EUROJUST

JITs Network

Guidelines on Joint Investigation Teams Involving Third Countries

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Criminal justice across borders

Contents

Introduction

Purpose

This document, jointly prepared by the Joint Investigation Teams Network Secretariat and European Union Agency for Criminal Justice Cooperation (Eurojust), aims to provide guidance to practitioners in European Union Member States considering setting up a joint investigation team (JIT) with a third country. The document is an updated version of the guidelines that were published in 2019 by the Council of the European Union as a restricted access document.

Background

With the progressive implementation of relevant legal bases, JITs are increasingly regarded by practitioners in EU Member States as a valuable option for judicial cooperation with third countries. In addition to looking at the issue of the legal bases, this document aims to provide guidance on specific factors that the competent national authorities of the EU Member States may need to consider when deciding to use a JIT as a tool for cooperation with a third country.

In general, several issues may influence a decision to set up a JIT: *inter alia*, the nature of the case (including the complexity of the criminal network and the degree of connection between domestic investigations), the scope of the investigation, the availability of resources and the extent of willingness to engage in a common investigation. The same considerations apply also to JITs involving third countries. However, different issues may also need to be considered.

While the *Joint Investigation Teams Practical Guide* developed by the JITs Network Secretariat in cooperation with Eurojust, the European Union Agency for Law Enforcement Cooperation (Europol) and the European Anti-Fraud Office – and updated in 2021 – provides general information, guidance and advice to practitioners on the setting up and operation of JITs, these guidelines focus on providing more specific guidance to practitioners considering setting up a JIT with the involvement of a third country.

Structure

The guidelines are structured in three sections and four annexes. **Section 1** provides a non-exhaustive overview of the legal framework that can be used when setting up a JIT with a third country. Specific legal/practical issues and best practices identified with regard to JITs involving third countries are summarised in **Section 2** of these guidelines. Finally, **Section 3** provides information on cooperation between Eurojust and third countries.

Annex I contains an overview of the implementation/ratification status of the applicable legal instruments. **Annex II** highlights particular details relevant to setting up JITs with Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States of America. **Annex III** provides statistics on JITs with third country involvement emerging from Eurojust's casework. In **Annex IV**, a checklist for practitioners is provided, covering issues that deserve consideration when setting up a JIT with a third country.

The findings presented in these guidelines are based on information available from the JITs Network Secretariat, Eurojust's casework in this field and input from Liaison Prosecutors at Eurojust (in the case of Annex II in particular).

1. Legal framework for setting up JITs with third countries

1.1. General

In recent years, in order to respond more effectively to the challenges of fighting transnational and cross-border organised crime, law enforcement and judicial authorities in the Member States have engaged with third countries in forms of cooperation not limited to 'classical' mutual legal assistance (MLA). The threat caused by organised crime – which by definition recognises no borders – is a strong incentive for using swifter and more flexible cooperation tools with countries located outside the EU.

At EU level, the possibility of setting up JITs was introduced by EU instruments as early as 2000, namely in the Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention), which was followed by the Council Framework Decision of 13 June 2002 on joint investigation teams (2002 FD on JITs). Later, a specific agreement between the EU and Iceland and Norway introduced the possibility of applying certain provisions of the 2000 EU MLA Convention – including Article 13 on JITs – when cooperating with Norway or Iceland.

With the adoption of multilateral agreements not limited to EU Member States that include provisions on JITs, the legal situation has evolved and there are several options for EU Member States to engage in JITs with third countries.

1.2. Bases for setting up a JIT with or between third countries

A country outside the EU can be a party in a JIT with an EU Member State provided that a legal basis for the creation of such a JIT exists.

This legal basis can take the form of:

- a multilateral agreement;
- a bilateral agreement;
- national legislation; or
- the principle of reciprocity.

1.2.1. Multilateral agreements

Several multilateral agreements include provisions on JITs (for the text of the relevant provisions, follow the hyperlinks). The content and level of detail included in provisions on JITs vary from one agreement to another. It should be noted that the provisions on JITs included in the two EU instruments (the 2000 EU MLA Convention and the 2002 FD on JITs) and the Second Additional Protocol to the Council of Europe (CoE) European Convention on Mutual Legal Assistance in Criminal Matters (CoE 1959 MLA Convention) are almost identical.

Council of Europe

Article 20 of the Second Additional Protocol to the CoE 1959 MLA Convention

Article 12 of the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence ([1])

United Nations

Article 19 of the United Nations Convention against Transnational Organized Crime (UNTOC)

Article 49 of the United Nations Convention against Corruption (UNCAC)

Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UN Convention against Drugs)

The JIT provisions stemming from UN instruments are generally considered 'enabling clauses', as they are far less detailed and leave open quite a large number of issues that then need to be covered by the JIT agreement between the participating countries.

Agreements between the European Union and third countries

Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 protocol thereto

Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America

1.2.2. Bilateral agreements

Several bilateral agreements have been signed between neighbouring countries or countries with close historical links that may include provisions on JITs (e.g. between Italy and Switzerland, Italy and Albania, Spain and Cape Verde, and Spain and Colombia).

1.2.3. National legislation

In the absence of a common international legal basis, it is worth considering whether the national laws of the countries concerned (e.g. the provisions of the national criminal procedure codes) could provide a basis for setting up a JIT.

1.2.4. Principle of reciprocity

During the 10th JITs annual meeting, the JIT experts mentioned that in the absence of an applicable legal framework the principle of reciprocity might also serve as a legal basis and that the possibility of setting up a JIT based on this principle need not be ruled out ([2]). The national legislations of the countries involved would need to allow for use of reciprocity in such a case, and a number of elements might need to be considered (e.g. domestic provisions on JITs, data protection rules, admissibility of evidence, disclosure and human rights issues).

To the knowledge of the JITs Network Secretariat, no JIT has so far been established solely on the basis of this principle.

([1]) As adopted by the Committee of Ministers of the Council of Europe on 17 November 2021. The text was opened for signature on 12 May 2022.

([2]) See Section b 'Legal basis and related issues' of the Conclusions of the 10th annual meeting of the national experts on joint investigation teams (25–26 June 2014, The Hague).

2. Legal/practical issues and best practices identified with regard to JITs involving third countries

2.1. Set-up process

2.1.1. Applicable legal basis

To be considered a common legal basis for the setting up of a JIT, the relevant international agreement has to be signed and ratified by all the countries concerned (see **Annex I** for an overview of the ratification status of the applicable agreements in EU Member States and selected third countries). Not all of the agreements mentioned in Section 1.2 are applicable between the same countries. Furthermore, the reservations and declarations of the parties to a given treaty must be taken into account.

Practical experience has shown that establishing a JIT between several countries within and outside the EU is not always an easy task, in particular when the content of the relevant provisions on JITs are not very detailed, as in the UN conventions.

While various legal instruments can serve as a legal basis for JITs with and between third countries, only the Second Additional Protocol to the CoE 1959 MLA Convention offers as much detail on the actual functioning of the JIT (e.g. the powers of seconded JIT members, rules on information exchange) as the 2000 EU MLA Convention and the 2002 FD on JITs do.

In the absence of one common legal basis, the practical solution found by JIT practitioners was to **combine the legal bases** (EU instruments, the Second Additional Protocol and UNTOC) and to apply specific instruments between specific partners ([3]):

> *In accordance with Article 19 of the United Nations Convention against Transnational Organised Crime of 15.11.2000 for A, B, C, D and, for A, C and D, in accordance with Article 20 of the Second Additional Protocol to the European Convention on mutual assistance in criminal matters of 08.11.2001, and as for the relations between A, B, C in accordance with Article 13 of the Convention of 29.05.2000 on mutual assistance in criminal matters between the Member States of the European Union.*

Several JITs set up with third countries have followed this example.

2.1.2. Practical considerations in the set-up phase

For the successful establishment and running of a JIT, the timely identification of relevant cases and parallel and/or linked investigations is crucial, as is the swift identification of key partners in the countries involved.

From an analysis of Eurojust casework ([4]), several **aspects** have been identified that should be taken into account in assessing the **suitability of a particular case for setting up a JIT**; these apply equally to JITs with third countries ([5]) and include:

- the existence and stage of investigations in the countries involved;

([3]) See also the *Joint Investigation Teams Practical Guide* and the Conclusions of the 10th annual meeting of the national experts on joint investigation teams (25–26 June 2014, The Hague).
([4]) See also Section 2.1.2 of the *Second JIT Evaluation Report*.
([5]) See also Chapter 2, Section 6, 'Understanding the specifics of JITs with third States' in the *Third JIT Evaluation Report*, which highlights Eurojust's experience of JITs with third countries.

- the number of potential JIT partners (would the JIT involve a limited number of or numerous partners?);
- the urgency of action;
- the estimated time frame for finalising the JIT agreement (this applies particularly to multilateral JITs and/or JITs with countries that have a more cumbersome authorisation process at national level); and
- the availability of resources in the countries involved.

In addition, bearing in mind the diversity of legal systems and the varying degrees of complexity of cases, it needs to be assessed on a case-by-case basis whether a JIT is the optimal cooperation tool or whether other methods of cooperation (i.e. MLA, the opening of parallel investigations) would be better to achieve the desired result.

If an EU Member State intends to set up a JIT with a third country, the (early) **involvement of Eurojust** could help to facilitate and support this process, in particular since Liaison Prosecutors from 10 third countries are posted at Eurojust. In addition, Eurojust has contact points in more than 60 third countries (see Section 2.1.4 and Chapter 3 for more information on Eurojust's cooperation with third countries).

Furthermore, the involvement of **Europol** should be considered, particularly in order to identify transnational links and build up a more comprehensive picture of a case. An overview of the operational agreements concluded between Europol and selected third countries can be found on the Europol website. Eurojust and Europol maintain a privileged working relationship and can jointly support national authorities in close cooperation.

In addition, several EU Member States have posted **Liaison Magistrates in third countries**; particularly in bilateral cases, these magistrates could assist in the identification of the competent authority in their host country to participate in the JIT, establish early contact between national authorities, facilitate an informal exchange of information at the pre-JIT stage and help overcome language and cultural barriers.

If practitioners are interested in setting up a JIT with a South Partner Country ([6]), they can contact the EuroMed Justice programme for further assistance (email: EuroMedJustice@eurojust.europa.eu).

2.1.3. Drafting of the JIT agreement

A model agreement has been developed to facilitate the setting up of JITs. A revision of 19 January 2017 took into account the outcomes of the 10th annual meeting of the JITs Network and the conclusions of the tactical meeting on judicial challenges arising from illegal immigrant smuggling held at Eurojust in February 2016, which suggested that an updated JIT model agreement could make it easier and quicker to set up JITs with third countries.

As a consequence, the **model agreement** no longer refers specifically to the 2000 EU MLA Convention or to the 2002 FD on JITs and includes a non-exhaustive list of international agreements enabling the setting up of JITs with third countries.

