**

The approach of the JIT partners in this field is displayed in Figure 15. In almost half of the cases (49%), JIT partners agreed on a common approach.

**1.3.7. Participation of seconded members**

Seconded members were not present during

Figure 12 - Duration of operational phase

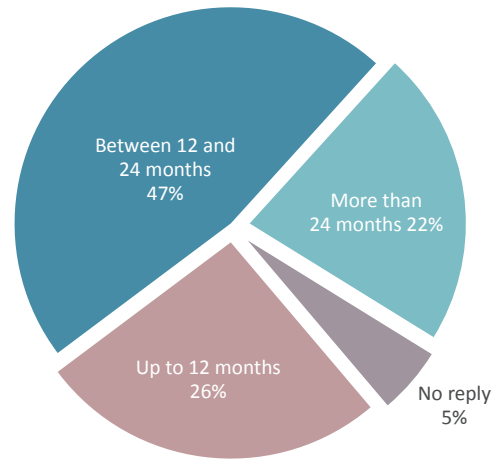


Figure 13 - Means of coordination of investigative measures in a JIT

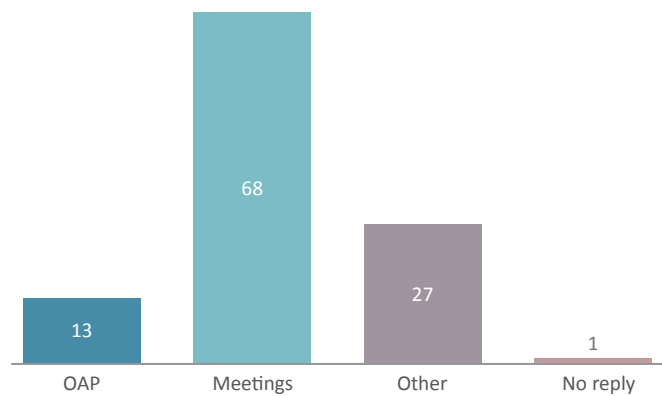
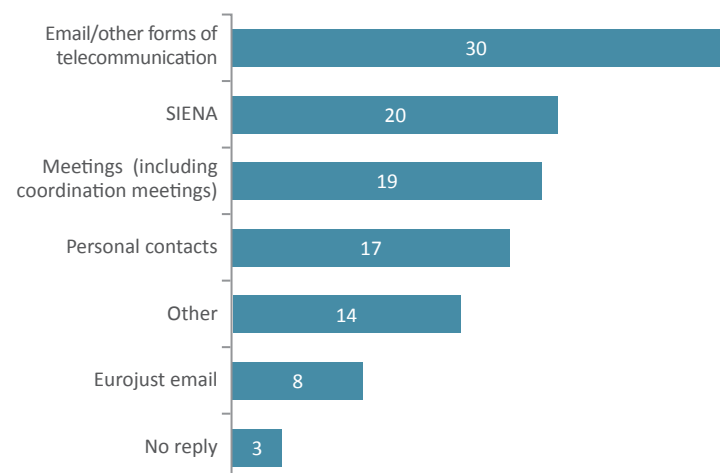


Figure 14 - Information and evidence exchange within the JIT



<sup>55</sup> The Secure Information Exchange Network Application (SIENA) is a tool designed by Europol to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence.

<sup>56</sup> Three evaluation forms did not answer this question.

investigative measures in **47%** of the cases (35 JITs), and were present in **45%** of cases (33 JITs).

Actual participation of seconded members in JIT activities outside their State of origin is summarised in *Figure 16*<sup>57</sup>.

Moreover, in **81%** of cases (60 out of 74 JITs), no specific arrangements were adopted on this issue. Special arrangements were included in **14%** of cases (10 JITs)<sup>58</sup>.

### 1.3.8. Arrangements related to jurisdiction

The arrangements taken by the evaluated JITs are summarised in *Figure 17*<sup>59</sup>.

