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COVER NOTE

From: General Secretariat of the Council
To: Delegations
Subject: First JIT Evaluation Report

Delegations will find attached the First Evaluation Report of the Network of National Experts on Joint Investigation Teams (JITs).



The Network of National Experts on Joint Investigation Teams

First JIT Evaluation Report

Evaluations received between:
April 2014 and October 2015

Disclaimer

The JIT evaluation report has been produced to provide information to practitioners (law enforcement and judicial authorities) and relevant stakeholders and is not intended for public dissemination. For any reference to this report for other purposes, please consult the JITs Network Secretariat.

Table of Contents

Main findings for practitioners	5
1. Background information	7
2. Scope and approach	7
3. Facts and Figures: quantitative analysis.	8
3.1. General Information on data analysed.....	8
3.1.1. Number and language of evaluation forms received.....	8
3.1.2. Period covered by the overview	8
3.1.3. Approach to evaluation.....	8
3.1.4. Means of transmission of the evaluations.....	9
3.1.5. Member States/non-EU States involved in the evaluated JITs.....	9
3.1.6. Date of establishment of evaluated JITs.....	10
3.1.7. Involvement of Eurojust and Europol	11
3.1.8. Crimes investigated by the evaluated JITs.....	11
3.1.9. Participants in the JIT	12
3.1.10. Involvement of other States via mutual legal assistance	12
3.2. Information related to the setting-up phase	13
3.2.1. Identification of the need for a JIT.....	13
3.2.2. (Pre-)Existence of parallel proceedings.....	13
3.2.3. Requirement of a letter of request for the setting-up of the JIT	13
3.2.4. Added value expected from the JIT	14
3.2.5. Duration of the JIT setting-up phase	14
3.2.6. Expertise received and use of supporting tools	14
3.2.7. Legal issues or practical challenges encountered during the setting up of the JIT.....	15
3.3. Information related to the operational phase.....	15
3.3.1. Duration of the operational phase	15
3.3.2. Use of other police and/or judicial cooperation instruments	16
3.3.3. Means of coordination of investigative measures in a JIT.....	16
3.3.4. Exchange of information and evidence	16
3.3.5. Eurojust/Europol support to the operational phase.....	17
3.3.6. Legal issues or practical challenges encountered during the operational phase of the JIT.....	17
3.3.7. Arrangements related to disclosure.....	17

3.3.8.	Approach to communication with media.....	18
3.3.9.	Participation of seconded members.....	18
3.3.10.	Arrangements related to jurisdiction	19
3.3.11.	The added value of the JIT to the investigation	19
3.3.12.	Best practices identified during the operational phase of the JIT.....	19
3.4.	Information related to the support provided by Eurojust and Europol	19
3.4.1.	Added value of Eurojust/Europol support.....	19
3.4.2.	Financial support provided by Eurojust/Europol/Commission	20
3.4.3.	Legal or practical challenges related to the financial support.....	20
3.4.4.	Added value of financial support received	20
3.5.	Information related to the follow-up to the JIT	20
3.5.1.	Number of JITs providing information about judicial follow-up.....	20
3.5.2.	Judicial outcome of the JIT.....	20
3.5.3.	Admissibility of evidence.....	21
4.	Qualitative analysis.....	21
4.1.	General trends.....	21
4.1.1.	In relation to the JIT evaluation process.....	21
4.1.2.	In relation to the use of JITs	22
4.2.	Findings related to the setting-up of the JIT	23
4.2.1.	General overview.....	23
4.2.2.	Challenges encountered and solutions found.....	25
4.2.3.	Best practices identified	25
4.3.	Findings related to the operational phase of the JIT	25
4.3.1.	General overview	25
4.3.3.	Best practices identified	28
4.4.	Findings related to Eurojust and Europol support.....	29
4.4.1.	Eurojust support.....	29
4.4.2.	Europol support.....	29
4.5.	Findings related to the follow-up to the JIT	30
4.6.	Recommendations received	30
ANNEX I.....		31
Acronyms and abbreviations		33