In December 2021, Appendix I to the JIT model agreement, which includes information on the participants in a JIT, was revised, introducing specific arrangements relating to the participation of Eurojust, Europol and the European Anti-Fraud Office. In relation specifically to Eurojust, the document

([6]) Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine and Tunisia.

introduces changes triggered by the new Eurojust legal framework and provides more details on the role of Liaison Prosecutors.

The latest version of the JIT model agreement is available on the Eurojust website in PDF and editable formats and in all EU languages, so that practitioners can download it and use it as a template. In practice, this EU model agreement is used in the vast majority of JITs set up between EU Member States and has proven to be **sufficiently flexible to serve as a basis for discussion with third countries**. Indeed, the revised model agreement addresses some specific issues with regard to JITs with third countries, such as access to information and evidence, and liability, aiming in particular to fill some gaps resulting from the absence of detailed provisions in the UN instruments as well as the (possible) lack of domestic legislation on JITs in third countries involved.

Best practice

In relation to the **drafting and signing of JIT agreements**, it has been established that the drafting process is swifter when the agreement is drafted and negotiations take place in a **common working language**; whenever possible, translations (if needed) should be produced only after agreement has been reached on the content.

If a JIT agreement exists in more than one language version, it is, furthermore, advisable to include a clause indicating the language version(s) that will be binding.

2.1.4. Role of Eurojust in facilitating the set-up process

Eurojust's global network contributes significantly to identifying key partners and linked investigations at an early stage, and ultimately to the increased successful setting up of JITs with third countries (see also Chapter 3 'Cooperation between Eurojust and third countries').

Before and during the set-up phase, Eurojust can help in identifying cases suitable for a JIT and the applicable legal basis and in drafting and finalising the JIT agreement ([7]). Eurojust also provides assistance by clarifying other legal and formal requirements related to the setting up and functioning of this tool (e.g. the signature process in the different countries involved, the role of seconded members, rules on disclosure, guarantees needed from third countries that a death penalty will not be imposed, challenges if evidence is based on plea bargaining, and specific data protection or confidentiality requirements). It does so in particular through direct cooperation between the National Members and Liaison Prosecutors and in the framework of coordination meetings.

There is the possibility of **involving representatives of third countries in coordination meetings organised at Eurojust**; this includes the Liaison Prosecutors posted at Eurojust and can facilitate the setting up of JITs between EU Member States and third countries.

In addition, Eurojust and the JITs Network Secretariat provide background information on JIT funding rules to national authorities.

([7]) See also the *Third JIT Evaluation Report*, which highlights Eurojust's experience of JITs with third countries, in particular from p. 21 onwards.

Best practice

In planning face-to-face coordination meetings with participants from third countries, more preparation time (especially in connection with any visas required) has to be taken into account (virtual or hybrid coordination meetings allow for less preparation time).

2.2. Operational phase

2.2.1. Considerations in the operational phase (planning and coordination of operational activities)

To achieve the purpose of a JIT, there are many considerations that JIT members have to take into account, and there are even more when a JIT is set up between an EU Member State and a third country.

To facilitate direct and immediate contact, it is advisable to identify at least one JIT member in each country who is able to communicate in a **common working language** and act as the **contact person** for his or her country.

Direct and proactive communication is crucial to clarify practical and legal issues (i.e. dual criminality, transfer of proceedings, conflict of jurisdiction, extradition) and to prepare operational measures. A regular exchange of views among JIT parties is pivotal not only for the development of a common prosecutorial strategy but also to build trust among the JIT partners.

For **operational planning**, it can be useful to have a (preliminary) schedule of operational meetings and to discuss the role and duration of deployment of seconded members.

A **secure and structured exchange of information/evidence gathered** within the JIT is another issue to be addressed. There are various options available and, depending on the countries involved and the nature of the case, it may be appropriate to hand over sensitive documents during operational meetings, during coordination meetings at Eurojust and/or via the countries' respective embassies. If the third country involved has a cooperation agreement with Europol, the exchange of information can also be facilitated by using Europol's Secure Information Exchange Network Application (SIENA). Furthermore, as part of the JIT funding, secure Eurojust laptops and mobiles can be loaned to JIT members. The technical possibilities for secure or even encrypted electronic transfer between the JIT members should be clarified.

In some cases, the JIT partners might also consider the added value created by keeping **overview lists of exchanged material**. Furthermore, especially when the investigations covered by the JIT are extensive and/or complex, entailing a high number of suspects, a **template** providing an **overview of the suspects and the state of proceedings**, to be periodically updated by JIT members, could create added value. In particular, such a template could provide an overview of all suspects, file references for the proceedings and information on the state of the proceedings, whether the judgment is final or not and the penalty imposed.

In **planning action days**, it is important to anticipate possible obstacles; for example, certain countries do not extradite their own nationals. There may therefore be a need to monitor the travel movements of targets to decide on the best approach and the timing of measures (see also Section 2.4.5 'Extradition regime').

Practical experiences of cooperation with third countries in the framework of JITs were exchanged by practitioners during the 17th annual meeting of the national experts on JITs ([8]).

2.2.2. Eurojust support in the operational phase

During the operational phase of a JIT, Eurojust can organise a dedicated coordination meeting, in which the JIT members can discuss future actions and strategies or issues relating to the admissibility of evidence, anticipation of future trial venues or communication with the media. Coordination meetings create an opportunity to meet face to face at the Eurojust premises or by videoconference in a secure environment and with simultaneous interpretation, if needed (or consecutive interpretation in videoconferences requiring more than three languages).

Furthermore, Eurojust can also facilitate the extension or amendment of JIT agreements, provide JIT funding and assist in coordination in issuing letters of request (LoRs) to countries that are not members of the JIT or in the use of other judicial cooperation tools (i.e. surrender/extradition, freezing and confiscation, transfer of proceedings).

Eurojust can set up a coordination centre in a particular case to facilitate the coordinated and simultaneous execution of measures in multiple countries during an action day. The coordination centre acts as a central information hub, in which joint operations are constantly monitored and coordinated by Eurojust, with all key stakeholders being in direct and immediate contact with each other.

The participation of all key stakeholders allows Eurojust to assist promptly with legal and practical advice and facilitates the issuing of critical judicial instruments, ensuring that the actions taken lead to successful prosecutions. Eurojust can also ensure appropriate follow-up (e.g. extradition, asset freezing and transfer of proceedings). Several coordination centres set up at Eurojust to date have also involved third countries.

2.2.3. JIT funding

Since 2016, Eurojust has been able to reimburse costs incurred by Member States and third countries that are parties to a JIT. However, this reimbursement is subject to the fulfilment of the following conditions:

- at least one Member State is involved in the JIT, and this Member State submits the JIT funding application to Eurojust on behalf of the JIT;
- the Eurojust National Members , their Deputies or Assistants of the Member States involved are invited to participate in the JIT for which Eurojust funding is sought (a Eurojust case ID must be available).

Some challenges have been encountered by third countries during the reimbursement process. For instance, some national authorities were not able to receive payments in euro to their bank accounts. Therefore, the JITs Network Secretariat had to consider ad hoc solutions to work around these country-specific difficulties. When such challenges are experienced, the JITs Network Secretariat can help to find appropriate solutions within the applicable legal framework. For any JIT funding issues, the JITs Network Secretariat should be contacted (at JITS@eurojust.europa.eu).

In some JITs involving third countries, challenges have been encountered in electronic communication. Due to the limited size of mailboxes linked to official email addresses and other technical difficulties, some members of JITs have sometimes been difficult to reach. Therefore, JIT funding adds value as it offers **IT**

([8]) See pp. 3–9 of Conclusions of the 17th annual meeting of the national experts on joint investigation teams (13–14 October 2021, The Hague).

equipment (e.g. mobile phones, laptops, mobile printers and scanners) for loan for the duration of the JIT, including extensions. These loans include the payment of all line and connection charges, as well as data costs; however, the items can be delivered only via an EU Member State. Loaned laptops and mobile phones are also equipped with secure Eurojust email accounts. Since October 2021, JITs have been able to apply for purchase of their own low-value equipment (hardware, software and licences), to be used both in EU Member States and in third countries, which offers another IT solution.

In addition to the regular funding scheme, comprising eight calls for proposals per year, Eurojust also provides financial assistance to JITs for urgent and/or unforeseen actions falling outside the scope of the regular Eurojust JIT funding scheme. For more information, consult the Eurojust website. Eurojust has also introduced new cost categories to its JIT funding programme: specialist expertise and, as mentioned above, purchase of low-value equipment. Furthermore, costs for victims and witnesses (those related to travel, accommodation and interpretation) are now also eligible for reimbursement.

2.3. Expiry of the JIT and JIT evaluation

A JIT is always set up for a limited duration, which, if necessary, can be prolonged as agreed by the JIT parties in an amendment to the JIT agreement. Especially in the case of JITs with third countries, it is important to **ensure the timely initiation of the process of extending the JIT**. In the light of the authorisation and signature processes required at national level (i.e. when a lengthy authorisation process is set out in the applicable legislation), the extension of a JIT has to be considered well in advance to allow sufficient time for the relevant procedures to be followed. Based on its casework, Eurojust suggests allowing at least one month for the drafting and signature of the amendment on the extension.

Before the closure of the JIT, issues related to **settlement of jurisdiction** and practical steps related thereto (e.g. review of the scope of the various proceedings, extradition, sharing and/or possible transfer of proceedings) may need to be considered by the JIT partners, even if the arrangements made can be implemented after the closure of the JIT ([9]).

An **evaluation of the JIT** by the actors involved is crucial to enhance knowledge of JITs, including those involving third countries, and improve their functioning. This is particularly relevant for JITs that have received financial assistance from Eurojust. When the JIT is due to expire, practitioners are encouraged to perform the evaluation jointly, ideally during a dedicated meeting. **Eurojust** can facilitate the evaluation of the JIT by offering a venue and assistance during evaluation meetings (including simultaneous interpretation), or by providing videoconference facilities. JIT funding may be used to finance participation in evaluation meetings.

After the expiry of the JIT, Eurojust can continue to provide case-related support, such as facilitating the issuing and execution of LoRs. Indeed, the expiry of a JIT agreement does not necessarily coincide with the finalisation of the investigation in all JIT member countries and further support may also be needed during the prosecution and trial phases.

2.4. Specific issues to take into account in JITs involving third countries

2.4.1. Exchange of information and evidence, confidentiality

According to the 2000 EU MLA Convention and the 2002 FD on JITs, JIT members enjoy – in principle – unlimited access to information and evidence collected in the territory of Member States where the JIT

([9]) In order to help practitioners to resolve any issues related to settlement of jurisdiction, Eurojust has published *Guidelines for Deciding 'Which Jurisdiction Should Prosecute?'*.

operates and may use such information and evidence for the purposes of their own proceedings in accordance with national law.