In eight of the 17 cases in which specific arrangements were adopted, these arrangements were made before the operational phase. In six other cases, arrangements were made after the operational phase, while in the three remaining cases, no indication was given.

With regard to the outcome, in eight cases, jurisdiction was split between JIT parties, while in the other eight cases, prosecution was transferred from one JIT partner to another. In one case, the outcome was not indicated in the form.

### 1.3.9. Added value of the JIT in the investigation

In a majority of cases (**92%**, 68 JITs out of 74), the JIT was found to be of added value in the investigation. In **5%** of cases (four JITs), the response was negative<sup>60</sup>.

Equally, practitioners stated that the JIT achieved its purpose in **89%** of cases (66 JITs), while it did not in **8%** of cases (six JITs)<sup>61</sup>.

### 1.3.10. Best practice identified during the operational phase of the JIT

Forty-nine JITs reported having identified best practice during the operational phase. Seven respondents did not elaborate.

Figure 15 - JIT approach to communication with media

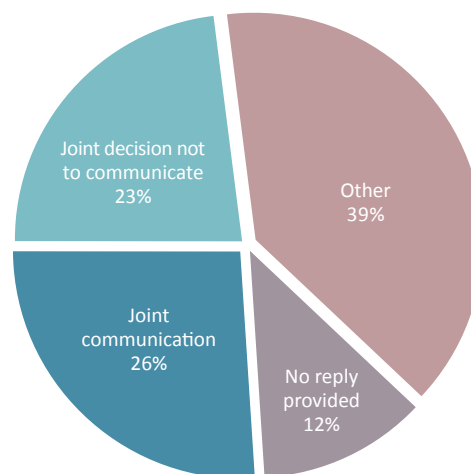


Figure 16 - Participation of seconded members

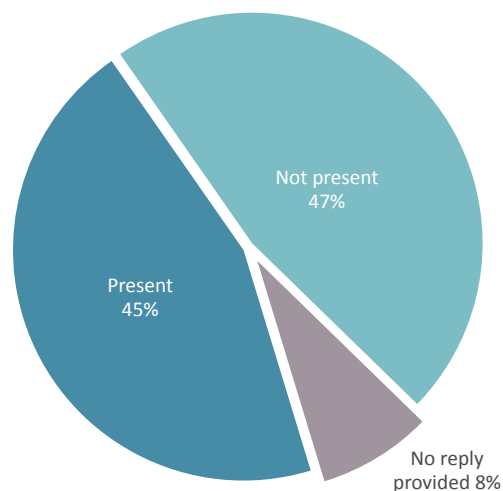
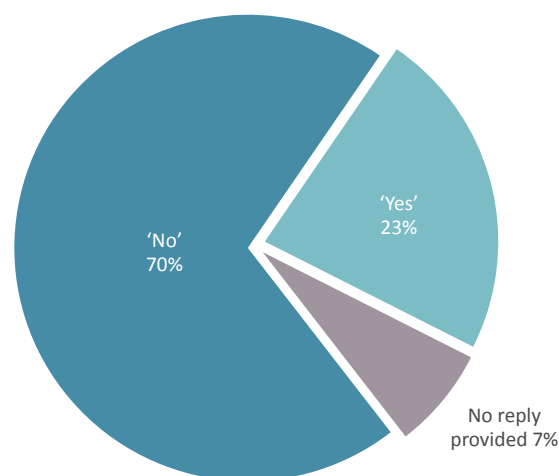


Figure 17 - Arrangements related to jurisdiction



<sup>57</sup> Five evaluation forms did not respond to this question.

<sup>58</sup> No reply was provided in the remaining 5% of cases (four JITs).

<sup>59</sup> Based on 37 responses to this question.

<sup>60</sup> No answers were provided in 3% of the cases (two JITs).

<sup>61</sup> No answers were provided in 3% of the cases (two JITs).

