



Report on Eurojust's Casework on Environmental Crime

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1. Executive summary

1. Environmental crime is expanding rapidly, endangering not only habitats and populations of wildlife but entire ecosystems, living environments and financial systems. These crimes can generate very **high profits**, carry a relatively **low risk of detection** and are often committed by **organised-crime groups**, which operate across the EU's internal and external borders.
2. The increase in environmental crime, combined with its **complex, transnational character**, requires an **integrated and coordinated approach**, from administrative, law enforcement and judicial authorities at the national level to cross-border cooperation at the international level.
3. Against such a background, it is commendable and welcome that the European Commission has adopted the **European Green Deal**, the new roadmap for making the EU's economy sustainable across all sectors of society.
4. **Eurojust**, the European Union Agency for Criminal Justice Cooperation, has the collective ability to **maximise the investigative efforts of the national authorities**, to ensure efficiency in the investigation and prosecution of environmental crime across borders.
5. In this casework report, Eurojust provides a concise and up-to-date overview of the **legal and operational challenges** arising from nearly 60 environmental cross-border crime cases referred to the agency in the period from 2014 to 2018.
6. It highlights **best practices** that have allowed national authorities to build trust, to ensure efficiency in the investigation and successful prosecution of environmental crime and to develop sustainable cooperation, not only within the European Union but with non-EU countries as well. A number of **case examples** illustrate how the countries involved reached a common understanding of legal concepts, exchanged information, engaged all actors needed to take action, developed a common strategy and achieved successful results together.
7. The report also maps out the **main challenges** specific to investigating and prosecuting environmental crime, and presents **recommendations** to better reap the potential benefits of effective and timely cross-border cooperation, as listed below.
 - (i) Effective **multidisciplinary cooperation** among the competent administrative, law enforcement and judicial authorities is required at the national level, as a precondition for effective international cooperation in environmental crime cases.
 - (ii) Environmental crime needs to be recognised as a **form of organised crime**. This allows a broader range of investigative tools and resources to be used and opens up the possibility of initiating a cross-border investigation.
 - (iii) It is important to **conduct financial investigations** and to **recover the profits** of environmental crimes on a more systematic basis, to tackle the financial incentives for this type of criminality.
 - (iv) The **early involvement of Eurojust** allows for effective international cooperation, coordination from the start of investigations, the effective exchange of information and the development of common strategies.
 - (v) Key **concepts of environmental criminal law** need to be **further harmonised** and more consistently interpreted across the EU Member States. The **penalties** for environmental crime should also be more **uniform and dissuasive**.

2. Objective, scope and methodology of this report

2.1. Objective

The objective of this report is to provide a concise and up-to-date overview of the legal and operational challenges arising from international judicial cooperation on environmental crime cases, and to share best practices to overcome these challenges.

This report is primarily aimed at members of public prosecution services and the judiciary in the EU

Member States who are dealing with international judicial cooperation within the framework of investigations and prosecutions concerning cross-border environmental crime. In addition, the report may be relevant for the work of policymakers and criminal-law practitioners from other national and EU authorities and bodies involved in combating cross-border environmental crime.

2.2. Scope

The report is limited to the experiences encountered in the criminal cases referred to Eurojust by national authorities for assistance in international judicial cooperation. It does not include any experiences that the authorities of the Member States may have had in the course of international judicial cooperation on environmental crime cases without Eurojust's involvement.

The findings of the report are based on the analysis of the environmental crime cases opened at Eurojust in the 5-year period from 1 January 2014 to 31 December

2018 (hereinafter, 'the reference period'). At the time the analysis was conducted approximately half of the cases were already closed, while the other half were still ongoing. The study covered both the ongoing cases and the closed cases.

The findings of this analysis build upon the conclusions and recommendations set out in the previous Eurojust report on its experience with environmental crime cases, which was published in November 2014¹.

2.3. Methodology

2.3.1. Definition of environmental crime

A broad range of offences is covered by the notion of environmental crime at the national, EU and international levels. In view of the lack of a single universally agreed definition of an environmental crime, the analysis team relied on a crime's qualification as such by the national authorities that referred the case to Eurojust as the starting point in the process of identifying the relevant cases.

- ▶ the environmental offences set out by Directive 2008/99/EC on the protection of the environment through criminal law²;
- ▶ the typology of environmental crime applied by Europol³, the United Nations Environment Programme⁴ and Interpol⁵.

In addition, the following EU and international sources were used as reference points for establishing the definition of an environmental crime and for identifying the cases relevant for the study:

1 Eurojust, *Strategic Project on Environmental Crime – Report*, 2014.

2 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Article 3).

3 Europol website, section 'Environmental crime'.

4 See UN Environment Programme and UN Interregional Crime and Justice Research Institute, *The state of knowledge of crimes that have serious impacts on the environment*, 2018, section 'Introduction', subsection 'Scope of the study', pp. XIV–XVII.

5 See UN Environment Programme and Interpol, *The Rise of Environmental Crime – A growing threat to natural resources, peace, development and security*, 2016, section 'What is environmental crime?', p. 17.

Consequently, Eurojust cases concerning the following crimes have been included within the scope of this report:

- ▶ illegal trading in and poaching of wildlife and plants;
- ▶ illegal, unreported and unregulated fishing;
- ▶ illegal dumping of, disposal of and trading in waste and chemicals;
- ▶ illegal trading in ozone-depleting substances;
- ▶ pollution crime;
- ▶ illegal mining and trading in precious metals and minerals;
- ▶ illegal logging/deforestation and associated timber trading;
- ▶ environmental crime associated with illegal construction;
- ▶ environmental crime associated with hazardous contamination in food.

2.3.2. Methodology of information gathering and analysis

The information for analysis was gathered by extracting data from the Eurojust Case Management System and, for some cases, by retrieving the information compiled in the Eurojust Case Information Forms and by interviewing the representatives of the National Desk that opened the respective case at Eurojust. The analysis covered both operational and procedural non-personal information in the relevant Eurojust cases.

The information available for the analysis varied greatly on a case-by-case basis, depending on a number of factors. In particular, the status (ongoing or closed) of the Eurojust case and the procedural stage of the respective national criminal proceedings were factors that affected the amount of data available for analysis.

The analysis of each relevant Eurojust case was conducted in accordance with a predefined template that addressed the following matters:

- ▶ involvement of the EU Member States and/or non-EU countries in the Eurojust case;
- ▶ type of environmental crime investigated and prosecuted;
- ▶ involvement of another crime (e.g. organised crime, tax or document fraud, money laundering);
- ▶ estimated environmental damage;
- ▶ envisaged type and level of criminal penalty;
- ▶ involvement of financial investigation and asset recovery;

- ▶ cooperation with Europol;
- ▶ legal instrument(s) used for international judicial cooperation in the case;
- ▶ legal issues / practical difficulties relating to international judicial cooperation;
- ▶ role of Eurojust and outcome of Eurojust's case;
- ▶ best practice to overcome the difficulties encountered.

The preliminary findings of the analysis were presented by Eurojust at the workshops within the framework of the conference on 'International Collaboration and Cooperation in the Fight against Environmental Crime', which was held jointly by Eurojust and the European Network of Prosecutors for the Environment on 29 and 30 October 2019. The discussions at the workshops allowed the findings to be verified with prosecutors and other experts who regularly deal with the relevant matters of environmental crime on a practical level.

3. Introduction

The mission of Eurojust – the European Union Agency for Criminal Justice Cooperation – is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities of the Member States when they deal with serious cross-border and organised crime, including environmental crime. By virtue of its unique role, Eurojust has built up an institutional knowledge of reoccurring legal and practical issues and solutions that can improve the effectiveness of international judicial cooperation in environmental crime cases.

In November 2014 Eurojust published the *Strategic Project on Environmental Crime – Report*⁶, which contained a set of recommendations concerning the challenging legal and practical aspects of international judicial cooperation on environmental crime cases. The report was based on the experiences gathered through the casework handled by Eurojust over a period of several years before its publication.

Since 2014 the EU's legal framework concerning international judicial cooperation in criminal matters has evolved in several areas, including the establishment and operation of joint investigation teams (JITs); the exchanging of criminal records; the freezing and confiscation of criminal assets; the combating of money laundering; the use of mutual recognition instruments (European Investigation Orders (EIOs) and Freezing and Confiscation Orders); and cooperation via Eurojust and Europol⁷.

In addition, the following significant policy developments have taken place in the EU that have stepped up the fight against organised cross-border environmental crime and international cooperation in this field⁸.

- ▶ In the current 2018–2021 policy cycle, environmental crime has become an EU crime priority for the first time.
- ▶ The eighth round of mutual evaluations took place from 2017 to 2019 and addressed the practical implementation and operation of EU policies on prevention and combating environmental crime, focusing on illegal trafficking in waste and the illegal production or handling of dangerous materials.

- ▶ The European Commission established the Environmental Compliance and Governance Forum and the action plan on environmental compliance assurance, implemented over the 2018–2019 period. One of the actions under the plan resulted in the publication of the good practice document on combating environmental crime.
- ▶ The Commission adopted the European Green Deal, a strategic roadmap for the EU to address climate and environmental challenges and to make a transition to a sustainable economy. The Commission then proposed a European climate law, which would turn the political commitment set out in the European Green Deal – to achieve a climate-neutral EU economy and society by 2050 – into a legal obligation.
- ▶ The Commission launched an evaluation of Directive 2008/99/EC on the protection of the environment through criminal law, with a view to assessing whether it has proved to be effective or whether a review might be necessary in the near future. As part of the evaluation the Commission sought to gather input from a broad range of stakeholders, including prosecutors and other practitioners dealing with environmental crime.