In addition, Article 13(10) of the 2000 EU MLA Convention introduces a 'purpose limitation rule', according to which information 'lawfully obtained' by the JIT that is not 'otherwise available to the competent authorities of the Member State concerned' may be used for the purposes mentioned in said article.

While a mirror provision appears in the Second Additional Protocol to the CoE 1959 MLA Convention, other international agreements allowing for the setting up of JITs with third countries do not contain detailed provisions on the exchange of information and evidence.

It is therefore advisable to consider whether the exchange of information and evidence within a JIT involving a third country may raise specific issues, in practical and legal terms. The revised JIT model agreement takes note of this in paragraph 9 'Access to information and evidence', which recommends that, if they deem it necessary, parties should agree on more specific provisions, in particular if a JIT is not based on the 2000 EU MLA Convention or the 2002 FD on JITs ([10]).

Furthermore, in the absence of detailed provisions on the rules governing confidentiality in the relevant international agreement, the parties involved might consider specifying in the JIT agreement how this issue will be dealt with.

2.4.2. Admissibility of evidence

Considering that the *lex loci* criterion is the general rule governing the functioning of a JIT, the inclusion of a (general) clause in the JIT agreement providing that the evidence will be gathered in accordance with the law of the country where the JIT operates, is recommended. If special legal requirements exist in one country party to the JIT, they should be brought to the attention of the other parties at an early stage, ideally during the negotiations on the JIT agreement. The parties to the JIT should carefully consider not only the procedural requirements for obtaining evidence in the country of operation but also, if need be, those of the countries where the evidence will be used.

2.4.3. Data protection rules

Exchange of information within a JIT involving only EU Member States is facilitated by the high level of integration within the EU, which entails compliance with common standards in the field of data security and data protection. Dedicated and secure channels of communication have been established that allow JIT partners to communicate effectively in real time (including Europol's Secure Information Exchange Network Application and Eurojust's secure email exchange). However, the same prerequisites and tools are not necessarily in place in relation to third countries.

In addition, it should also be borne in mind that the exchange of information within a JIT involving a third country is subject to the application of the relevant provisions of the Law Enforcement Directive ([11]) governing the transfer by Member States of operational personal data to third countries and of the domestic law that enacts this Directive.

([10]) 'In addition, parties may agree on a clause containing more specific rules on access, handling and use of information and evidence. Such a clause may in particular be deemed appropriate when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Article 13(10) of the Convention).'

([11]) Chapter V of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

In this context, the parties involved may need to consider the extent to which data protection concerns can be addressed in the JIT agreement to ensure that appropriate safeguards are in place in accordance with EU standards.

2.4.4. Liability

A similar approach may need to be considered with regard to provisions on the civil and criminal liability of seconded members. Section 17.3 of the JIT model agreement specifically suggests that '[p]arties may wish to regulate this aspect, particularly when the JIT is based neither on the [2000 EU MLA] Convention nor on the Framework Decision (which already include specific provisions in this respect – see Articles 15 and 16 of the Convention)'.

2.4.5. Extradition regime

Under the legislation of several EU Member States, the **extradition of the country's own nationals** to a third country is prohibited (the so-called nationality exception). In addition, the rulings of the Court of Justice of the European Union (CJEU) in the *Petruhhin* case ([12]) and subsequent decisions ([13]) have an impact on cases in which an EU Member State receives an extradition request from a third country regarding an EU citizen from another EU Member State (there is a duty to consult with the Member State of which the requested person is a national) ([14]). For more information on the issues arising from the CJEU's case-law on the extradition of EU citizens identified by Eurojust and the European Judicial Network in their respective casework, see the *Joint report of Eurojust and the European Judicial Network on the extradition of EU citizens to third countries*.

Several third countries also apply the nationality exception and thus do not extradite their own nationals to EU Member States.

Therefore, in JITs involving third countries, the **applicable extradition regime** should be carefully considered at an early stage in the planning of operational activities. In particular, it should be established if an extradition agreement has been concluded between the EU and the third country involved and if one or more of the countries involved forbids extradition of its own citizens. For members of the Council of Europe, the 1957 European Convention on Extradition applies.

([12]) Judgment of the CJEU of 6 September 2016, *Petruhhin*, C-182/15.

([13]) Judgment of the CJEU of 10 April 2018, *Pisciotti*, C-191/16; judgment of the CJEU of 13 November 2018, *Raugevicius*, C-247/17; judgment of the CJEU of 2 April 2020, *Ruska Federacija*, C-897/19 PPU; judgment of the CJEU of 17 December 2020, *Generalstaatsanwaltschaft Berlin*, C-398/19 and judgment of the CJEU of 12 May 2021, *Bundesrepublik Deutschland (Interpol Red Notice)*, C-505/19.

([14]) Articles 18 and 21 of the Treaty on the Functioning of the European Union (relating to, respectively, the principle of non-discrimination on grounds of nationality and the right of Union citizens to move and reside freely within the territory of the Member States): the CJEU obliges the requested Member State to **exchange information** with the EU Member State of which the person is a national, to give that other EU Member State the opportunity to **exercise its jurisdiction** to prosecute offences of its own nationals, and to **give priority to a potential European Arrest Warrant** of that Member State over the extradition request of the third country. The obligation to inform the Member State of nationality of the extradition request applies only if the requested EU Member State prohibits the extradition of its own nationals (i.e. applies the nationality exception).
Article 19 of the Charter of Fundamental Rights of the European Union**:** there is a duty to verify that the extradition will not prejudice the rights included in Article 19 of the Charter. In line with the *Aranyosi* judgment, the CJEU reminds in the *Petruhhin* judgment that the requested Member State must base its assessment on information that is objective, reliable, specific and properly updated (para. 59).

Examples

Challenges were encountered in a JIT supported by Eurojust, as it became clear only when investigations were at an advanced stage that one JIT member country (an EU Member State) could not extradite its own nationals to third countries, while the third country had a strong interest in prosecuting the main suspects.

In another case supported by Eurojust, investigations were ongoing at judicial level in two EU Member States. Most suspects were nationals of a third country that prohibits the extradition of its own nationals. At the time of registration of this case, there were no ongoing national investigations in this third country. Following a coordination meeting at Eurojust, the third country in question opened its own national proceedings, joined the JIT as a member and successfully prosecuted the main suspects.

2.4.6. Transfer of proceedings

Jurisdiction issues need to be anticipated and discussed by the JIT partners, as in most JITs parallel proceedings are pending in the countries involved. At a certain point in time, **transfer of proceedings** may have to be considered. This might be the case in particular if one of the JIT members does not extradite its own nationals.

In relation to JITs set up between countries that are members of the Council of Europe, the most specialised international agreement is the 1972 Council of Europe Convention on the Transfer of Proceedings in Criminal Matters, which spells out the detailed conditions and procedural rules for transfer. However, only a limited number of countries have ratified this Convention ([15]).

Another multilateral agreement that could be used by countries that are members of the Council of Europe as a basis for transfer of proceedings is the 1959 CoE MLA Convention (Article 21).

Article 21 of UNTOC has also been used on some occasions.

When the countries concerned have not ratified a relevant multilateral agreement, **bilateral agreements** can serve as a legal basis for transfer of proceedings. In the absence of bilateral agreements, the **principle of reciprocity** could be considered as a legal basis in combination with relevant national provisions on transfer of proceedings.

2.4.7. Human rights issues

Another issue that deserves careful consideration when setting up a JIT with a third country is the level of protection against the violation of basic human rights (e.g. death penalty, torture, inhuman treatment) in the countries involved.

([15]) The ratification status of the European Convention on the Transfer of Proceedings in Criminal Matters can be checked on the Council of Europe website.

Clause that could be used when entering into a JIT with a third country that has the death penalty

Information and evidence provided by the parties to this JIT (or pursuant to mutual legal assistance requests) may only be used as evidence in subsequent prosecution proceedings with the prior consent of the parties to this JIT (as well as the country that submitted the information). This consent can be provided only if the [INSERT NAME OF THIRD COUNTRY] authorities guarantee that the information and evidence provided by the parties to this JIT (or pursuant to the aforementioned mutual legal assistance requests) will not be used to seek, impose or execute the death penalty.

Reference is made to Article 18(21)(b) of the United Nations Convention against Transnational Organized Crime, which states that mutual legal assistance may be refused 'if the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests'. The death penalty falls within the scope of that provision.

3. Cooperation between Eurojust and third countries

3.1. Eurojust contact points in third countries

To enhance and facilitate cooperation between the judicial authorities of Member States and third countries, Eurojust continuously works to extend its worldwide network of judicial contact points in third countries.

To date, **more than 60 third countries have Eurojust contact points** in place.

3.2. International agreements enabling cooperation between Eurojust and third countries

The Eurojust Regulation, which became applicable in December 2019, changed Eurojust's external relations policy. Under the previous legal framework, Eurojust concluded cooperation agreements with third countries directly. In accordance with the new rules, Eurojust works closely with the European Commission to develop 4-year strategies to enhance its international reach at operational level. These strategies specify the third countries and international organisations with which there is an operational need for cooperation. On the Commission's recommendation, international agreements for cooperation with Eurojust are concluded by the Council of the EU pursuant to Article 218 of the Treaty on the Functioning of the European Union.

A total of **13 cooperation agreements** are in force, between Eurojust and the following third countries: Albania, Georgia, Iceland, Liechtenstein, Moldova, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States. These agreements create an enabling environment in which third countries can participate in and benefit from the practical cooperation tools offered through Eurojust.

These agreements also give national authorities in third countries the opportunity to post Liaison Prosecutors at Eurojust's headquarters to work side by side with their colleagues from Member States, with access to Eurojust's operational tools.

Eurojust may also transfer operational personal data to a third country or to an international organisation where the Commission has decided in accordance with Article 36 of Directive (EU) 2016/680 that an

adequate level of protection is ensured by the third country, a territory or one or more specified sectors within that third country, or the international organisation in question.

A working arrangement may be concluded between Eurojust and the country or organisation concerned to implement an adequacy decision. In the absence of an adequacy decision, operational personal data may be transferred if appropriate safeguards exist or have been provided for, or if a derogation for specific situations applies.

3.3. Liaison Prosecutors at Eurojust

Third countries that have entered into a cooperation agreement with Eurojust may second a Liaison Prosecutor to Eurojust. Ten third countries have seconded Liaison Prosecutors to Eurojust: Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States.

The Liaison Prosecutors posted at Eurojust play a crucial role in the setting up of JITs, which is reflected in the number of JITs set up with their respective third country.

Liaison Prosecutors can facilitate cooperation throughout the different stages of a JIT. At the set-up stage, a Liaison Prosecutor can raise the awareness of their national authorities of the value of a JIT as a judicial cooperation tool in cases involving EU Member States and third countries. Furthermore, Liaison Prosecutors can help to identify the relevant national authorities involved in the investigation; facilitate communication between the JIT partners; support national authorities in the drafting and signing of the JIT agreement; and assist during the operational phase of a JIT, for example by being involved in joint action days.