## 1.4. Information related to the participation and support provided by Eurojust and Europol

### 1.4.1. Involvement of Eurojust and Europol

In 67 (out of 74) of the analysed cases, either Eurojust only or Eurojust and Europol together supported the case. Neither agency was involved in only seven cases, as summarised in *Figure 18*.

### 1.4.2. Participants in the JITs

Eurojust was involved as a participant in 55 of the 74 evaluated JITs. In 27 of these 55 cases, Europol was involved with the same status (see *Figure 19*). No other institutions or bodies were identified as participants in the evaluated JITs.

### 1.4.3. Eurojust/Europol support to the operational phase

Eurojust's and Europol's support to the operational phase is summarised in *Figure 20*.

*Figure 21* provides a comparison of various aspects of Eurojust's and Europol's support at different stages of the lifecycle of the JIT.

### 1.4.4. Financial support provided by Eurojust/Europol/Commission

Fifty-seven of the evaluated JITs (**77%**) received financial support from Eurojust. Three JITs received financial support from both Europol and Eurojust, while other two JITs benefitted from additional funding support.

### 1.4.5. Legal or practical challenges related to financial support

The assessment of the challenges is made on the basis of the replies of those JITs that had received funding from Eurojust.

No legal or practical challenges were encountered in 32 of these cases, while in other five cases, no reply was given to this specific question. Legal and practical challenges regarding funding were identified by 20 of those JITs and related mostly to the funding procedure. Forty-six out of 57 JITs stated that the funding brought added value to the JIT. Four JITs indicated that the funding provided by Eurojust did not bring added value, while in seven cases no response was provided.

Figure 18 - Involvement of Eurojust and Europol

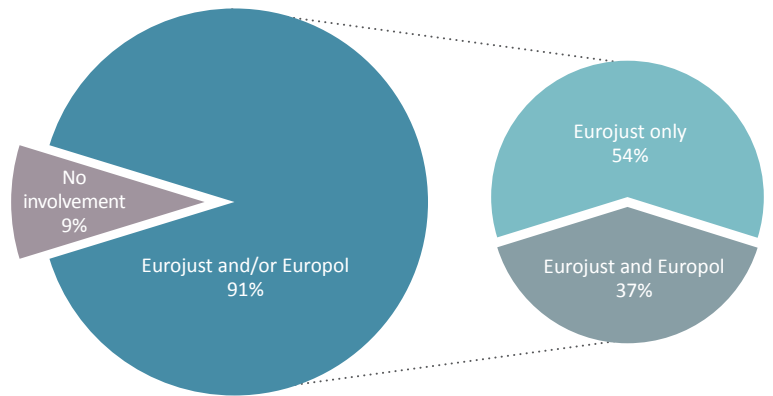


Figure 19 - Participation in the JITs

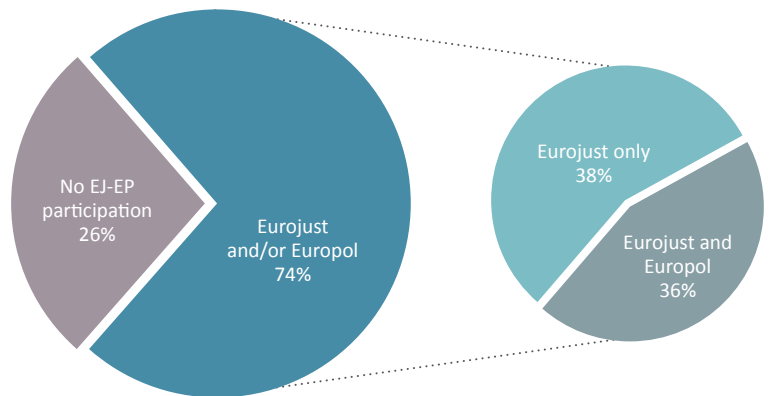
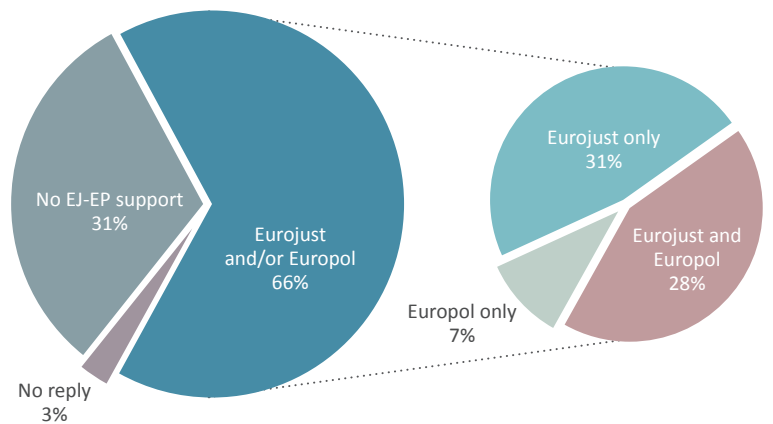