Within this context, the Economic Crime Team and its Environmental Crime subgroup, with the prior approval of the College of Eurojust, conducted a project to analyse Eurojust's recent experiences in cross-border environmental crime cases and to renew the conclusions and recommendations formulated in Eurojust's 2014 report. The current report represents the outcome of that project.

⁶ Eurojust, *Strategic Project on Environmental Crime*, op. cit.

⁷ See Annex 2, references 1–9.

⁸ See Annex 2, references 10–17.

4. Statistical analysis of Eurojust's environmental crime casework

4.1. Number of cases referred to Eurojust

57 Environmental crime cases opened by

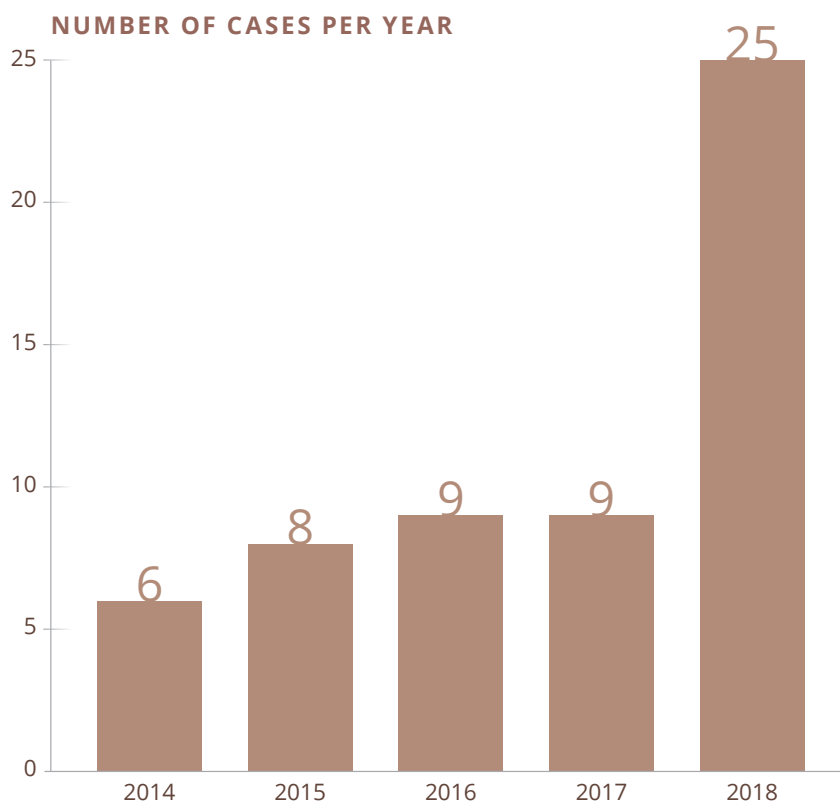
16 EU Member States



Third States most often involved as requested parties:



EU Member States most often involved as requested parties:



In the 5-year period between 1 January 2014 and 31 December 2018 a total of 57 environmental crime cases were registered at Eurojust. The cases were opened by 16 National Desks, with the Netherlands, France and Germany opening the most cases. The cases opened by these three Member States together constituted more than half of Eurojust's total environmental crime casework during the reference period (30 out of 57 cases) (see Chart 1, Annex 1).

Environmental crime cases represented less than 1 % of Eurojust's total casework during this 5-year period (see Charts 2 and 3, Annex 1). The number of environmental crime cases referred to Eurojust may be considered insufficient in view of the current estimate that environmental crime is the fourth-largest criminal activity in the world, worth up to USD 258 billion annually⁹.

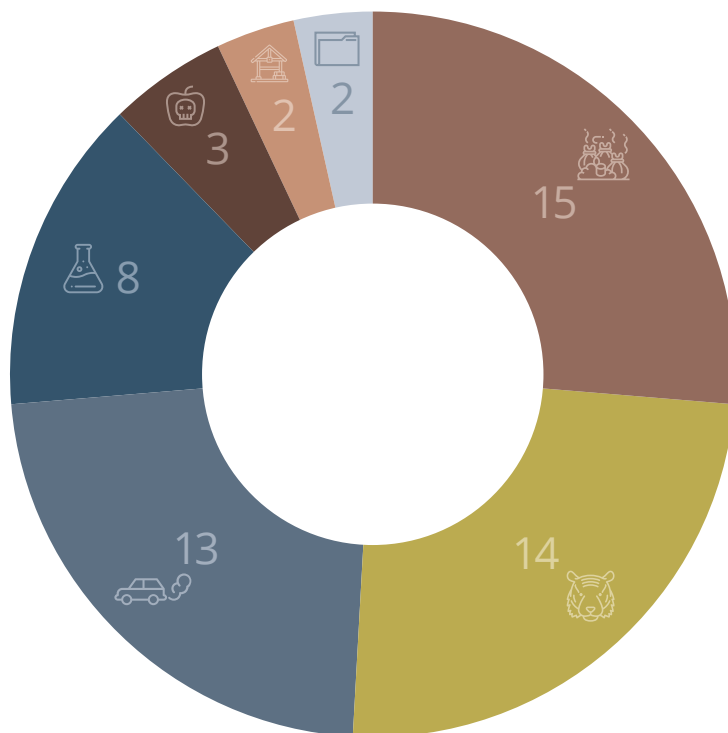
During the first 4 years of the reference period, Eurojust received, on average, fewer than 10 environmental crime cases per year. The sharp increase in the final year (2018) occurred in the context of 'Dieselgate', when the car industry's use of defeat devices to manipulate emissions tests was discovered and began to be investigated in several Member States. However, the increase is not fully representative, because a number of separate Eurojust cases opened in that period relate to the same or closely linked national criminal proceedings.

⁹ See UN Environment Programme and Interpol, *Strategic Report – Environment, peace and security – A convergence of threats*, 2016, foreword. See also UN Environment Programme and Interpol, *The Rise of Environmental Crime*, op. cit., p. 7, particularly the following statement: 'Environmental crime is now estimated to be ca. 91–258 billion USD (2016) annually, a 26% increase from previous estimate in 2014 ... Environmental crime is rising by 5–7 % annually'.

All 28 Member States were involved as requested Member States in the environmental crime cases registered at Eurojust during the reference period. The most frequently requested Member States were Belgium, Germany and the Netherlands (see Chart 4, Annex 1).

Seven non-EU countries were involved as requested parties in the environmental crime cases registered at Eurojust during the reference period. Of these, three – Switzerland, Norway and the United States – had Liaison Prosecutors at Eurojust during that period. These countries were among the most frequently involved non-EU countries (see Chart 5, Annex 1).

4.2. Types of environmental crime and criminal sanctions envisaged



The majority of the environmental crime cases dealt with by Eurojust between 2014 and 2018 concerned the following four types of environmental crime (see Chart 6, Annex 1):

- ▶ illegal trafficking in waste (15 cases);
- ▶ illegal trafficking in wildlife species (14 cases);
- ▶ pollution crime (13 cases);
- ▶ illegal trading in hazardous substances (8 cases).

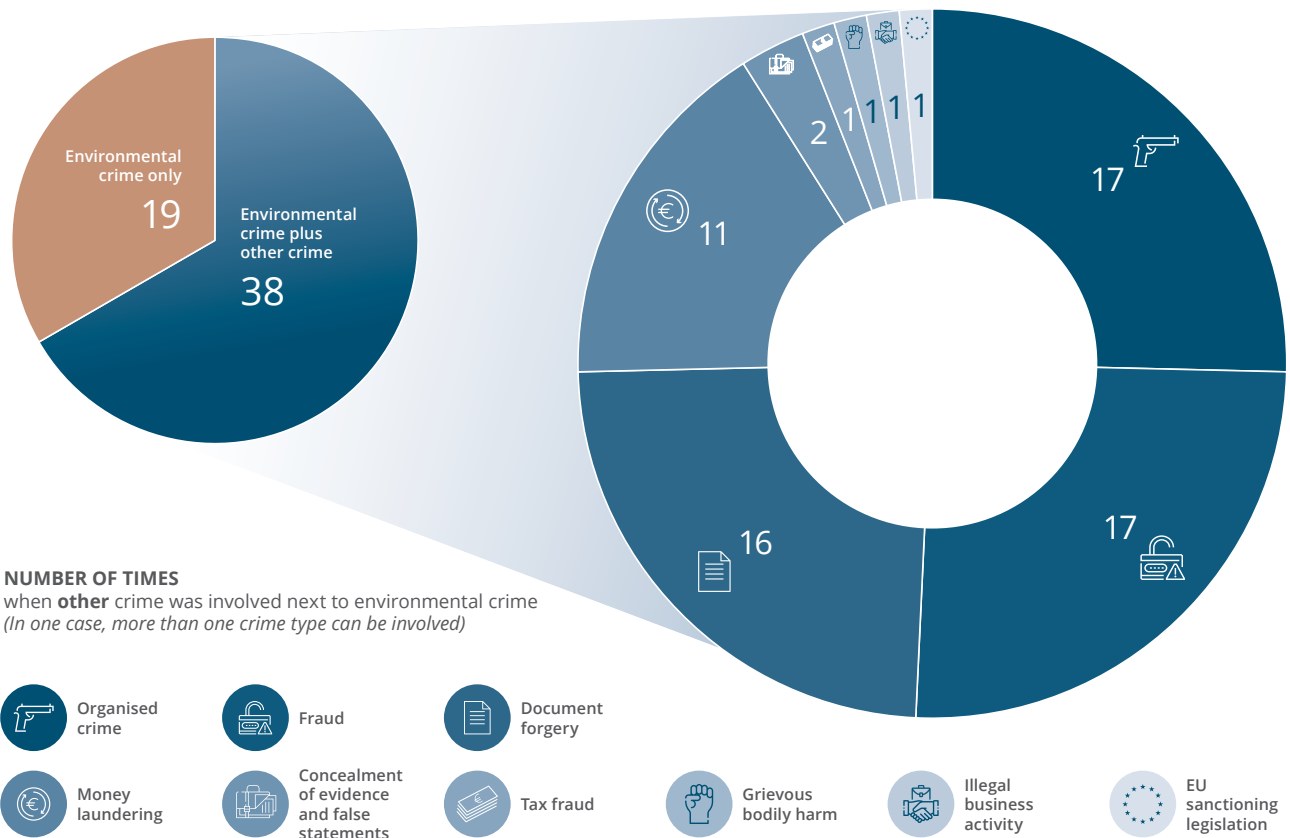
The preponderance of illegal trafficking in waste and illegal trafficking in wildlife species in Eurojust's environmental crime casework reaffirms the relevance of the focus of EU policy on these crimes. The EU action plan against wildlife trafficking¹⁰ and the eighth round of mutual evaluations have specifically addressed these crime types in recent years.