Annex I – Overview of the legal framework

The overview tables in this annex provide information on the implementation/ratification status of the applicable legal instruments in the EU Member States and selected third countries (for the latest ratification status, click on the hyperlink for the instrument).

EU Member States

	2002 FD on JITs	2000 EU MLA Convention	Second Additional Protocol COE 1959	UNTOC	UN Convention against Drugs	UNCAC
Austria	Y	Y	Y	Y	Y	Y
Belgium	Y	Y	Y	Y	Y	Y
Bulgaria	Y	Y	Y	Y	Y	Y
Croatia	Y	N	Y	Y	Y	Y
Cyprus	Y	Y	Y	Y	Y	Y
Czech Republic	Y	Y	Y	Y	Y	Y
Denmark	Y	Y	Y	Y	Y	Y
Estonia	Y	Y	Y	Y	Y	Y
Finland	Y	Y	Y	Y	Y	Y
France	Y	Y	Y	Y	Y	Y
Germany	Y	Y	Y	Y	Y	Y
Greece	Y	N	S	Y	Y	Y
Hungary	Y	Y	Y	Y	Y	Y
Ireland	Y	Y	Y	Y	Y	Y
Italy	Y	Y	Y	Y	Y	Y
Latvia	Y	Y	Y	Y	Y	Y
Lithuania	Y	Y	Y	Y	Y	Y
Luxembourg	Y	Y	Y	Y	Y	Y

Malta	Y	Y	Y	Y	Y	Y
Netherlands	Y	Y	Y	Y	Y	Y
Poland	Y	Y	Y	Y	Y	Y
Portugal	Y	Y	Y	Y	Y	Y
Romania	Y	Y	Y	Y	Y	Y
Slovakia	Y	Y	Y	Y	Y	Y
Slovenia	Y	Y	Y	Y	Y	Y
Spain	Y	Y	Y	Y	Y	Y
Sweden	Y	Y	Y	Y	Y	Y

Selected third countries

	2000 EU MLA Convention	Second Additional Protocol COE 1959	UNTOC	UN Convention against Drugs	UNCAC
Albania	NA	Y	Y	Y	Y
Andorra	NA	N	Y	Y	N
Argentina	NA	NA	Y	Y	Y
Armenia	NA	N	Y	Y	Y
Australia	NA	NA	Y	Y	Y
Azerbaijan	NA	N	Y	Y	Y
Bosnia and Herzegovina	NA	Y	Y	Y	Y
Brazil	NA	NA	Y	Y	Y
Chile	NA	Y	Y	Y	Y
Georgia	NA	Y	Y	Y	Y
Iceland	Y	S	Y	Y	Y
Israel	NA	Y	Y	Y	Y

Liechtenstein	NA	Y	Y	Y	Y
Malaysia	NA	NA	Y	Y	Y
Moldova	NA	Y	Y	Y	Y
Monaco	NA	N	Y	Y	Y
Montenegro	NA	Y	Y	Y	Y
North Macedonia	NA	Y	Y	Y	Y
Norway	Y	Y	Y	Y	Y
San Marino	NA	Y	Y	Y	Y
Serbia	NA	Y	Y	Y	Y
Switzerland	NA	Y	Y*	Y*	Y*
Turkey	NA	Y	Y	Y	Y
Ukraine	NA	Y	Y	Y	Y
United Kingdom	NA	Y	Y	Y	Y
United States	NA	NA	Y	Y	Y

Y = Yes
N = No
S = Signed, but not ratified
Y* = Ratified, but does not consider the instrument a valid legal basis for setting up a (judicial) JIT
NA = Not applicable

Annex II – Country-specific considerations

1. Albania

Legal basis for JITs with the involvement of Albania

- Albania has ratified the **Second Additional Protocol** to the CoE 1959 MLA Convention, which includes provisions on JITs (in force since 1 February 2004).
    - Albania has also negotiated and implemented **bilateral instruments** containing provisions on JITs, for example with Italy (Agreement with Italy on Mutual Legal Assistance, 2008, Albanian version and Italian version).
- Other legal instruments, such as the applicable **UN Conventions**, could also be used as a legal basis for setting up a JIT.

Practical experience

- By 31 December 2021, Albania had been involved in 12 JITs as a member. The JITs were set up on the bases of the Second Additional Protocol to the CoE 1959 MLA Convention and the Bilateral Agreement with Italy on Mutual Legal Assistance.

Signature process and set-up procedure

With the approval and entry in force in September 2021 of Law No 97/2021, the process of setting up a JIT is as follows.

- On the proposal of the public prosecutor, the head of the relevant prosecution office through the Prosecutor General or the Head of the Special Prosecution Office against Organised Crime and Corruption (SPAK), may request the establishment of a JIT in cases where:
    - investigations into a criminal offence require the performance of particularly complex or difficult actions and relate to another state; or
    - one or more other states are conducting investigations into related criminal offences and the circumstances require coordinated or joint investigative actions.
- The head of the prosecution office of general jurisdiction (the first-instance prosecution office), through the Prosecutor General – or, when the investigation falls under the competence of the SPAK (see Article 75a of the Albanian Criminal Procedure Code), the Head of the SPAK – transmits to the foreign authority the request to establish a JIT, through the Ministry of Justice.
- The request for the establishment of a JIT, in addition to the information set out in Article 14 of the CoE 1959 MLA Convention, should also contain a proposal for the composition of the JIT and its duration.
- The JIT agreement is signed by the head of the relevant prosecution office dealing with the investigation (the general jurisdiction prosecution office or the SPAK).
- The Minister of Justice decides to agree to the request of a foreign authority for the establishment of a JIT, unless he or she deems that the requested actions endanger sovereignty, security or important interests of the state. If the foreign authority addresses such a request directly to the Prosecutor General or the Head of the SPAK, they must notify the Minister of Justice immediately.

- The Minister of Justice does not agree to the request if it becomes clear that Albanian legislation expressly prohibits the requested actions or if it is contrary to the fundamental principles of the legal order in Albania. In this case, the Minister notifies the foreign authority of the decision immediately.
- The Minister of Justice, after agreeing to a request, forwards it through the Prosecutor General to the head of the competent prosecution office (the general jurisdiction prosecution office or the SPAK).

Specificities to take into account

- Albania can be a member of a JIT if there is an **ongoing investigation** in Albania.
- **A formal LoR** is required to set up a JIT.
- From the Albanian side, the following authorities can act as a **JIT member**: a public prosecutor, a judicial police officer attached to a prosecution office, a judicial police officer in the state police, or a judicial police officer in the tax or customs authority.
- The time limit for the termination of a criminal investigation in Albania is 3 months from the date when the name of the person whom the criminal offence is attributed to is written in the register of notification of criminal offences, or 6 months for criminal offences that are prosecuted by the SPAK.

  A public prosecutor may extend the period of investigations by 3 months. For the SPAK, this time limit is up to 6 months.

  The prosecutor in case of complex investigations or when it is objectively impossible to terminate the investigations within the extended period may make further extensions, each of them to be not more than 3 months. The period of the preliminary investigations may not exceed 2 years. Beyond the period of 2 years, for crimes committed by a criminal organisation and for crimes that are adjudicated on by a judicial panel, the term of the investigations may be prolonged only with the approval of the Prosecutor General or the Head of the SPAK. This extension is up to 1 year.
- A JIT **seconded member** can be present while investigative activities are carried out on Albanian territory, but the domestic authorities always carry out the activities.
- All the evidence gathered by the JIT can be used as evidence in court proceedings in Albania for the purposes for which the JIT has been set up.

  The evidence gathered through the investigations carried out by the JIT outside Albanian territory has the same probative value as the evidence gathered through the same investigative actions carried out in the territory of Albania and may be used in court in accordance with the provisions of Albanian legislation.

  The head of the prosecution office who signed the agreement on setting up of the JIT may ask the other party or parties – due to the needs of the preliminary investigation or court proceedings other than those to which the JIT agreement relates – for a delay in the use of information obtained from JIT investigations and activities for a period of not more than 6 months.
- Albania can conclude a JIT agreement in Albanian.
- **Role of the Albanian Liaison Prosecutor at Eurojust:** The powers of the Albanian Liaison Prosecutor at Eurojust are those detailed in Article 5 of the Agreement on Cooperation between Eurojust and the Republic of Albania. Formally, the contact point for setting up JITs with the involvement of Albania is

the Ministry of Justice. Practically, the Liaison Prosecutor acts as the central contact point for any JIT that is set up with the support of Eurojust.

2. Georgia

Legal basis for JITs with the involvement of Georgia

- Georgia has ratified the **Second Additional Protocol** to the CoE 1959 MLA Convention (in force since 1 May 2014).
- It has ratified the UN Convention against Drugs (1988).
- It has ratified UNTOC (2000).
- It has ratified UNCAC (2003).
- The setting up of JITs is governed under Article 12[1] of the Law of Georgia on International Cooperation in Criminal Matters 2010.

Practical experience

- By 31 December 2021, Georgia has been involved in **one JIT** as a member. The JIT was set up on the basis of Article 19 of UNTOC (2000).

Signature process and set-up procedure

- In accordance with Georgian law, the Office of the Prosecutor General of Georgia is the competent authority to authorise the setting up of a JIT and appoint the Deputy Prosecutor General who will sign the JIT agreement (depending on the type of crime).

Specificities to take into account

- Georgia requires a **formal LoR** for the setting up of a JIT. The LoR should contain at least information about the features of the case and the offences concerned, as well as a brief justification of the need to set up a JIT.
- There are no specific provisions under Georgian law determining which authority should act as the **JIT leader**. Therefore, a representative of an authority investigating and/or prosecuting a pertinent matter can act as a JIT leader. A representative of a law enforcement authority investigating the relevant matter can act as a JIT member.
- **Role of seconded members.** There are no specific provisions in Georgian law regulating the participation of seconded members in JIT activities. The general rule applicable to the activities of all foreign law enforcement officers limits their participation in investigation measures in Georgia to mere presence. The Second Additional Protocol to the CoE 1959 MLA Convention applies directly to JITs set up under this instrument. The protocol leaves it to the JIT leader to determine the scope of the mandate of seconded members.
- **Access to confidential information.** In accordance with Georgian law, any information and evidence can be exchanged unless it is sensitive; there are restrictions under law on the transmittal of such information. Information and/or evidence can be withheld where it is classified. The JIT leader may also refrain from handover of information where its transmittal to a foreign official (seconded member) may make it subject to mandatory disclosure in a foreign

state and premature disclosure of such information may harm local investigations in Georgia. Classified information may only be transmitted to the authorised officials of a foreign state with which Georgia has a bilateral agreement on the exchange of such information. The regime established under such agreements will apply to the disclosure process.