Figure 20 - Eurojust-Europol support to the operational phase





1.4.6. Added value of Eurojust/Europol support

Practitioners' views with respect to the added value of Eurojust/Europol support are shown in Figure 22<sup>62</sup>.

1.5. Information related to the follow-up to the JIT

1.5.1. Number of JITs providing information about judicial follow-up

Four of the forms contained no response to this question; 95% of the forms (70 JITs out of 74) include information in Section 5<sup>63</sup>.

1.5.2. Judicial outcome of the JIT

Replies are often partial, either including information on the judicial follow-up in only one State and/or lacking information in certain fields. Among the reasons for this situation are that proceedings are ongoing, or the authority(ies) completing the form lacks information about convictions/acquittals. Therefore, the information is not easily comparable and should be considered with caution.

Out of the 70 JIT evaluations in which Section 5 was completed, 50 indicated that cases were brought to the national courts of at least one of the parties to the JIT.

In 87% of the total cases in which a sentence was given (30), the outcome resulted in convictions only, as shown in Figure 23.

1.5.3. Admissibility of evidence

In 28 cases, the evidence collected by the JIT was not challenged in court, as compared to nine cases in which the JIT was challenged. The remaining 37 JITs did not provide any information about any (possible) challenges during the trial phase in this respect.

For 36 of the analysed JITs, the evidence gathered was admitted in national courts, including the nine cases mentioned above in which the evidence had been challenged. No information was provided in the remaining cases at this stage.