No information on the type and severity of the criminal punishments envisaged for the environmental crimes involved was available to the analysis team for most of the cases registered during the reference period. Therefore, no analysis could be performed on this subject. For those cases in which such information was available, the penalties varied from a monetary fine for a company responsible for illicit trading in fuel oils and related hazardous chemical pollution to imprisonment for a maximum of 4 years in a case concerning illegal trafficking in wildlife species.

In addition to criminal sanctions for the environmental crime, in most cases the investigating and prosecuting authorities relied on the other crimes involved, such as forgery of documents and participation in a criminal organisation, to ensure significant criminal sanctions in relation to the case.

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – EU action plan against wildlife trafficking, COM(2016) 87, 26 February 2016.

4.3. Other crimes associated with environmental crime



Cross-border environmental crime is often highly organised crime that generates substantial illegal profits and goes hand in hand with other crimes such as tax fraud, forgery of documents and money laundering. In total, two thirds of the environmental crime cases referred to Eurojust concerned other crimes in addition to environmental crime (see Chart 7, Annex 1). The crimes most frequently associated with environmental crime in Eurojust's environmental crime casework were:

- ▶ organised crime (17 cases);
- ▶ fraud (17 cases);
- ▶ document forgery (16 cases);
- ▶ money laundering (11 cases).

A number of stakeholders in the field of combating environmental crime report that the criminal networks involved in environmental crime may also be involved in drug trafficking, trafficking in human beings, firearms trafficking, financing of terrorism or corruption. However, if detected, these crimes tend to become the 'lead crimes' of the criminal proceedings, while environmental crime becomes ancillary and

sometimes is not even investigated and prosecuted to its full potential¹¹. The Eurojust statistics seem to confirm this perception because, indeed, none of these crimes appears as a crime associated with environmental crime in the cases referred to Eurojust. Unfortunately, this phenomenon could not be analysed based solely on the information that was available by virtue of the cases referred to Eurojust by the national authorities.

¹¹ See Environmental Crime Network, *Environmental Crime in Europe*, 2016, section 'Involvement of organised crime groups and links with other crimes', pp. 7-9. See also Interpol, *Environmental Crime and its Convergence with Other Serious Crimes – Environmental security*, 2015, p. 4.

4.4. Estimated environmental damage

No information on the monetary estimation of the environmental damage caused was available to the analysis team in most of the cases registered during the reference period. Therefore, no analysis could be performed on this matter. In those cases in which such information was available (three cases in total), it indicated the involvement of significant illicit profits,

which confirms that environmental crime is one of the most profitable types of criminal activity¹². For example, in a multilateral case on illegal trafficking in protected wildlife species (European glass eels), the commercial value of the seized species was estimated at EUR 2 000 000.

4.5. Involvement of Europol in Eurojust's environmental crime cases

Europol is a key partner for Eurojust in assisting the competent authorities of the Member States in fighting cross-border and organised crime. Within the framework of Eurojust's environmental crime cases, cooperation with Europol includes the exchange of operational data via SIENA¹³ for cross-matching and analysis; Europol's participation in coordination meetings (CMs)¹⁴ and coordination centres (CCs)¹⁵ organised by Eurojust; Eurojust's participation in operational meetings organised by Europol; and the provision of support to JITs.

In the context of raising environmental crime to the level of an EU crime priority, in 2018 (i.e. near the end of the reference period of this report) Europol set up the Analysis Project (AP) EnviCrime to allocate its analytical resources specifically to environmental crime investigations. Eurojust is associated with the AP through a designated representative, the Contact Point for Environmental Crime, who acts as part of Eurojust's Economic Crime Team.

During the reference period, Europol was involved in five environmental crime cases registered at Eurojust: three on illegal trafficking in protected wildlife species, one on contamination in food products and one on illegal trafficking in waste.

12 UN Environment Programme and Interpol, *Strategic Report*, op. cit.; UN Environment Programme and Interpol, *The Rise of Environmental Crime*, op. cit.

13 The Secure Information Exchange Network Application (SIENA) is a platform for the secure exchange of operational and strategic crime-related information between Europol, the EU Member States, cooperating states outside the EU and cooperating partners such as the European Border and Coast Guard Agency, Eurojust, the European Anti-Fraud Office and Interpol.

14 CMs are a tool used by Eurojust to stimulate discussion and the exchange of information and to reach agreement between national authorities on their cooperation and the coordination of investigations and prosecutions at the national level. They are attended by national judicial and law enforcement authorities from the Member States. In addition, representatives from non-EU countries may be invited, along with officials from cooperation partners such as Europol and the European Anti-Fraud Office and international organisations such as Interpol. One crucial service provided during CMs is simultaneous interpretation, which allows the participants to communicate directly with their counterparts in their own languages, allowing a more comprehensive understanding of their respective legal regimes. For more information, see Eurojust's website, section 'Judicial cooperation – Tasks and tools of Eurojust – Coordination meetings'.

15 CCs are a tool used by Eurojust when a complex cross-border case requires the real-time exchange of information and large-scale multilateral actions (e.g. the simultaneous execution of house/company searches, arrests and freezing of assets in different countries). To support the national authorities concerned, CCs may be set up at Eurojust's premises. They are designed to serve as a central hub for the real-time exchange of information and for coordinating the joint execution of judicial and law enforcement measures. For more information, see Eurojust's website, section 'Judicial cooperation – Tasks and tools of Eurojust – Coordination centres'.

5. Experience, challenges and best practices identified in Eurojust's environmental crime casework

This section provides an overview of Eurojust's experience, in particular on:

- ▶ judicial cooperation instruments and tools frequently used in environmental crime cases;
- ▶ legal and practical issues encountered;

▶ assistance provided by Eurojust;

▶ best practices identified to improve the effectiveness of cross-border judicial cooperation.

The generic information in this section is supplemented by examples of specific Eurojust cases handled during the reference period.

5.1. Judicial cooperation instruments and tools

Often, a combination of several judicial cooperation instruments and tools is used in one Eurojust case.

Mutual legal assistance (MLA) has been the core tool in the gathering and transfer of evidence in cross-border environmental crime cases referred to Eurojust. More than half of the cases (30 cases out of 57) during the reference period concerned various MLA matters: exchange of operational and legal information needed for the preparation of an MLA request; urgent issuing and transmission, facilitation or speeding up of the execution of one or multiple MLA requests.

EIO was the second most frequently used legal instrument in the cases registered during the 5-year reference period. EIOs were used in almost one third of the cases (16 cases), although this legal instrument became available only near the end of the reference period of this report¹⁶.

Spontaneous exchange of information was the main tool used in 12 cases, mostly with the aim of identifying parallel or linked criminal proceedings ongoing in other Member States and non-EU countries.

JITs were assisted by Eurojust in five cases registered during the reference period¹⁷. The assistance that was provided mainly concerned setting up the JIT or funding its activities.

Asset freezing or confiscation was facilitated in five cases. This included seizures implemented during the action days organised on multilateral cross-border cases and coordinated by means of a CC set up at Eurojust. In addition, in another 17 cases, financial investigations that had not yet developed to the stage of the seizure or confiscation of assets were part of the ongoing criminal investigations facilitated by Eurojust.

Other judicial cooperation instruments and tools used in the environmental crime cases dealt by Eurojust during the reference period included:

- ▶ European Arrest Warrants (EAWs) (three cases);
- ▶ transfer of criminal proceedings (three cases);
- ▶ transfer of a sentenced person (one case);
- ▶ extradition to a non-EU country for prosecution (one case).

¹⁶ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. The deadline for its transposition by the Member States was 22 May 2017. Since 15 September 2018 all of the Member States have taken part in EIOs, with the exception of Denmark and Ireland.

¹⁷ This number includes only those cases in which a JIT was eventually established.

JIT 'Chicken run': #JusticeDone for large-scale contamination of eggs with fipronil



During a joint action day supported by a coordination centre at Eurojust, coordinated searches and arrests were executed. The Dutch-Belgian JIT continued to work together during the prosecutorial phase and included a financial investigation that led to the tracing and seizure of assets.