- Georgia can conclude a JIT agreement in English.
- **Role of the Georgian Liaison Prosecutor at Eurojust.** The main contact point for the setting up of a JIT with Georgia is the Georgian Liaison Prosecutor, who can provide support and facilitate cooperation through Eurojust.

3. Montenegro

Legal basis for JITs with the involvement of Montenegro

- Montenegro has ratified the **Second Additional Protocol** to the CoE 1959 MLA Convention (in force since 1 February 2009).
- Other legal instruments, such as UNTOC, UNCAC and the UN Convention against Drugs, can also be used as a legal basis for setting up a JIT.
- Section IVa (Article 41a–d) of the Montenegrin Law on Mutual Legal Assistance in Criminal Matters provides for the possibility of setting up a JIT.

Practical experience

- By 31 December 2021, Montenegro has been involved in **one JIT**. The JIT was set up with another third country on the basis of the Second Additional Protocol to the CoE 1959 MLA Convention.

Signature process and set-up procedure

- In accordance with Montenegrin law, a request for the setting up of a JIT has to be submitted to the Supreme State Prosecutor, who has authority to decide on the set-up and to sign the JIT agreement. Subsequently, the Supreme State Prosecutor needs to inform the Minister of Justice.

Specificities to take into account

- Montenegro can be a member of a JIT only if there is an **ongoing investigation** in Montenegro. According to the Montenegrin Law on Mutual Legal Assistance in Criminal Matters, a Montenegrin prosecution office can participate in a JIT to conduct investigations in the territory of one or more states.
- Montenegro requires a **formal LoR** for the setting up of a JIT to be sent to the Supreme State Prosecutor of Montenegro.
- From the Montenegrin side, the following authorities can act as JIT members: prosecutors and other professionals in accordance with the JIT agreement. The JIT leader for Montenegro has to be a representative of the state prosecution office acting in the case.
- There are no special limitations regarding the offences in relation to which a JIT can be established.
- **Role of seconded members.** Seconded members are entitled to be present when investigative measures are conducted in Montenegro, unless the leader of the team, in accordance with

Montenegrin law, decides otherwise. The JIT leader may assign JIT members with tasks to undertake investigative measures, in accordance with Montenegrin law and with the consent of the Montenegrin competent authorities and the competent authorities of the country of the member of the team assigned with the task.

- Montenegro can conclude a JIT agreement in Montenegrin, with a translated version in the language of the other party.
- **Role of the Montenegrin Liaison Prosecutor at Eurojust.** The Liaison Prosecutor's role is to provide support and facilitate cooperation through Eurojust, from an early stage (e.g. discussions about setting up the JIT).

4. North Macedonia

Legal basis for JITs with the involvement of North Macedonia

- The **Second Additional Protocol** to the CoE 1959 MLA Convention applies to North Macedonia.
- Several UN instruments that provide for the possibility of setting up JITs have been ratified by North Macedonia, namely the UN Convention against Drugs (1988), UNTOC (2000) and UNCAC (2003).
- North Macedonia is also a party to the Police Cooperation Convention for Southeast Europe (2006), which provides a legal basis for setting up a JIT between countries in south-eastern Europe.
- The national legal basis for setting up JITs in North Macedonia is set out in Articles 35–37 in conjunction with Article 16 of the Law on International Cooperation in Criminal Matters (LICCM). The LICCM has been in force since 6 April 2021. In addition, Articles 39 and 40 of the Criminal Procedure Code and Article 31 of the Law on Public Prosecution of North Macedonia also have to be taken into consideration.

Practical experience

- So far, North Macedonia has been involved in **two JITs** as a member. Both JITs were set up on the basis of the Second Additional Protocol to the CoE 1959 MLA Convention; however, only one of them was supported by Eurojust.

Signature process and set-up procedure

- The **Prosecutor General** is authorised to sign a JIT agreement.

Specificities to take into account

- North Macedonia can be a member of a JIT relating to any criminal case, regardless of the stage of the proceedings (pre-investigative or investigation).
- A JIT can be set up for the investigation and prosecution of robust and complex criminal cases aiming to reveal, investigate and prosecute criminal offences that require cooperation with other countries and other actions that involve significant resources or harmonised and coordinated joint actions of competent bodies from one or several countries.
- JIT agreements shall be concluded in Macedonian.

- According to North Macedonian legislation, JIT members are determined by the competent investigative authority that requested the setting up of the JIT.
- **Role of the North Macedonian Liaison Prosecutors at Eurojust.** The North Macedonian Liaison Prosecutor seconded to Eurojust has the same powers as a public prosecutor working in North Macedonia.

5. Norway

Legal basis for JITs with the involvement of Norway

- The main instrument is the agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 protocol thereto;
- In principle, other legal instruments, such as the **Second Additional Protocol** to the CoE 1959 MLA Convention and applicable UN Conventions, can also be used as a legal basis for setting up a JIT.
- There is no specific national legislation on JITs in Norway; the only implementing norm refers to the activities of seconded members (Article 20a of the Police Act).

Practical experience

- By 31 December 2021, Norway had been involved in 26 JITs as a member.

Signature process and set-up procedure

- Public prosecutors (i.e. prosecutors working at district level or in the office of the Director of the Public Prosecution Service) in charge of investigations have the authority to decide on setting up a JIT. No specific authorisation mechanism is in place.
- In urgent cases, the Norwegian Liaison Prosecutor at Eurojust is authorised to sign a JIT agreement.

Specificities to take into account

- Norway can be a member of a JIT if there is an **ongoing investigation** in Norway.
- **No formal MLA** is required to set up a JIT.
- Norway can conclude a JIT agreement in English.
- **Seconded members** can participate in investigative measures in Norway, but they cannot carry out coercive measures on their own. Foreign police officers can be granted powers similar to Norwegian police officers on a case-by-case basis and therefore can carry out the same coercive measures as Norwegian police officers (mostly in cases involving joint action).
- Written witness statements received from other JIT partners may have to be repeated, either by the witness testifying before the Norwegian court or by the testimony being re-taken by a Norwegian officer in the presence of the defence lawyer.

- In Norway, there are specific rules related to the hearing of minors: as hearings at the pre-trial stage are recorded, minors do not need to attend court proceedings.
- **Role of the Norwegian Liaison Prosecutor at Eurojust.** The Norwegian Liaison Prosecutor is employed as a public prosecutor in the Norwegian Prosecution Service parallel to the secondment to Eurojust. Formally, he or she has the same powers as a public prosecutor working in Norway, but for practical reasons those powers are to be used only with the agreement of the public prosecutor in charge of the Norwegian investigation.

  The Liaison Prosecutor at Eurojust acts as a central contact point for setting up JITs with the involvement of Norway. The supportive role of the Liaison Prosecutor is usually specified in the annex to the JIT agreement.

6. Serbia

Legal basis for JITs with the involvement of Serbia

- Serbia has ratified the **Second Additional Protocol** to the CoE 1959 MLA Convention (in force since 1 August 2007).
- Other legal instruments, such as UNTOC, UNCAC or the UN Convention against Drugs, can also be used as a legal basis for setting up a JIT.
- Furthermore, Serbia has bilateral agreements with Bosnia and Herzegovina, North Macedonia, Montenegro and Slovenia.
- The relevant **domestic legislation** on the setting up of a JIT is Article 83(1) of the Serbian Law on Mutual Legal Assistance in Criminal Matters.

Practical experience

- By 31 December 2021, Serbia had been involved in **10 JITs** as a member. All the JITs were set up on the basis of the Second Additional Protocol to the CoE 1959 MLA Convention.

Signature process and set-up procedure

- A request for the setting up of a JIT, along with a draft JIT agreement, has to be submitted to the Serbian Ministry of Justice. The Serbian Minister for Justice is the authorising authority who signs a JIT agreement.

Specificities to take into account

- Serbian law does not contain specific provisions determining the stage of criminal investigation at which a JIT needs to be set up or the offences concerned.
- Serbia requires a formal LoR for the setting up of a JIT.
- From the Serbian side, the following authorities can act as JIT members:
  - Competent authorities to act as **JIT leaders** are the relevant prosecutors' offices. So far, the Prosecutor's Office for Organised Crime of the Republic of Serbia has been involved in JITs.

- Competent authorities to act as **JIT members** are competent prosecutors' offices and competent bodies of the Ministry of the Interior, depending on the specific case.

- **Role of seconded members.** Rules on the participation of seconded members in investigative measures carried out in Serbia are not explicitly set out in Serbian law, but the provisions of Article 20 of the Second Additional Protocol to the CoE 1959 MLA Convention apply. In JIT agreements concluded so far, the situation has usually been as follows: the JIT members can participate in all investigative action in the countries involved and can travel to the other countries by prior arrangement between the JIT leaders. Any covert deployment of operatives in a state requires prior approval from the state where the covert deployment is to take place.
- **Disclosure of confidential information.** According to Serbian law, information and evidence gathered on behalf of or by the JIT must not be passed to any third parties, including third countries, without the written consent of all JIT leaders.
- Serbia can conclude a JIT agreement in Serbian, with a translated version in the language of the other party.
- **Role of the Serbian Liaison Prosecutor at Eurojust.** The Serbian Liaison Prosecutor at Eurojust provides support to representatives of national authorities in relation to the formation and running of JITs, from the stage of drafting the JIT agreement. He or she provides legal and practical support during the functioning of the JIT, for example in relation to coordination meetings and exchange of evidence.

7. Switzerland

Legal basis for JITs with the involvement of Switzerland

- Switzerland has ratified the **Second Additional Protocol** to the CoE 1959 MLA Convention, which includes provisions on JITs (applicable since 1 February 2005).
- Switzerland has also negotiated and implemented **bilateral instruments** containing provisions on certain aspects of JITs, namely an agreement with Italy supplementing the CoE 1959 MLA Convention and a specific agreement on the setting up of JITs with the United States.
- It is not possible for Switzerland to set up a JIT based on UN Conventions, such as UNTOC or UNCAC. The provisions on JITs in those Conventions are considered not sufficiently clear to be directly applied ('non-self-executing').
- **In the national legislation**, the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) contains provisions on setting up JITs for investigations related to organised crime, terrorism or crimes presenting a serious and immediate danger (Article 80d^{ter} read in conjunction with Article 80d^{bis} IMAC). This legal basis enables Switzerland to set up JITs in those matters even in the absence of a treaty or a convention that acts as such. The legal framework for the setting up of JITs, the conditions to be met and several aspects related to the execution of JITs are regulated by Article 80d^{ter} to Article 80d^{duodecies} IMAC. Article 80d^{bis}, paragraph 4a, IMAC allows information and evidence transmitted through a JIT **to be used for investigation purposes only, not during the judgment phase** (see further details below).