Figure 21 - Summary overview of Eurojust and Europol support

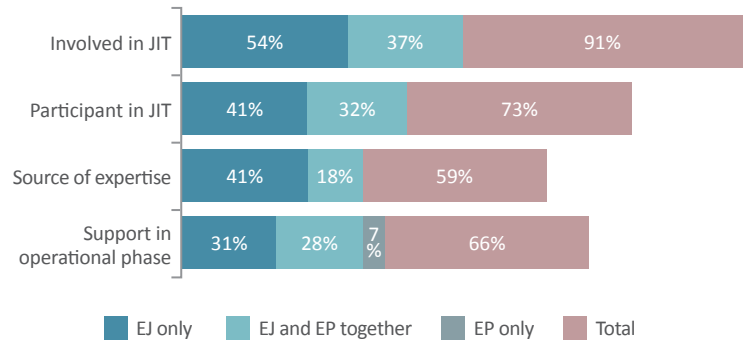


Figure 22 - Added value of Eurojust/Europol support

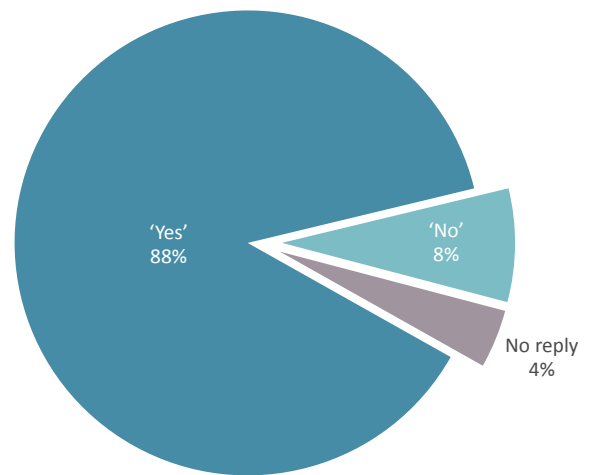
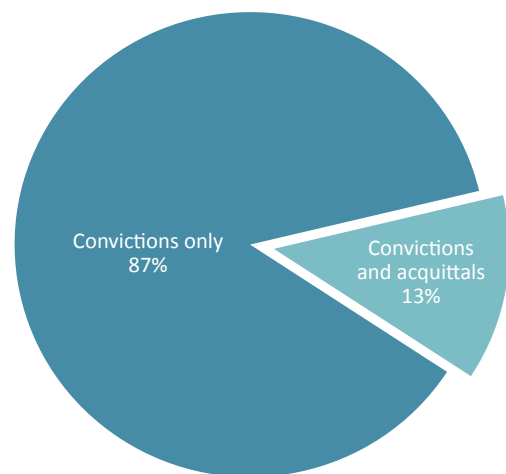


Figure 23 - JIT cases at trial stage



<sup>62</sup> Two evaluation forms did not respond to the question.

<sup>63</sup> At least with regard to one of the participating Member States.

## Annex II: Acronyms and abbreviations

<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>BG</b>	Bulgaria
<b>BiH</b>	Bosnia and Herzegovina
<b>CY</b>	Cyprus
<b>CZ</b>	Czech Republic
<b>DE</b>	Germany
<b>DK</b>	Denmark
<b>EE</b>	Estonia
<b>EJ</b>	Eurojust
<b>EL</b>	Greece
<b>ENCS</b>	Eurojust National Coordination System
<b>EP</b>	Europol
<b>ES</b>	Spain
<b>FI</b>	Finland
<b>FR</b>	France
<b>FYROM</b>	former Yugoslav Republic of Macedonia
<b>HR</b>	Croatia
<b>HU</b>	Hungary
<b>IE</b>	Ireland
<b>IT</b>	Italy
<b>JIT</b>	Joint investigation team
<b>LoR</b>	Letter of Request
<b>LT</b>	Lithuania
<b>LU</b>	Luxemburg
<b>LV</b>	Latvia
<b>MLA</b>	Mutual legal assistance
<b>MT</b>	Malta
<b>ND</b>	National Desk
<b>NL</b>	Netherlands
<b>NO</b>	Norway
<b>OAP</b>	Operational Action Plan
<b>OCG</b>	Organised crime group
<b>PL</b>	Poland
<b>PT</b>	Portugal
<b>RO</b>	Romania
<b>SE</b>	Sweden
<b>SI</b>	Slovenia
<b>SIENA</b>	Secure Information Exchange Network Application
<b>SK</b>	Slovakia
<b>THB</b>	Trafficking in human beings
<b>UK</b>	United Kingdom





**JITs Secretariat**

EUROJUST, Johan de Wittlaan 9, 2517 JR The Hague, Netherlands

Phone: +31 70 412 5000 - E-mail: [jitsnetworksecretariat@eurojust.europa.eu](mailto:jitsnetworksecretariat@eurojust.europa.eu) - Website: [www.eurojust.europa.eu](http://www.eurojust.europa.eu)

Print - Catalogue number: QP-04-18-278-EN-C • ISBN: 978-92-9490-218-4 • Doi: 10.2812/266952  
PDF - Catalogue number: QP-04-18-278-EN-N • ISBN: 978-92-9490-217-7 • Doi: 0.2812/16063