Six coordination meetings took place at Eurojust to agree on the common investigation and prosecution strategy and to exchange evidence. Eurojust provided a formal legal opinion on a possible *ne bis in idem* issue in the Belgian and Italian criminal proceedings. With the support of Eurojust, cross-border cooperation took place with Germany, Romania and Italy.

The National Desks at Eurojust opened linked cases to provide operational and legal assistance, including the creation and funding of a JIT between the Belgian and Dutch authorities, with the involvement of Eurojust and Europol.



2017: Following the discovery of large quantities of chicken eggs and egg products contaminated with the insecticide fipronil, parallel criminal investigations were initiated in the Netherlands, Belgium, Germany and Italy.



5.2. Legal and operational issues

5.2.1. Specific legal and operational issues relating to environmental crime

A number of legal issues and practical difficulties encountered in the environmental crime cases referred to Eurojust between 2014 and 2018 can be attributed to such specifics of environmental crime investigations and prosecutions as their complexity and their multidisciplinary and resource-intensive nature. These legal issues and practical difficulties included the following.

- ▶ Insufficient specialised knowledge and practical experience about the EU's environmental criminal legal framework, because environmental crime cases are not frequently encountered by investigators and prosecutors dealing with organised cross-border crime and international judicial cooperation.
- ▶ The existence in different jurisdictions of different investigative approaches to environmental offences by means of administrative and criminal law, and in particular a lack of recognition of environmental crime as organised crime, which hampers the initiation of cross-border environmental crime investigations.
- ▶ A lack of incentive for competent national authorities to get actively involved in a potentially large-scale, complex international environmental crime investigation, possibly due to the abovementioned lack of specialised knowledge and experience, along with a lack of resources and the existence of other priorities. The lack of incentive to engage actively is manifested through a hesitation on the part of national authorities, in some Eurojust cases, to initiate parallel criminal proceedings, to take part in a CM or a CC or to establish a JIT. For example, in a multilateral case concerning illicit trading in fuel oils and related hazardous chemical pollution, where parallel investigations were identified and were ongoing in several Member States, the national authorities of the Member States concerned were not interested in participating in a CM and in establishing a JIT, as proposed by the Member State that opened the Eurojust case.
- ▶ The existence in different jurisdictions of different legislative approaches to environmental crime (even though the current EU legal framework requires a harmonised approach), which results in different perceptions about some key legal qualifications and can trigger dual criminality issues during cross-border cooperation. For example, in a case on illegal waste trafficking, the object of the trafficking was qualified as 'waste' in the Member State that issued the EIO but as a 'product' in the executing Member State, which resulted in a refusal to execute the EIO.
- ▶ The multidisciplinary nature of environmental investigations, with diverse specialised national administrative authorities (e.g. customs, environmental, veterinary, fisheries, public health and food safety authorities) that have relevant competences along with police and prosecutors, and the related challenges, in particular the following.
 - Ensuring the complementarity of competences and the exchange of information and coordination during an investigation at the national level is already a challenge, and it becomes even more challenging at the cross-border level. Multidisciplinary coordination at national and international levels among the competent administrative, law enforcement and judicial authorities may be needed promptly, for example in wildlife trafficking cases involving the seizure of live animals and the subsequent need to ensure their survival and a swift return to their natural habitat. A lack of such coordination can have a dramatic result: in a multilateral case concerning the trafficking of European glass eels, a significant number of the seized species did not survive because of the lack of prompt cooperation among the authorities involved.

- The risk of confusion regarding the competences of the authorities involved may see a particular increase during the process of cross-border cooperation. For example, in a case on illegal trading in pesticides, the execution of an MLA request was assigned to the national environmental authority (because the offence concerned fell under the competence of that authority), even though that authority lacked the investigative and coercive powers to execute most of the requested measures, such as arrests, interviews, searches and the seizure of documents. As a result, the MLA request in respect of these measures was refused.
- Environmental crime cases may require highly specialised legal, scientific or technical expertise, and thus the need to cooperate with relevant national or international authorities and organisations. For example, an MLA request may involve measures specific to environmental crime, such as taking samples of wild animals' DNA, taking samples of and testing hazardous substances or transporting seized live animals and reintroducing them into their natural habitat.

5.2.2. Legal and operational issues not specifically related to environmental crime

Most of the legal issues and practical difficulties encountered in the environmental crime cases referred to Eurojust between 2014 and 2018 were closely related to the use of the judicial cooperation instruments and tools listed in Section 5.1 of this report. These legal issues and practical difficulties included the following.

- ▶ Choosing the appropriate legal instrument for the necessary international judicial cooperation and exchange of information, and identifying the competent national authority to be addressed, including in cases involving cooperation and the exchange of information with non-EU countries.
- ▶ The urgency dictated by national procedural deadlines or by the operational needs of the investigation.
- ▶ Issues relating to the execution of MLA or mutual recognition instruments, particularly delays in execution and difficulties arising from the peculiarities of the national criminal material and procedural laws of the states involved (e.g. when clarifications were needed by the requested/executing Member State concerning dual criminality, the criminal qualification of the suspected acts, the procedural status of the persons in question or other information was needed as a precondition for the use of certain investigative measures).
- ▶ Legal and practical issues in the context of parallel criminal proceedings (e.g. a need for the urgent identification of ongoing parallel proceedings; the initiation of parallel proceedings; the prevention or resolution of jurisdictional and *ne bis in idem* issues; the coordination of investigative actions; the exchange of information and evidence in relation to parallel proceedings conducted at different procedural stages in different jurisdictions).
- ▶ Legal and practical aspects relating to the transfer of criminal proceedings and the transfer of sentenced persons, and extradition-related issues (e.g. when the Member State of nationality and the Member State of residence of the person being sought are different and the request is to extradite to a non-EU country).
- ▶ Matters relating to asset recovery (e.g. coordinating financial investigations; facilitating the execution of a freezing order or of an MLA aimed at the confiscation of assets).
- ▶ JIT-related legal issues and practical difficulties, including choosing the appropriate legal basis (the European Convention on Mutual Assistance in Criminal Matters of 1959, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000, the Council Framework Decision 2002/465/JHA on joint investigation teams), the potential implications of national legal requirements (e.g. the duty of disclosure; the withdrawal of the United Kingdom from the EU) and, last but not least, practical difficulties in working together as a multicultural team.



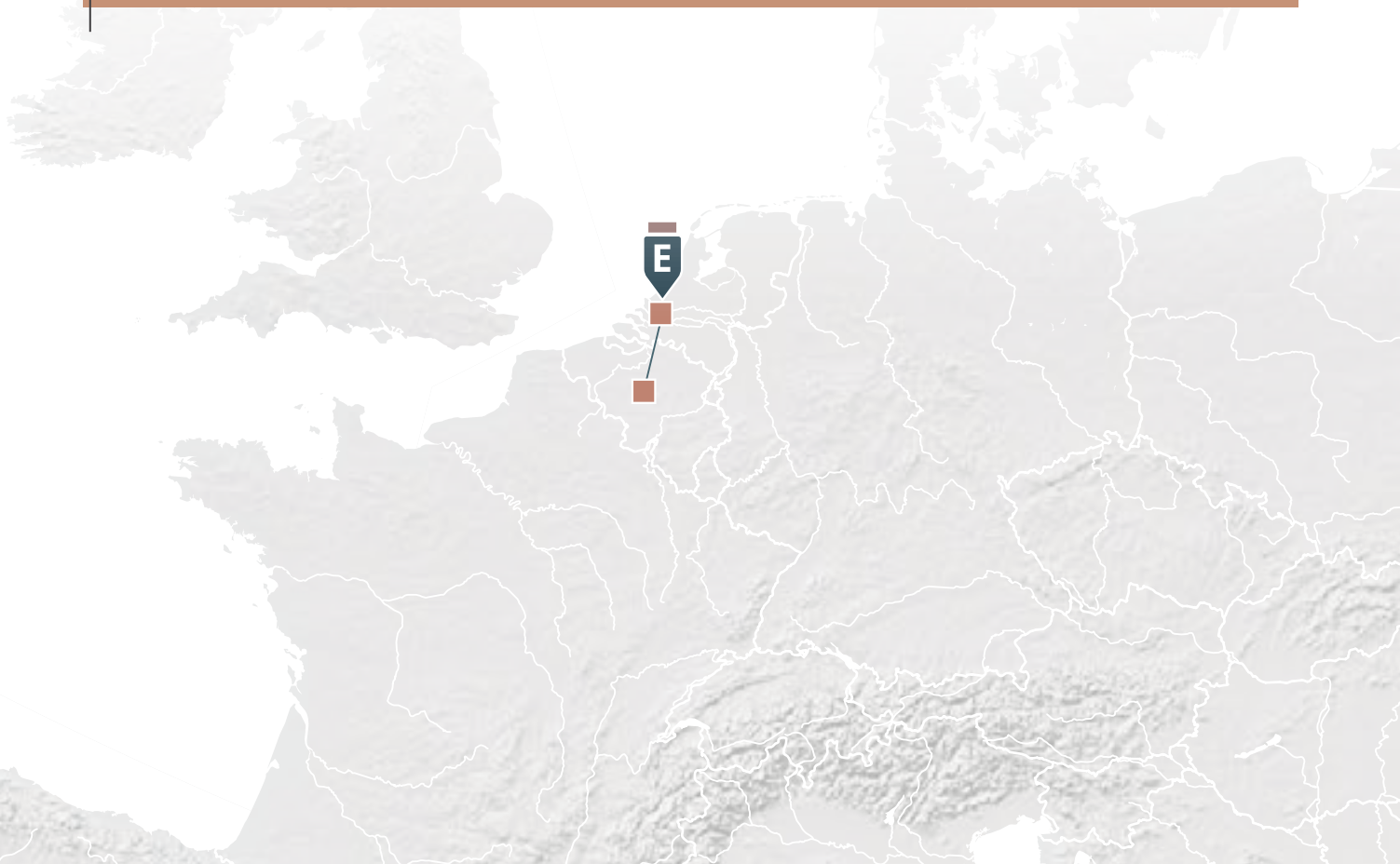
During a coordinated action day in the Netherlands and Belgium, the activities of the suspected Dutch company were shut down by the Dutch authorities because of serious health and safety risks. The assets of the main suspect and of the suspect's company were seized. The action day was a joint effort by several authorities with expertise in different areas, aiming at a multidisciplinary approach in order to be successful and effective.