Practical experience

- By 31 December 2021, Switzerland had been involved in 30 JITs as a member. All the JITs were set up on the basis of the Second Additional Protocol to the CoE 1959 MLA Convention.

Signature process and set-up procedure

- At cantonal or federal level, the prosecutor in charge of the domestic investigation or responsible for the execution of a request for mutual assistance is competent to negotiate the setting up of a JIT agreement. Internal rules determine the person responsible for signing it (usually the Prosecutor General or the case prosecutor).

Specificities to take into account

- An ongoing investigation in Switzerland is not required for the setting up of a JIT.
- Swiss law requires a **prior request for mutual assistance** from the judicial authorities of each JIT party in order to set up a JIT (Article 80d^{ter}, paragraph 3, IMAC).
- General provisions on MLA apply, namely the requirement for dual criminality and the grounds for refusal of MLA (e. g. political, military and tax offences).
- The JIT agreement has to be translated into an official language of Switzerland (French, German or Italian), depending on the language of the Swiss authority participating in the JIT.
- **Use of information and evidence gathered in Switzerland is restricted to investigation purposes**

  As a principle governing MLA in Switzerland, information and evidence shall not be handed over to the requesting foreign authority until the final ruling in the MLA proceeding, including any judgment on appeal, has become legally binding. During an MLA proceeding, the persons affected by the MLA have the rights to access the files, to raise objections against the transmission of evidence and to appeal. They shall therefore be notified of the MLA request.

  The early transmission of information and evidence before the conclusion of mutual assistance is considered a temporary exception, since the notification and involvement of the persons affected are deferred, usually until the end of the JIT. This exception is subject to certain conditions under law. In particular, the requesting authority has to provide Switzerland with an undertaking that 'the information or evidence will only be used to assist with investigations, and under no circumstances for the purpose of requesting, justifying or issuing a final decision' (Article 80d^{bis}, paragraph 4a, IMAC).

  Due to this particularity of the legislation, **JIT agreements with Switzerland shall include a specific clause** (see the box below) related to the use of information and evidence gathered on Swiss territory, which is restricted to investigative purposes.

  According to the Criminal Procedure Code, the term 'investigations' includes all acts and measures taken by the police and prosecutors until the formal conclusion of the pre-trial phase, namely through indictment before court or the issuing of a summary penalty order. This pre-trial stage is concluded by decision of the prosecutor, who brings the charge and makes the proceeding pending before the court. **Information and evidence gathered in Switzerland and gained through a JIT may therefore be used for any investigative purposes until the point where charges are brought before court for judgment**. Up to this point, information and evidence can

be used by law enforcement and prosecution authorities and, if necessary, also be presented to a judge or a court to request or justify compulsory measures.

> **Compulsory clause in a JIT agreement with Switzerland**
>
> Evidence and information gathered on Swiss territory in the context of the current JIT may be used exclusively in the ongoing criminal investigations carried in country X and detailed in point 2 of this Agreement. Furthermore, they may be used by the country X authorities under the JIT exclusively as information to progress the country X investigation, but not as evidence to request, motivate or render a final decision on guilt or sanction at the trial stage or by the ruling authority.
>
> If any evidence or information gathered on Swiss territory is required to be used at the trial stage or by the ruling authority in country X, a formal request for mutual legal assistance must be addressed to the competent authority in Switzerland. **As long as the corresponding Swiss procedure for mutual legal assistance in criminal matters is not completed and legally binding (i.e until the expiry of the remedies), and the evidence and information are not officially transmitted by the competent Swiss authority according to Swiss legislation, relevant material gathered in Switzerland cannot be used in country X as evidence at the trial stage or by the ruling authority.** If the mutual legal assistance is not granted, evidence or information gathered on Swiss territory within the framework of the current JIT shall be removed from the case file of the foreign procedure.

- **Confidentiality and JIT agreement disclosure.** According to Swiss legislation, the JIT agreement shall be a part of the case file, whether there is a domestic investigation or only an MLA request. The JIT agreement is therefore likely to be disclosed to the parties involved in the proceedings.
- **Requirement for a second request for mutual assistance to Switzerland seeking the formal transmission of the relevant evidence**

  To allow the use of information and evidence gathered in Switzerland and exchanged in the framework of the JIT **as evidence in trial before court**, those elements **shall be formally requested beforehand** through a (second) LoR to Switzerland. As described above, the standard MLA procedure has to be followed, especially because of the compulsory **notification of the affected persons**, and fully completed before the formal transmission of the evidence to the requesting authority.

  It should be noted that the duration of such MLA proceedings, including a possible ruling on appeal, can be up to 6 to 12 months.
- **Specialty principle.** Information and evidence handed over to the requesting state for investigation during the JIT phase or in the execution of an MLA request **shall not be shared with a third state** or party without prior authorisation by the Swiss authorities. Furthermore, they may not be used either in investigations or as evidence in the prosecution of acts for which mutual assistance shall not be granted by Switzerland (e.g. political, military or tax offences).
- **Role of the Swiss Liaison Prosecutor at Eurojust.** The Swiss Liaison Prosecutor provides support in the identification of the relevant authority in Switzerland and in the process of setting up a JIT.

8. Ukraine

Legal basis for JITs with the involvement of Ukraine

- Ukraine has ratified the **Second Additional Protocol** to the CoE 1959 MLA Convention (in force since 1 January 2012). The relevant provision on JITs is implemented in Ukraine through Article 571 of the Criminal Procedure Code.
- Ukraine has made a **declaration** that, in accordance with Article 20 of the Second Additional Protocol to the CoE 1959 MLA Convention, the authority in Ukraine that decides on setting up a JIT is the **Prosecutor General's Office**.
- In principle, other legal instruments, such as UNTOC or UNCAC, can be used as a legal basis for setting up a JIT. However, to date this has not yet taken place.

Practical experience

- By 31 December 2021, Ukraine had been involved in **22 JITs** as a member. All the JITs were set up on the basis of the Second Additional Protocol to the CoE 1959 MLA Convention.

Signature process and set-up procedure

- In accordance with Ukrainian law, the **Prosecutor General's Office** has authority to decide on setting up a JIT; the established practice is that the **Prosecutor General signs the JIT agreement**.

Specificities to take into account

- Ukraine can be a member of a JIT only if there is an **ongoing investigation** in Ukraine.
- Ukraine can be a member of a JIT only **in the pre-trial stage**. Thus, once the indictment is sent to court and the judge takes over, Ukraine can no longer be a member of the JIT.
- This makes it important to consider at the drafting stage how the **purpose of the JIT** is referred to in the agreement, **in particular with regard to the use of terms such as 'for investigation' and 'for prosecution'**. For Ukraine, the difference between 'for investigation' and 'for prosecution' is crucial, because, as mentioned above, it can be party to a JIT only in the pre-trial phase of the investigation.
- From the Ukrainian side, the following authorities can act as JIT members: prosecutors, investigators and members of the intelligence services (who have no investigative powers but may be in possession of relevant information).
- For the set-up process, it is crucial that the relevant competent authority in Ukraine is identified ([16]). The Liaison Prosecutor for Ukraine at Eurojust is available to assist in the **identification of the Ukrainian authority in charge**.
- Ukraine requires a **formal LoR** for the setting up of a JIT to be sent to the Prosecutor General's Office. The LoR should contain in addition to the information referred to in the relevant provisions of Article 14 of the CoE 1959 MLA Convention, a proposal for the composition of the team.

([16]) Ukraine has various authorities with investigative powers, which have partly overlapping competences (besides the Prosecutor General's Office): the National Police, the Bureau of Economic Security, the Security Service, the State Bureau of Investigation and the National Anti-Corruption Bureau.

- **Role of seconded members.** In accordance with Ukrainian law, the competent authorities of other JIT parties can be present while investigative measures are being conducted on Ukrainian territory but cannot actively take part in them.

9. United Kingdom

Legal basis for JITs with the involvement of the United Kingdom

Section 88(7) of the Police Act 1996, and its corresponding statutory instruments, specifies the legal bases for the United Kingdom's participation in JITs as follows:

- Second Additional Protocol to the CoE 1959 MLA Convention
- UN Convention against Drugs (1988)
- UNTOC (2000)
- UNCAC (2003).

There must be a common legal basis for setting up a JIT; the United Kingdom will therefore enter into a JIT only on a legal basis that applies to all participating countries.

In practice, the majority of UK JITs are based on the Second Additional Protocol to the CoE 1959 MLA Convention.

In addition, it should be noted that, according to the EU–UK Trade and Cooperation Agreement, in the case of multilateral JITs involving EU Member States and the United Kingdom, the relationship between the EU Member States within the JIT will be governed by EU law, notwithstanding the legal basis referred to in the JIT agreement.

Practical experience

- Matters such as the competent authority to authorise the setting up of a JIT or who can act as a JIT leader or JIT member are not specified in law.
- In practice, UK law enforcement and the UK prosecution authorities act as JIT members.
- As far as JIT leaders are concerned, these are likely to be representatives of UK law enforcement, as they are responsible for the conduct of investigations.
- UK law does not require a prior LoR in order to set up a JIT. The UK authority will issue an LoR when required by another state.

Signature process and set-up procedure

- How these are to be conducted is not specified in law. In practice, UK law enforcement and/or the UK prosecution authorities sign the JIT agreement.

Specificities to take into account

- As far as exchange and sharing of evidence and information is concerned, this matter should be discussed and agreed for each individual JIT by the JIT parties and leaders. UK law does not require a set formula to be followed.
- **Admissibility of evidence in the JIT.** In principle, the law relating to admissibility of evidence is the same regardless of whether the evidence is from another jurisdiction or obtained within the United

Kingdom. The law is complex. If admissibility is disputed, the court will consider a range of factors, including (but not exclusively) UK legislation and precedent, applicable international instruments, whether or not the evidence was obtained in the other state in accordance with the law and procedures of that state, and whether or not any 'bad faith' was present in the obtaining of the evidence.

- **Participation of seconded members to investigative measures.** This should be discussed and agreed for each individual JIT by the JIT parties and leaders. UK law does not require a set formula to be followed.
- **Confidentiality and disclosure**

The following text is included as an annex to UK JIT agreements.

General principles

In the United Kingdom the investigating agency conducting the investigation gathers material. 'Material' is widely defined in the relevant statute, the Criminal Procedure and Investigations Act 1996 (CPIA), and includes witness statements, messages, notes, photographs, computer printouts, exhibits and other chattels.

The investigating agency must assess what material may be relevant to the investigation.

Material which may be relevant to the investigation is defined in a Code of Practice as anything that appears to an investigator, or the officer in charge of an investigation, or the disclosure officer, to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances unless it is incapable of having any impact on the case.

Material is of obvious relevance if it undermines the prosecution case against the defendant, and/or assists the defendant's case.