A JIT between the Netherlands and Belgium was set up with the support of Eurojust and participation of Europol. Three coordination meetings were held at Eurojust. The JIT developed the strategy of the joint investigation, prepared a joint international action day and got advice on various legal issues arising from the investigations, such as the use of the European freezing order.



2018: A feed-producing company in the Netherlands was suspected of systematically mixing waste into animal feed. The feed was then marketed as certified and safe for consumption. Dutch and Belgian authorities opened parallel investigations into this matter. At the request of the Dutch authorities, the Eurojust National Desks were involved to offer support for cross-border cooperation and coordination.



5.3. The role of Eurojust

In the environmental crime cases referred to Eurojust between 2014 and 2018, Eurojust provided the following types of legal and operational assistance.

- ▶ Legal advice and practical facilitation in applying international judicial cooperation instruments and tools (in most cases MLA and EIOs, but also the spontaneous exchange of information, JITs, asset freezing and confiscation, EAWs, extradition, transfer of proceedings, transfer of a sentenced person) at the various stages: from choosing the appropriate legal instrument or tool to drafting, transmitting, accepting for execution, prioritising multiple requests and orders, speeding up the execution process, mitigating delays and refusals and transmitting results.
- ▶ Identifying cross-border investigative links and liaising between national authorities in the decision-making process to initiate parallel investigations; ensuring, via Eurojust's National Desks and Liaison Prosecutors, the coordination and exchange of information and evidence between national authorities on ongoing parallel or linked criminal proceedings.
- ▶ Supporting JITs at all stages of the JIT life cycle, from reaching an agreement to establish a JIT and drafting the JIT agreement, to providing funding and evaluating the results. JITs were successfully established for five environmental crime cases registered during the reference period.
- ▶ Formal written legal opinions to suggest ways to settle issues arising in the course of judicial cooperation on cross-border cases, for example on *ne bis in idem* and conflict of jurisdiction matters, to identify the best place to prosecute the offences under investigation.
- ▶ Facilitating communications between the national judicial, law enforcement and administrative authorities concerned in order to ensure information exchange and coordination, particularly where language barriers prevented direct communication between the authorities concerned.
- ▶ Organising bilateral and multilateral CMs with the participation of competent national authorities, for the direct exchange of information and the coordination of linked proceedings. Language barriers were removed by providing simultaneous interpretation into the national languages of all participating authorities. Organising a CM involves preparatory work by the National Desks and Liaison Prosecutors concerned and Eurojust's Operations Department, along with follow-up work on the CM's conclusions and agreed actions. CMs were organised for nine environmental crime cases registered during the reference period. The number of CMs per case varied from one to six, resulting in a total of 18 CMs. However, proposals to hold a CM were not always accepted: in four cases the proposed CMs were not organised as they were not supported by all of the Member States concerned.
- ▶ Organising international action days, including setting up a CC for the action day, to ensure the simultaneous coordinated execution of investigative measures in multiple jurisdictions, the real-time exchange of gathered information and evidence, and follow-up at the judicial level. Action days were organised for three of the environmental crime cases registered during the reference period, and for two of them a CC was set up at Eurojust's premises.
- ▶ Providing information on national criminal law provisions, when it was needed in the course of an ongoing cross-border investigation.

5.4. Best practices identified

Based on the legal and operational issues encountered and the solutions to these issues that were successfully applied, Eurojust has built up a set of best practices that can improve the effectiveness of international judicial cooperation in environmental crime cases. These best practices can be summarised as follows.

- ▶ In complex cases in which an extensive MLA request or EIO needs to be sent, before issuing the MLA request or EIO discuss it with the national authority that will be its addressee.
- ▶ Before requesting information in evidential format, request that the available information be shared as intelligence at the police level, to obtain prompt access to this information and to have the opportunity to evaluate it and to prioritise the information needed in evidential format for your investigation.
- ▶ Consider that combating environmental crime is a multidisciplinary area, where competent administrative authorities play an important role in the national environmental enforcement system but have fewer investigative and coercive powers than police and prosecutors. If, in an environmental crime case, an MLA request or EIO requires special or coercive investigative measures, make sure that the execution of the request/order is assigned to an authority that has the necessary powers to execute the requested measures.
- ▶ In cases of a delayed or refused MLA request or EIO, or other mutual recognition instrument, ask for assistance from Eurojust as soon as possible, before a significant delay has occurred or an official negative reply has been received.
- ▶ If information on national criminal law provisions is needed in the course of an ongoing cross-border investigation, obtain the necessary clarifications promptly via the National Desks or Liaison Prosecutors of non-EU countries at Eurojust, which are trusted sources of up-to-date national legal information and its interpretation.
- ▶ Enhance close cooperation and mutual trust between investigators and prosecutors by meeting in person, particularly in complex or sensitive cases; consider using CMs organised by Eurojust as a tool for that purpose.
- ▶ Discuss your cross-border case from the different perspectives of all of the countries involved to ensure that a common understanding is achieved. Environmental crime cases may need more explanation and specialised expertise than cases relating to other crime types. Use CMs organised by Eurojust to discuss and agree on a common investigation and prosecution strategy.
- ▶ Keep in direct contact or, if a language barrier exists, keep in contact via National Desks and Liaison Prosecutors at Eurojust, to inform each other about steps planned in the investigation and to coordinate investigative actions.
- ▶ In multilateral cases, issue MLA requests, EIOs or other mutual recognition instruments in a coordinated manner, so that the results can be used in the proceedings of all of the countries involved, and decide in a coordinated manner about the best place to prosecute, so that *ne bis in idem* issues and possible conflicts of jurisdiction can be prevented.
- ▶ Consider establishing a JIT, which has proved to be an effective tool for the prompt and direct exchange of evidence in a number of Eurojust's environmental crime cases. JITs provide a basis for working in a multidisciplinary team of experts, including prosecutors, police, environmental protection inspectors, customs, tax authorities, etc. Working in a JIT helps to build trust among authorities from different jurisdictions. In a JIT setting, national authorities have a complete overview of the evidence gathered in all of the jurisdictions involved and have the possibility to analyse it jointly, which will ensure a stronger evidential position for all of the national judicial authorities involved.

- ▶ Considering that cross-border organised-crime groups are often involved in committing environmental crimes, strive to detect and investigate the involvement of organised crime in the environmental crime that has been committed, be it waste trafficking, wildlife trafficking or environmental pollution. If an environmental crime case is identified as a case involving cross-border organised crime, this qualification enables the case to be prioritised and a more extensive set of investigative measures to be used, including special investigative tools for organised crime. This qualification also enables national authorities to refer the case to Eurojust, so that cross-border coordination and cooperation is ensured in environmental crime cases on a more regular basis.
- ▶ Environmental crimes involve a financial component, as their incentives are often the reduction of economic costs or the generation of profit; therefore, strive to conduct a financial investigation as part of the criminal investigation in each environmental case. When establishing a JIT, include financial investigation and asset recovery in the JIT agreement as objectives of the JIT.
- ▶ Strive to identify the existence of ongoing parallel proceedings in other jurisdictions as soon as possible, to avoid conducting linked investigations in a non-coordinated manner. Use Eurojust's assistance to check in a prompt and centralised manner whether parallel criminal proceedings are ongoing in any other Member State.
- ▶ Consider requesting Europol's assistance for information analysis, particularly when extensive amounts of data from different jurisdictions need to be processed.

JIT 'Jungle': Close cooperation to stop illegal trafficking in protected wildlife species



Working within a JIT significantly facilitated cross-border police and judicial cooperation but could not fully overcome certain legal and operational challenges:

- difficulties with gathering evidence to meet national legal criteria of an OCG, to be able to **prosecute for organised crime**;
- absence of a methodology **to evaluate the damage caused by environmental crime**, for the purpose of calculation of the illicit profit and recovery of illegal assets.