CPIA regulates the disclosure regime of unused material in England and Wales, and provides that for investigations starting on or after 4 April 2005 the Prosecutor must:

(a) disclose to the accused any prosecution material which has not been previously disclosed to the accused, and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused; or
(b) give to the accused a written statement that there is no material of the description mentioned in paragraph (a).

'Unused material' is relevant material that is not used as evidence in criminal proceedings.

It is the duty of all investigators to ensure that all information relevant to the investigations is recorded and retained. Where there is any doubt about the relevance of the material it should be retained.

At the heart of every investigation is the obligation to pursue all reasonable lines of enquiry whether these point towards or away from the guilt of the suspect.

When a defendant is sent to the Crown Court, the appointed Disclosure Officer prepares two schedules listing the unused material: one for non-sensitive material, which is given to the defence, and one for sensitive material that is not. The Disclosure Officer is also required to certify to the prosecutor that:

'To the best of my knowledge and belief, all relevant material which has been retained and made available to me has been inspected, viewed or listened to and revealed to the prosecutor in accordance with the Criminal Procedure and Investigations Act 1996 as amended, the Code of Practice and the Attorney General's Guidelines.'

The Prosecutor must consider each of the schedules and decide whether any item undermines the prosecution case or may assist the defence case. If an item meets this test then it is disclosed to the defence. If there is a sensitive item that meets the test and should be disclosed there is a procedure whereby the prosecution can ask a judge to withhold the disclosure of the material (e.g. informants, covert techniques, premises used for surveillance etc.).

The defence must serve a Defence Case Statement after the prosecution has complied with its duty of disclosure. The Disclosure Officer and prosecutor must then re-consider the material, in the light of this statement, to ascertain whether there is any further material to be disclosed.

The defence can make an application to the Court for disclosure where they have reasonable cause to believe that there is prosecution material that should be disclosed.

JIT disclosure

A JIT operating in the United Kingdom with a view to proceedings there, or where such proceedings are reasonably contemplated, should handle unused material in the same way as any other investigation in the relevant part of the United Kingdom. All relevant material in the possession of the United Kingdom team, whether obtained in the United Kingdom, or received from a partner Member State party to the agreement, or from another state, will be scheduled and considered by the United Kingdom Disclosure Officer and Prosecutor.

In the United Kingdom, the Crown, which includes both the relevant prosecuting and investigating agencies, is under an obligation to take reasonable steps to obtain relevant material, including when this material is held outside the United Kingdom.

United Kingdom seconded JIT members, i.e. working pursuant to the agreement in another Member State party to the agreement, must keep a written record relating to access given to them to relevant material in that partner Member State. If they are not permitted to take away, copy or take notes on any material that may be relevant, they nonetheless remain under an obligation to the United Kingdom court to record the extent to which access to the material was given to them by the other Member State's authorities, including reasons given to them for the refusal to allow them to take away, copy or take notes on the said material.

- **United Kingdom: interception of telecommunications**

The following text is included as an annex to UK JIT agreements.

General principles

In England and Wales the interception of communication in the course of its transmission by means of a telecommunications system is strictly regulated by statute to ensure that its use is proportionate to the activity against which it is deployed and in circumstances when the information required cannot reasonably be obtained by other means. The principal legislation regulating the interception of communications is the Investigatory Powers Act 2016 (IPA). In England and Wales law enforcement and intelligence agencies can only intercept communications

such as email or telephone conversations if they have a warrant authorised personally by the Secretary of State.

The Secretary of State will only approve an interception warrant if it is necessary:

(a) in the interests of national security;

(b) for the purposes of preventing or detecting serious crime;

(c) for the purpose of safeguarding the economic well-being of the United Kingdom; or

(d) for the purpose of any international mutual legal assistance agreement.

Generally, United Kingdom law does not allow any information obtained through interception to be used as evidence. Instead the intelligence services, the police and other law enforcement agencies use intercepted information as intelligence to help them disrupt and prevent serious criminal and terrorist acts. They also use interception to determine which investigation and surveillance techniques they should use to obtain evidence that they can use in court.

Section 56 of IPA prohibits the use of intercept product as evidence, and stipulates that nothing can be adduced in evidence, or disclosed, which would tend to suggest that there has been a warranted interception.

In exceptional circumstances, where it is essential in the interests of justice, disclosure may be made to the trial judge. This will arise where the Prosecutor considers that he requires the assistance of a trial judge to ensure the fairness of proceedings, or he is in doubt as to whether the result of taking steps that are available to him or her to secure the fairness of the proceedings will in fact ensure fairness.

Foreign intercept material

The House of Lords has ruled in *R.* v. *P. and others* ((2001) 2 WLR 463) that, where telephone conversations have been lawfully monitored in another country by the relevant authorities of that country, recordings of those conversations are admissible in evidence in a trial in the United Kingdom. Where the United Kingdom obtains such foreign intercept material, the material is assessed for the purposes of disclosure.

Following *R.* v. *P.*, the product of intercepted telecommunications obtained in another Member State that is party to the JIT may be used evidentially in the United Kingdom.

UK intercept material

Material from intercepted telecommunications obtained in the United Kingdom cannot be used for evidential purposes in proceedings either in the United Kingdom or in any other state. No reciprocity is therefore possible.

10. United States of America

Legal framework for JITs with the involvement of the United States

- Article 5 of the Agreement on Mutual Legal Assistance between the United States of America and the European Union provides a legal framework for the United States and EU Member States to engage in JITs. Bilateral instruments between the United States and certain EU Member States also contain provisions on JITs.

> JITs should be distinguished from routine international cooperation between the United States and EU Member States. A JIT, as referenced herein, generally refers to an entity that has a defined composition, a specified duration, a contemplated organizational structure, an articulated function, and an overall purpose.

Particularities to take into account

- **Flexible approach.** The United States considers whether to participate in a JIT, and the terms of any such participation, on a case-by-case basis.
- In evaluating whether to participate in a JIT, the United States considers, among other factors, whether the objectives could be accomplished through alternative means, including through other law-enforcement-to-law-enforcement channels and MLA requests. Given that the United States and EU Member States often collaborate effectively through such alternate channels, and given that such working arrangements can have the benefit of being able to be more rapidly implemented and more flexible in nature, in many cases the United States will prefer to proceed on the basis of existing working arrangements, rather than entering into a JIT.
- The terms and conditions under which the United States may participate in a JIT may vary significantly from the terms and conditions agreed upon between EU Member States, due to differences between the US and EU Member States' legal systems. In preparing a JIT agreement, the drafters should consider the extent of detail required. In general, a more streamlined text than that used between EU Member States will provide the necessary flexibility while still allowing for a sufficient degree of precision in relation to foreseeable circumstances, and supplementary provisions can be agreed upon should circumstances make greater precision necessary.
- Inquiries regarding US participation in a JIT should be directed to the US Department of Justice, Criminal Division, Office of International Affairs. In matters that involve Eurojust, such inquiries can be submitted through the US Liaison Prosecutor. The composition, duration, location, organisation, functioning and other aspects of the JIT will be negotiated with input from the US team that is working on the investigation, including prosecutors and law enforcement officials representing the US investigative agency concerned.

Annex III – Statistics

a. JITs with third country involvement

During the period from 1 January 2012 to 31 December 2021, Eurojust supported **143 JITs involving a third country** as a member (Figure 1). In the first 5 years (2012–2016), around 8 % of the JITs supported by Eurojust involved at least one third country. Comparing this figure with the following 5-year period (2017–2021), in which 28 % of the JITs supported by Eurojust involve at least one third country, a sharp increase can be observed.

The statistics are based on data from Eurojust's Case Management System and information provided by the JITs Network Secretariat (in particular in connection to JIT funding requests). Due to the ongoing nature of JITs, the figures may change after the reporting date.

It is important to note that JITs that were set up between Member States and third countries without Eurojust involvement are not reflected in the statistics provided here.

Figure 1: Total numbers of JITs set up and supported by Eurojust and numbers of those with third country involvement, 2012–2021