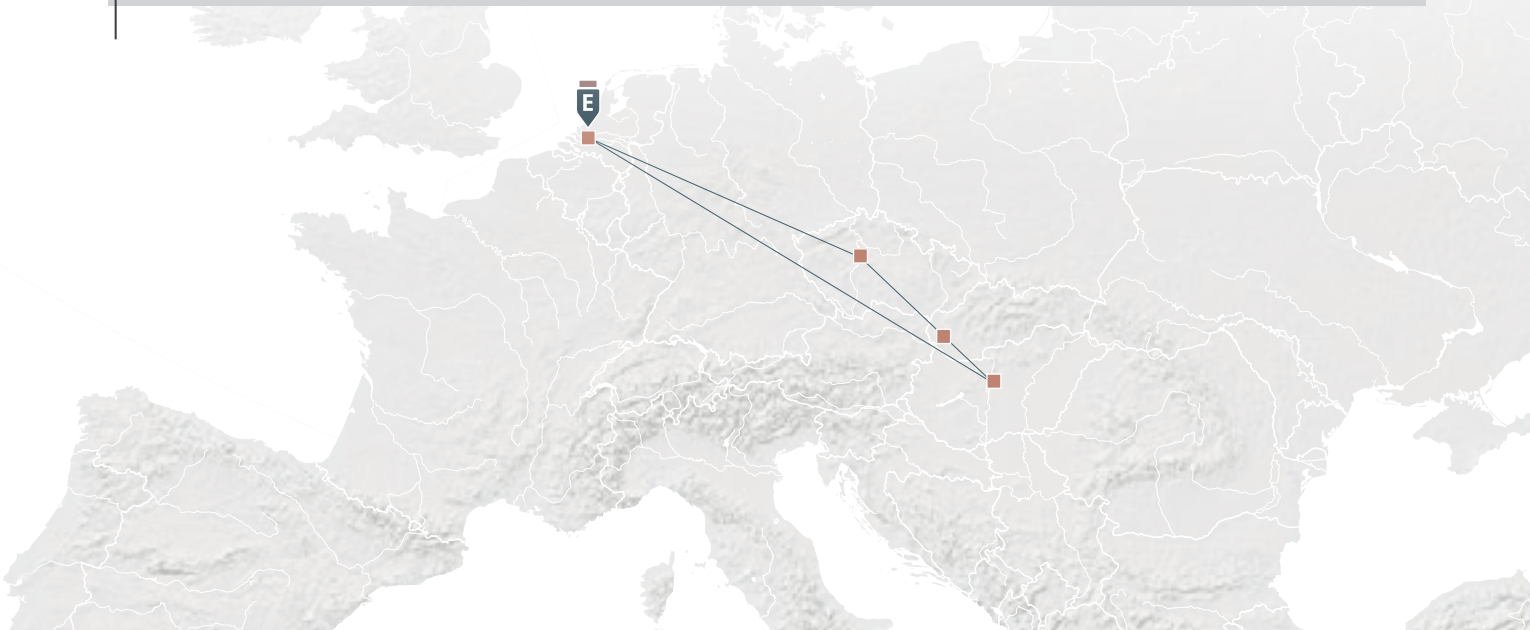
On a request by the Czech prosecutor, Eurojust assisted the national authorities of Czechia, Hungary and Slovakia in negotiating and drafting the joint investigation team (JIT) agreement, to coordinate the execution of investigative measures (house searches, arrests, seizure of illegal proceeds), share evidence, prosecute the OCG members in a coordinated manner and recover illegal assets.

Exchange of information via customs, police, Eurojust and Europol confirmed that the Czech, Hungarian and Slovak investigations were linked and concerned the activities of an international organised crime group (OCG). The OCG engaged in illegal hunting of protected species (tigers, elephants, rhinoceros, bears, wolves, etc.) and trafficking of ivory, bones, skins and extracts from the bodies of the illegally killed animals, as well as laundering of significant illegal profits.



2018: Slovakia started investigating illegal business activities involving regular organisation of hunting on protected animal species and illegal trade with hunting trophies.

2017: Czechia started criminal proceedings on preparations that were detected to illegally hunt, in Czechia, tigers breed in captivity. In the same year, Hungary opened an investigation into suspected illegal trafficking in rhinoceros horns.



6. Conclusions and recommendations

6.1. Conclusions

Eurojust's environmental crime casework between 2014 and 2018 had the following main features.

1. Illegal trafficking in waste, illegal trafficking in wildlife species, pollution crime and illegal trading in hazardous substances were the top four environmental crimes investigated and prosecuted in the cases referred to Eurojust.
2. In the majority of Eurojust's cases, environmental crime was not a stand-alone crime. Organised crime, fraud, document forgery and money laundering were the top four crimes associated with environmental crime in the cases referred to Eurojust.
3. Two categories of legal and operational issues were dealt with in Eurojust's environmental crime cases during the reference period: (1) issues specific to environmental crime; and (2) generic issues relating to the use of various instruments and tools of international judicial cooperation.
4. Issues specific to environmental crime were determined by the complex and resource-intensive nature of environmental investigations and prosecutions. Environmental enforcement is a multidisciplinary area that requires specialised knowledge; it combines the administrative and criminal approaches, and involves a range of specialised national authorities, along with police and prosecutors. The legal and operational challenges determined by these specific issues included:
 - a lack of resources and insufficient prioritisation of environmental crime cases at the national level;
 - insufficient specialised knowledge and practical experience;
 - the use of different investigative approaches in different jurisdictions, including a lack of recognition of environmental crime as organised crime;
 - the existence of different perceptions about key legal concepts of the EU environmental legal framework, which created difficulties in cross-border cooperation, including dual criminality issues;
 - challenges caused by the multidisciplinary nature of environmental enforcement, particularly challenges involved in ensuring the complementarity and coordination of all of the actors involved.
5. Generic (i.e. non-specific for environmental crime) issues in Eurojust's environmental crime cases involved a broad variety of matters relating mostly to the facilitation of international judicial cooperation based on MLA requests, EIOs and the spontaneous exchange of information. In a smaller number of cases the issues dealt with related to the setting-up and funding of JITs; the facilitation of financial investigations, including asset recovery; EAWs; extradition; and transfers of criminal proceedings and sentenced persons.
6. The number of cross-border environmental crime cases referred to Eurojust constituted less than 1 % of the agency's total casework. This can be considered insufficient and clearly inadequate in view of the estimate, published by Interpol and the UN Environment Programme, that since 2016 environmental crime has been the fourth-largest criminal activity in the world, growing at a rate of between 5 % and 7 % per year.

6.2. Recommendations

The findings of the analysis of Eurojust's environmental crime casework in the period from 2014 to 2018, as presented in this report, confirm the validity and relevance of the conclusions and recommendations stated in the previous Eurojust report on this matter, published in November 2014¹⁸. The overall number of cross-border environmental crime investigations and prosecutions coordinated at the EU level is still very small. In order to increase the number of such cases, make the judicial cooperation and coordination on such cases more effective and contribute to the achievement of the goals of the European Green Deal, Eurojust would like to renew and update its recommendations, as follows.

1. **Effective multidisciplinary cooperation.**

Environmental crime is mainly a crime with a voiceless victim. The possibility of the investigation and prosecution of environmental crime relies on the control, detection and initial evidence-gathering performed by various specialised national administrative authorities in charge of environmental control and enforcement. Information exchange and cooperation among the competent administrative, law enforcement and judicial authorities is needed to maximise the use of the available expertise and resources, as is the coordination of administrative and criminal approaches at the national level. Multidisciplinary cooperation at the national level is also a precondition of effective cross-border cooperation to tackle environmental crime at the international level.

2. **Recognition of environmental crime as organised crime and prioritisation of environmental crime cases.**

Environmental crime often involves organised crime, be it a traditional organised-crime group or a modern and sophisticated international criminal network based on corporate structures and information-technology tools. National authorities should pursue the detection and investigation of the involvement of organised crime in the environmental crime that has been committed. Such an approach would stimulate the prioritisation of the case at the national level, allow the use of a broader range of investigative tools and resources and open the possibility of the initiation of an international investigation. Eurojust's experience indicates, as a general tendency, the lack of recognition of environmental crime as organised crime, which hampers the initiation of cross-border cases.

3. **International coordination and cooperation and early involvement of Eurojust.**

International coordination and cooperation are the key requirements in fighting organised cross-border environmental crime effectively. The involvement of Eurojust and the use of its tools, expertise and established best practices in international judicial cooperation on environmental crime cases can assist investigators and prosecutors in complex cross-border investigations, in particular if a case is referred to Eurojust at an early stage of the investigation. Through early involvement, Eurojust is better situated to facilitate the detection or initiation of parallel or linked criminal proceedings and to assist in their coordination, including through the organisation of CMs and CCs, and in establishing and funding JITs.

4. **Use of JITs.**

JITs in particular are a tool that has not yet been used to its full potential in cross-border environmental crime cases. Considering the typical features of environmental crime, such as the involvement of trafficking routes across the EU and beyond, the high level of illegal profits, the low risk of detection and the involvement of organised crime and other crimes along with environmental crime, JITs are an efficient instrument to employ. JITs can include the whole range of competent national authorities, and can therefore ensure a multidisciplinary approach to the investigation. In addition, they allow for the exchange of information and evidence in a quick and direct manner across borders, thereby ensuring the possibility of a broader and stronger prosecution in the affected countries.

¹⁸ Eurojust, *Strategic Project on Environmental Crime*, op. cit.

5. Financial investigations and recovery of criminal proceeds.

Environmental crimes are crimes of an economic nature, as their incentive lies mainly in the illegal reduction of economic costs or the generation of illegal profits. Furthermore, these crimes have both a relatively low risk of detection and soft penalties, while the level of profit generated is extremely high. To remove the incentive, measures to confiscate the proceeds of crime need to be implemented on a more systematic basis. Conducting a financial investigation, including investigating money-laundering activities and pursuing the recovery of criminal assets, should be an integral part of each environmental crime case. In cases in which a JIT is established, it is recommended that asset tracing, seizure and confiscation be included in the JIT agreement as objectives of the JIT.

6. Further harmonisation of the EU's legal framework concerning environmental crime.

Eurojust's experience indicates the existence of different national legislative approaches to environmental crime across the EU. Different perceptions about key legal concepts, such as definitions of criminal offences, exist in different jurisdictions, and these can create obstacles to cross-border cooperation, for example dual criminality issues. The investigation and prosecution of environmental crime in the EU, including judicial cooperation on such cases, would benefit from the implementation of more harmonised legislation and the consistent interpretation of the key legal concepts of EU environmental criminal law, and from the application of more uniform and dissuasive penalties for environmental crimes across the EU.