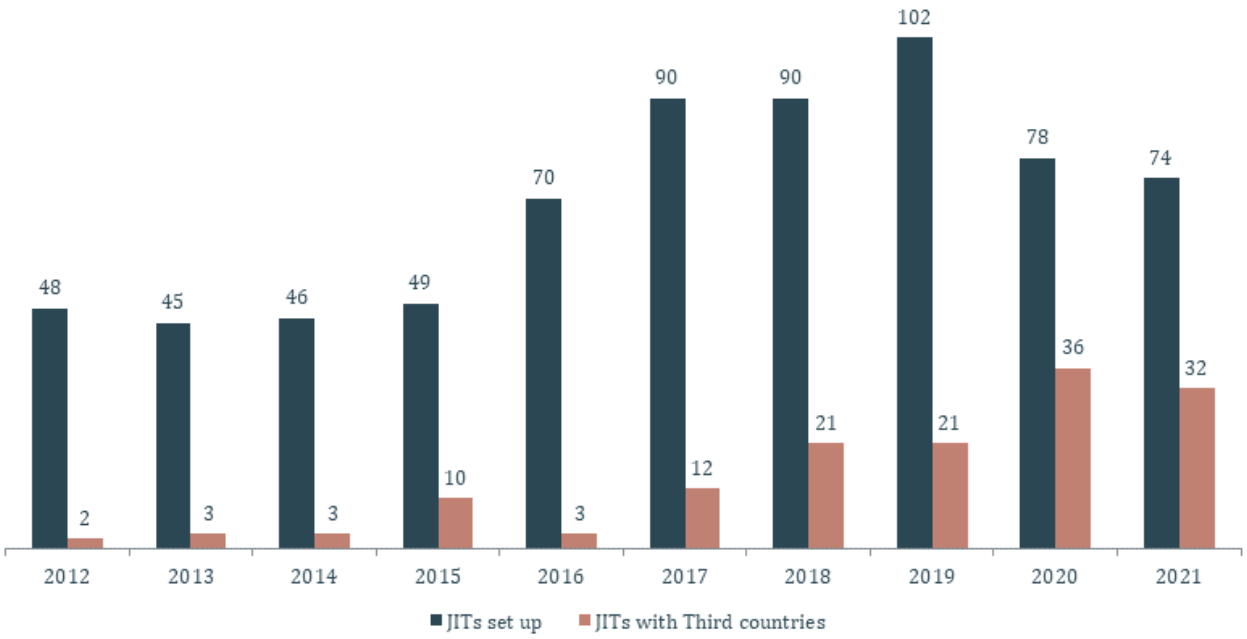
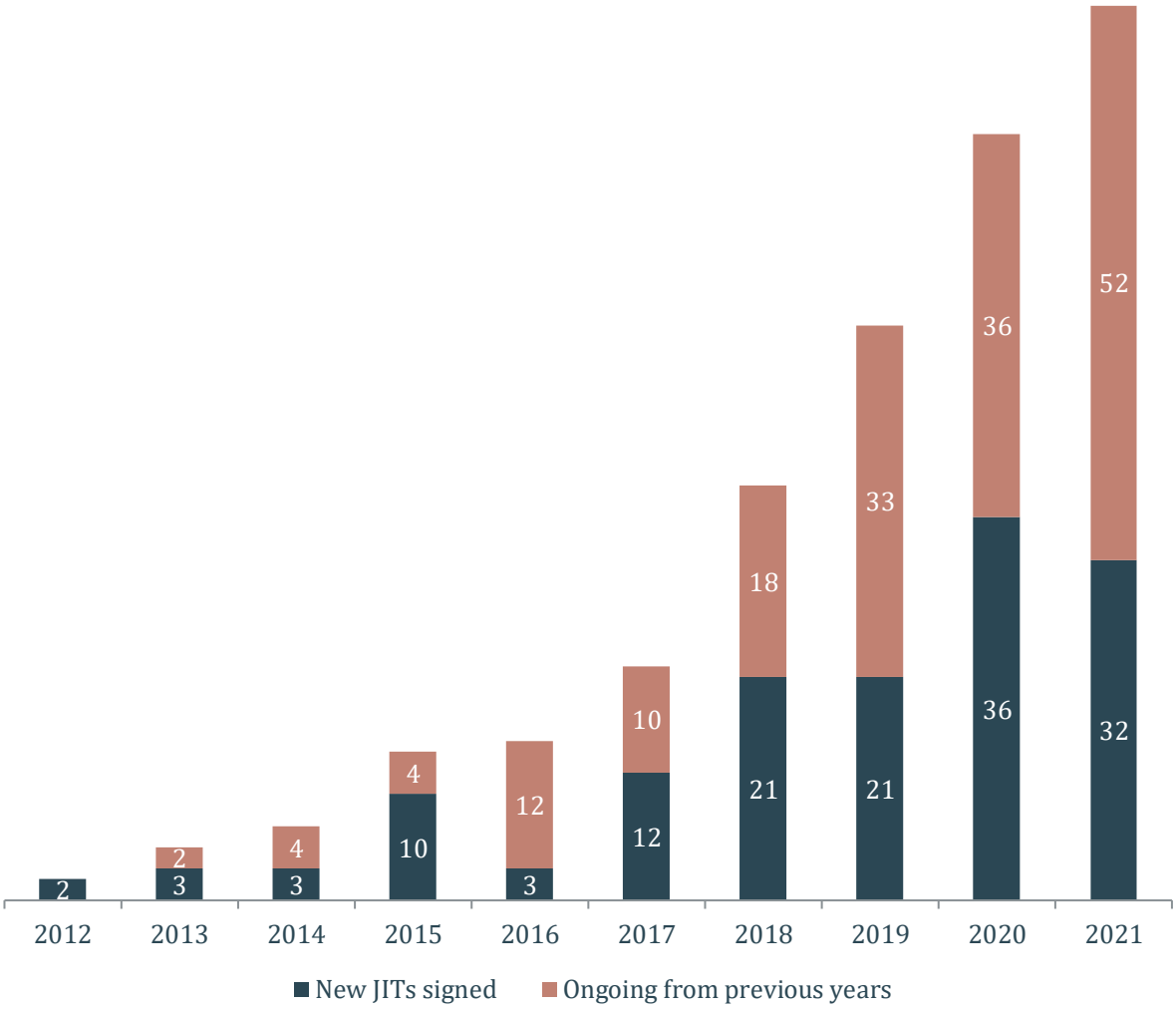


Figure 2: Newly set up JITs with third country involvement and those ongoing from previous years, 2012–2021

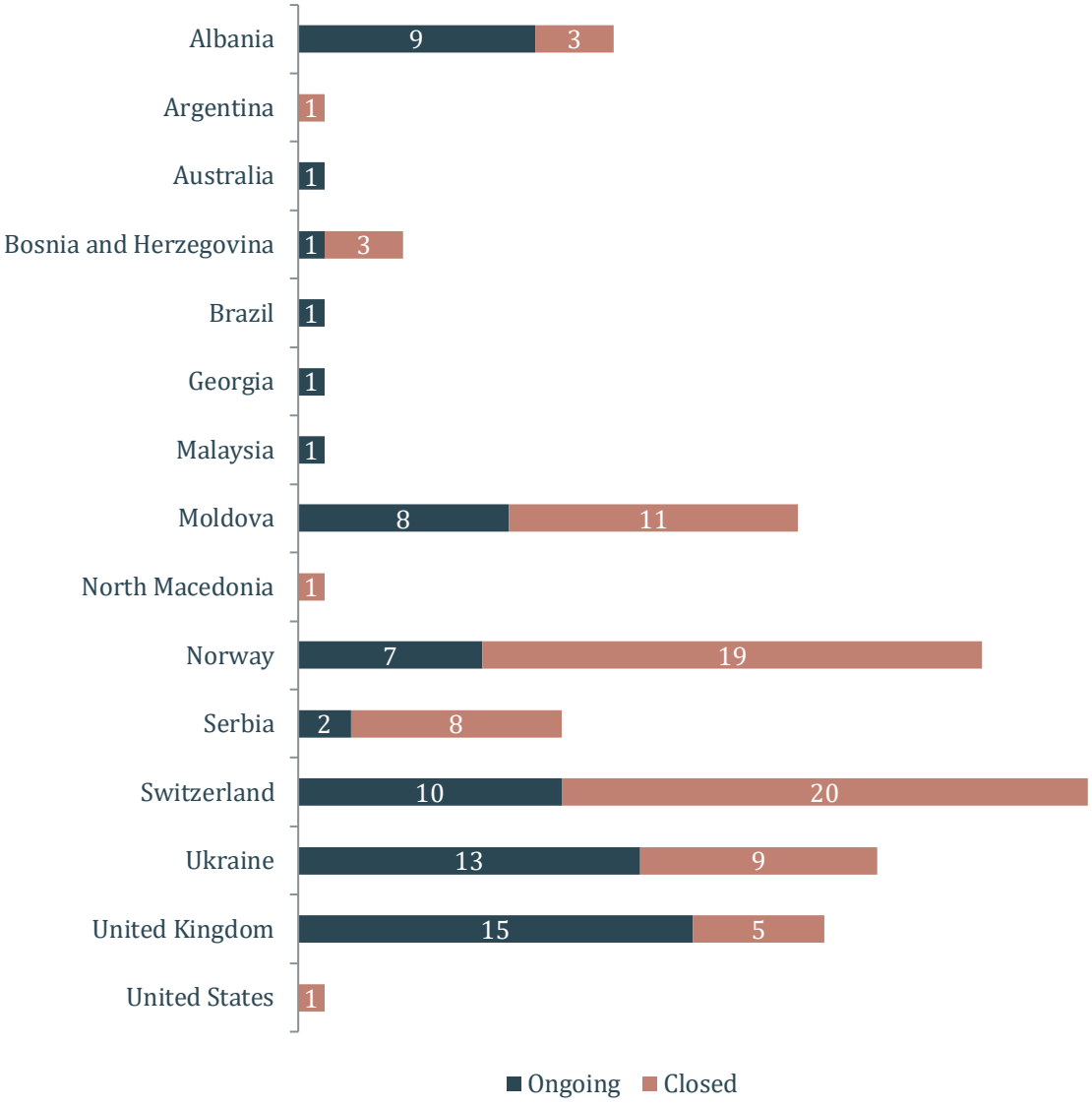


b. Third countries involved in JITs

A total of 15 third countries were involved in the 143 JITs. Switzerland is the country involved in the most JITs, followed by Norway and Ukraine (Figure 3).

The figures for the United Kingdom reflect the JIT agreements it has signed as a third country (since 1 January 2021). Figure 3 clearly indicates the continued strong need for and significant use of the JIT tool in cooperation between EU Member States and the United Kingdom.

Figure 3: Third countries involved in JITs and status of the JITs, 2012-2021 (except United Kingdom, with figures for 2021 only)



Annex IV – Checklist for practitioners

Set-up phase	
Legal basis	✓ International agreements (*check for ratification status*): 2000 EU MLA Convention Second Additional Protocol COE 1959 UNTOC UN Convention against Drugs UNCAC ✓ Bilateral agreements ✓ National legislation ✓ Principle of reciprocity ✓ Second Additional Protocol to the Budapest Convention NB: This is a non-exhaustive list
Assessment of suitability for setting up a JIT	✓ Existence and stage of investigations in the countries involved ✓ Number of potential JIT partners ✓ Urgency of action ✓ Estimated time frame for finalising the JIT agreement ✓ Available resources in the countries involved
Identification of key partners	✓ Involvement of Eurojust to facilitate the process (through Liaison Prosecutors posted at Eurojust or Eurojust contact points in third countries) ✓ Involvement of Liaison Magistrates posted in third countries
Drafting of JIT agreement	✓ Consider using the JIT model agreement ✓ Best practice to negotiate in a common working language ✓ Consider specific clauses on – Exchanges of information/evidence – Confidentiality – Data protection – Liability – Human rights issues
Eurojust support	✓ Presence of Liaison Prosecutors at Eurojust ✓ Get in touch with Eurojust contact points ✓ Organisation of coordination meetings at Eurojust: – The general rule is that travel and accommodation of two participants per country are reimbursed – Ensure adequate preparation time for face-to-face meetings – Take into account possible visa requirements

	✓ Identification of suitable cases for a JIT, clarification of legal/formal requirements, drafting of the JIT agreement
Operational phase	
Contact between JIT members	✓ Appointment of contact person (one JIT member per country) who is able to communicate in a common working language
Exchanges of information and/or evidence	✓ Handover of sensitive documents during operational/coordination meetings at Eurojust and/or via the countries' embassies ✓ Possible added value of maintaining overview lists of exchanged material
Clarification of practical and legal issues	✓ Dual criminality ✓ Transfer of proceedings ✓ Conflict of jurisdiction ✓ Extradition regime ✓ Guarantees needed from third countries that human rights will be respected ✓ Challenges posed by evidence based on plea bargaining ✓ Data protection and confidentiality requirements
Eurojust support	✓ JIT funding, including loan of secure IT equipment and purchase of low-value equipment ✓ Coordination meetings ✓ Coordination centres
Expiry of the JIT and JIT evaluation	
Extension of the JIT	✓ Ensure timely initiation of the extension procedure
Evaluation of the JIT	✓ JIT evaluation form ✓ JIT evaluation meeting (JIT funding available)
Settlement of jurisdiction	✓ Review of the scope of the various proceedings ✓ Extradition ✓ Transfer of proceedings
Eurojust support	✓ Assistance with the extension and evaluation of a JIT

Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, Netherlands
Phone: +31 70 412 5000 - E-mail: info@eurojust.europa.eu - Website: www.eurojust.europa.eu
Follow Eurojust on Twitter and LinkedIn @Eurojust

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