Annex 1: Statistical charts

List of country codes

Belgium	BE	Lithuania	LT
Bulgaria	BG	Luxembourg	LU
Czechia	CZ	Hungary	HU
Denmark	DK	Malta	MT
Germany	DE	Netherlands	NL
Estonia	EE	Austria	AT
Ireland	IE	Poland	PL
Greece	EL	Portugal	PT
Spain	ES	Romania	RO
France	FR	Slovenia	SI
Croatia	HR	Slovakia	SK
Italy	IT	Finland	FI
Cyprus	CY	Sweden	SE
Latvia	LV	United Kingdom	UK

Chart 1

Environmental crime cases referred to Eurojust in 2014–2018, per Member State

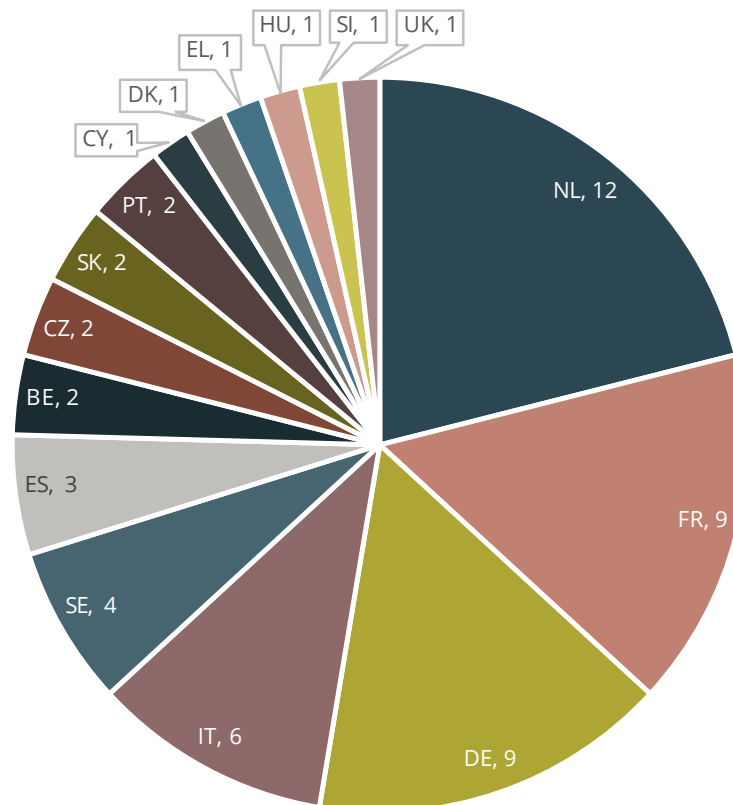


Chart 2

Total number of cases referred to Eurojust in 2014–2018, per year

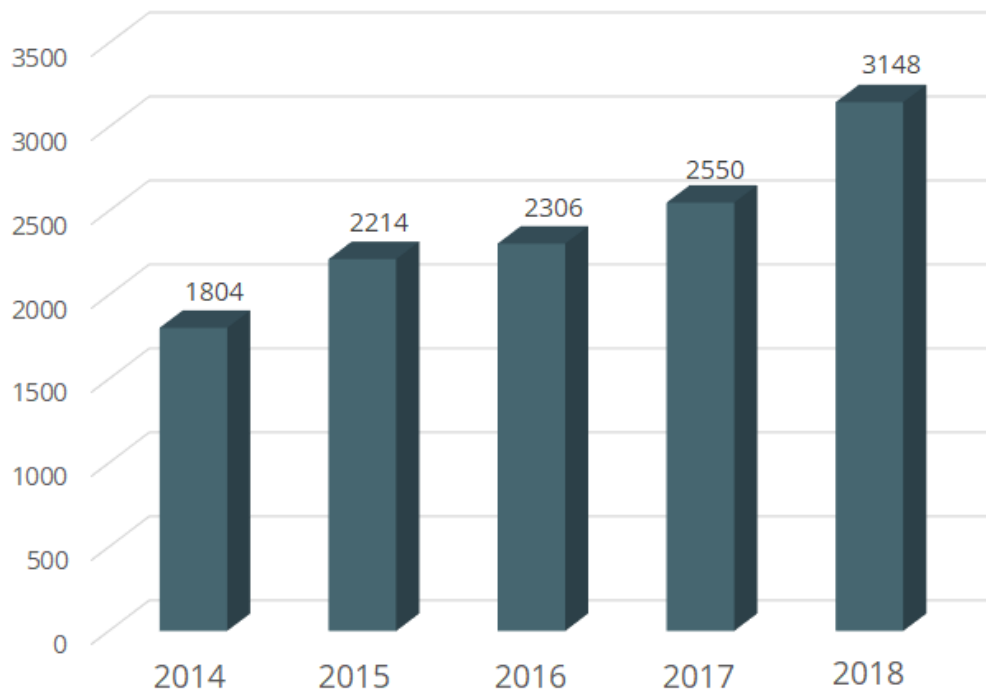


Chart 3

Number of environmental crime cases referred to Eurojust in 2014–2018, per year

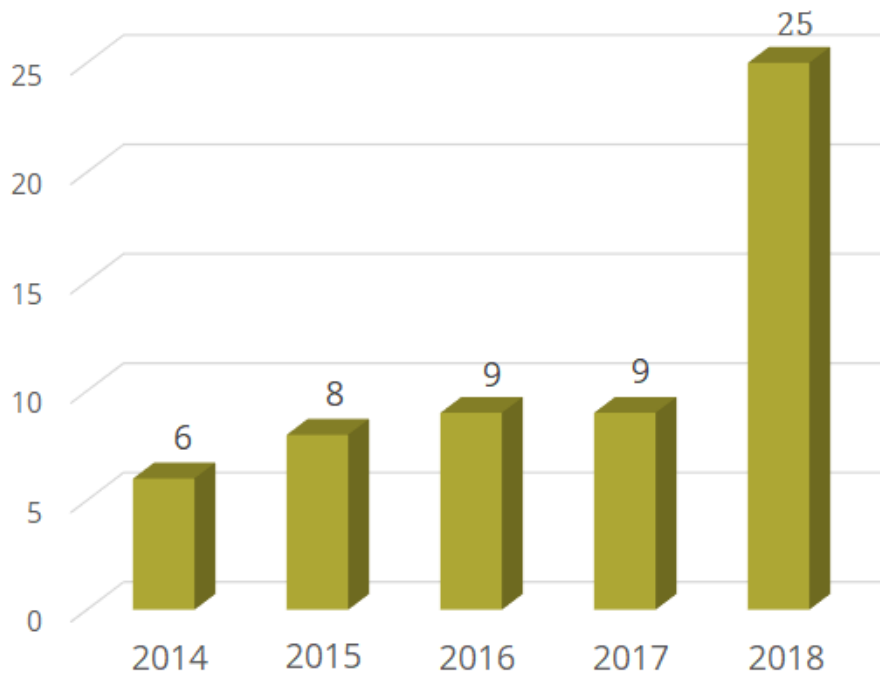


Chart 4

Member States as requested parties in environmental crime cases at Eurojust in 2014–2018, per number of cases

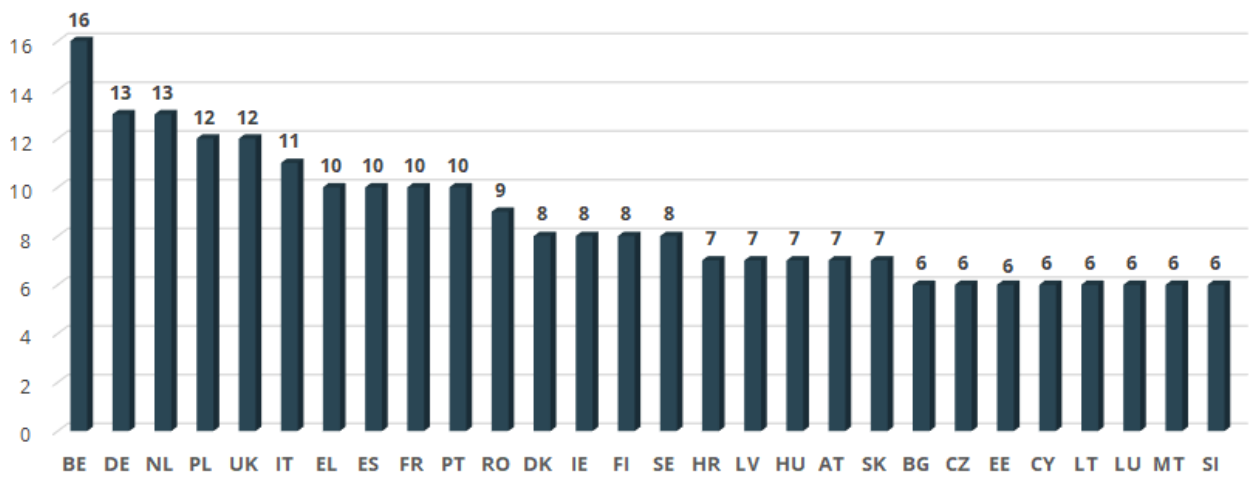


Chart 5

Non-EU countries as requested parties in environmental crime cases at Eurojust in 2014–2018, per number of cases

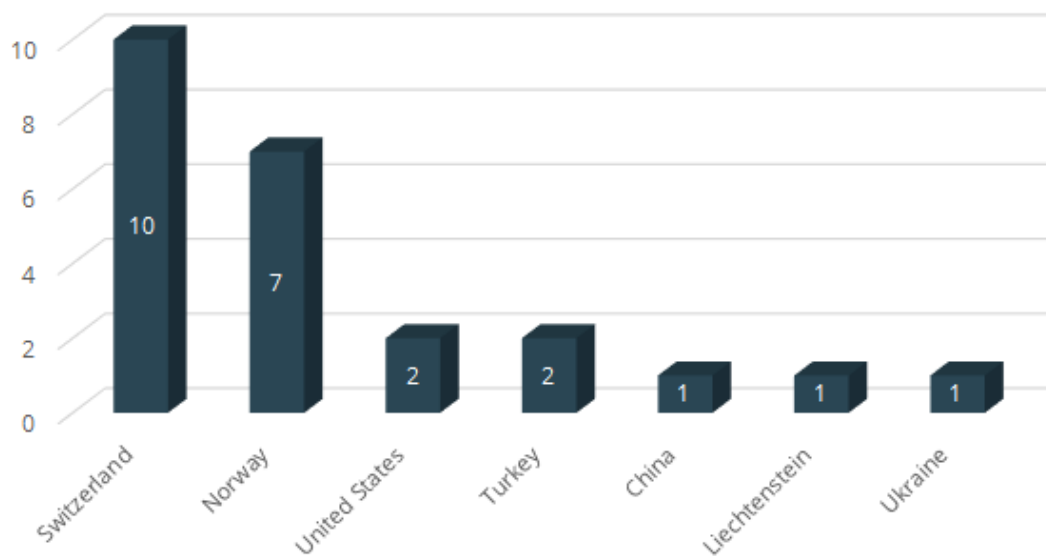


Chart 6

Types of environmental crime in cases referred to Eurojust in 2014–2018

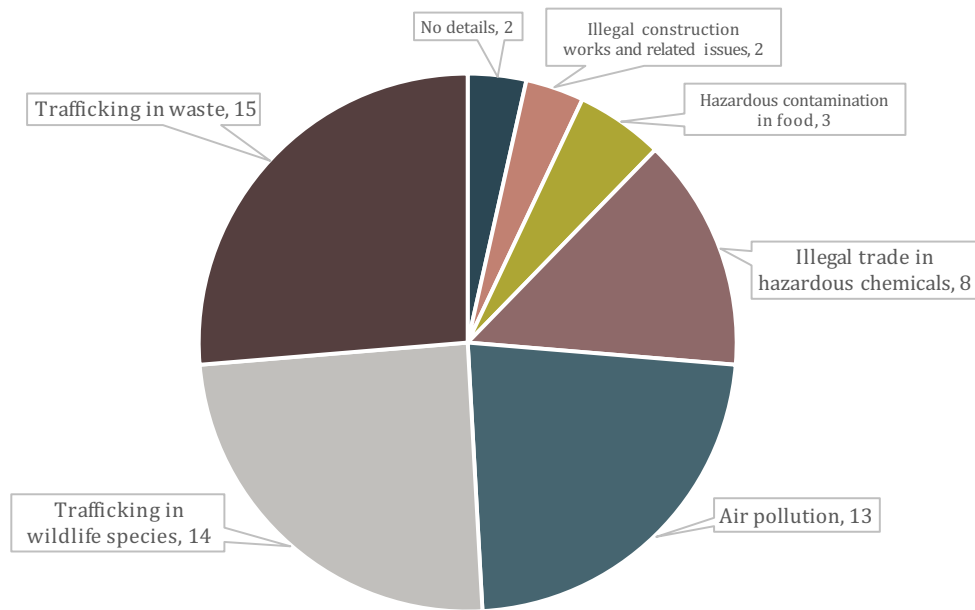
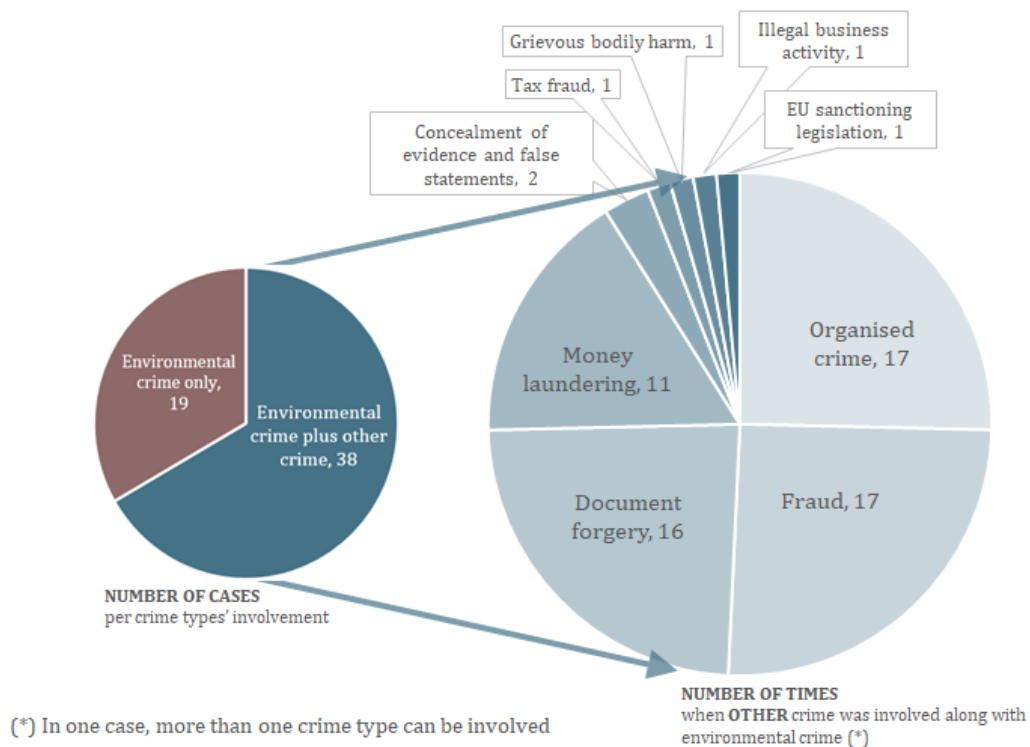


Chart 7

Other crimes in environmental crime cases referred to Eurojust in 2014–2018



Annex 2:

References to EU legal and policy documents

1. Council Resolution [2017/C 18/01](#) on a model agreement for setting up a joint investigation team (JIT).
2. Regulation (EU) [2019/816](#) of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726.
3. Directive (EU) [2019/884](#) of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA.
4. Directive [2014/42/EU](#) of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.
5. Directive (EU) [2018/1673](#) of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.
6. Directive [2014/41/EU](#) of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.
7. Regulation (EU) [2018/1805](#) of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.
8. Regulation (EU) [2018/1727](#) of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA.
9. Regulation (EU) [2016/794](#) of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.
10. Council conclusions [8654/17](#) of 12 May 2017 on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021.
11. Final report of the eighth round of mutual evaluations on environmental crime, [14852/19](#) of 5 December 2019.
12. Commission Decision setting up a group of experts on environmental compliance and governance, [C\(2018\) 10](#) of 18 January 2018.
13. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – EU actions to improve environmental compliance and governance, [COM\(2018\) 10](#) of 18 January 2018.
14. Environmental Compliance Assurance – Good practice document – Combating environmental crime: Waste and wildlife (version 1.0) of 29 April 2020.
15. The European Green Deal – Annex to the communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, [COM\(2019\) 640](#) of 11 December 2019.
16. Proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), [COM\(2020\) 80](#) of 4 March 2020.
17. Directive [2008/99/EC](#) of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law.

Annex 3:

Links to useful Eurojust sources

Eurojust systematically collects, analyses and publishes information on the Member States' experiences of various aspects of international judicial cooperation in criminal matters, gathered from Eurojust's casework and national and EU case-law. This information is intended to serve as practical guidance for practitioners using EU and international judicial cooperation instruments in cross-border investigations and prosecutions.

The following publications issued by Eurojust in recent years may be of interest to prosecutors dealing with cross-border environmental crime.

European Investigation Orders.

- ▶ *Report on Eurojust's casework in the field of the European Investigation Order*, November 2020.
- ▶ *Joint note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order*, June 2019.
- ▶ *Eurojust Meeting on the European Investigation Order – Outcome report*, December 2018.

Conflicts of jurisdiction, *ne bis in idem*.

- ▶ *Case law by the Court of Justice of the European Union on the principle of ne bis in idem in criminal matters*, April 2020.
- ▶ *Report on Eurojust's casework in the field of prevention and resolution of conflicts of jurisdiction*, February 2018.
- ▶ *Guidelines for Deciding 'Which jurisdiction should prosecute?'*, December 2016.

European Arrest Warrants.

- ▶ *Case law by the Court of Justice of the European Union on the European Arrest Warrant*, March 2020.
- ▶ *Questionnaire on the CJEU's judgments in relation to the independence of issuing judicial authorities and effective judicial protection – Updated compilation of replies and certificates*, March 2020.
- ▶ *Guidelines for deciding on competing requests for surrender and extradition*, October 2019.
- ▶ *Report on Eurojust's casework in the field of the European Arrest Warrant (2014–2016)*, May 2017.

Asset recovery.

- ▶ *Note on Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders*, December 2020.
- ▶ *Report on Eurojust's Casework in Asset Recovery*, February 2019.
- ▶ *Eurojust's Casework in Asset Recovery at a Glance*, February 2019.



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