Main findings for practitioners

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

1. Setting-up of the JIT

➤ Challenges identified

- *identification of legal basis in case of involvement of a non-EU State*
- *different approaches to the level of detail to be included in the JIT agreement*
- *differences in procedural laws, particularly with regard to admissibility of evidence, disclosure of information and the powers of seconded members*
- *translation costs*

➤ Best practice

- *use of a common working language*
- *development of a checklist*
- *inclusion of liaison officers posted to Europol as JIT members to ensure coordination with Europol focal points*
- *inclusion of a clause allowing the sharing of information obtained via MLA with the other JIT parties*
- *inclusion of a clause foreseeing an evaluation meeting*
- *use to the full extent the potential of JITs in terms of information exchange to build up an effective investigative strategy*
- *in relation to non-EU States, use of the JIT as a “catalyst” to initiate domestic proceedings, in the absence of extradition of nationals*

2. Operational phase of the JIT

➤ Challenges identified

- *data security : insufficient availability of encrypted lines*
- *different timeframes of respective national proceedings (e.g. could lead to a premature closure of the JIT, although the need for cooperation still exists)*
- *Address admissibility requirements at the earliest possible stage*

➤ Best practice

- *use of Eurojust’s and Europol’s supporting tools: mobile offices, cross-match and analytical reports, coordination/operational centres, JIT meetings, coordination of prosecutions and funding, involvement of the Secretariat in JIT evaluation meetings*
- *secondment of JIT members during the action days, facilitated via Eurojust’s financial support*
- *in highly complex investigations, use of an overview/template to keep track of progress made in respective investigations*

- *coordinated approach between JIT partners to the cooperation with one or more countries outside of the JIT*

3. Recommendations from practitioners

- *need to consider jurisdictional issues at the earliest possible stage since these issues could have an impact on the operational phase (execution of European arrest warrants)*
- *need to ensure a sufficient allocation of human resources to a JIT case*
- *necessity of more thoroughly developing the financial aspects of the investigations within the JIT*
- *possibility to finance costs of non-EU States via Eurojust JITs funding (implemented since 2014)*
- *extension of the funding scheme to costs incurred after the closure of the JIT (implemented since January 2015)*
- *appointment of one JIT member or the JIT National Expert to deal with funding issues*
- *amendment to the standard clause on press communication to make it applicable to JIT participants*
- *Make information available on domestic admissibility requirements¹*

¹ Specific information on national legislation can be found in the *JITs restricted area*, a web platform to which practitioners may be granted access if they so wish. To request access, please address your JITs National Expert(s), or, should you not be able to identify him/her, contact the JITs Network Secretariat at jitsnetworksecretariat@eurojust.europa.eu.

1. Background information

As a follow-up to the 8th annual meeting of the National Experts on JITs (18 – 19 October 2012), the JITs Network Secretariat (hereinafter referred to as the ‘Secretariat’) supported the development of a form to assist practitioners in assessing the performance of JITs, including the results achieved, the legal issues and practical difficulties encountered. Following the adoption – during the 9th annual meeting of the National Experts on JITs (27 – 28 June 2013) – of a first version of the *JITs evaluation form*, an ‘interactive’ version was developed and made available in April 2014.

The objectives of the *JITs evaluation project* are the following:

- to enhance the use and functioning of JITs in the Member States;
- to create a ‘bank of knowledge’ on JITs through the systematic and centralised collection of evaluation data, accessible to the National Experts, Eurojust and Europol *via* the dedicated web-based platform (*JITs restricted area*); and
- to provide feedback on JITs to relevant actors and stakeholders.

This periodic report constitutes one of the deliverables of the *JITs evaluation project*.

The findings of the *JITs evaluation project* are expected to provide input for and contribute to the implementation of other projects of the JITs Network, particularly the project on national legislation on JITs (*Fiches espagnoles*).

In addition, the processing of completed evaluations will allow the functioning of the JITs evaluation form to be assessed and possible improvements to be considered, if needed.

To facilitate the processing of evaluation data, the project also includes the establishment within the Secretariat of a dedicated database, using the XML scheme linked to the JITs evaluation PDF form. Analysis of received applications will also contribute to the definition of the requirements of such database.

2. Scope and approach

The objective of the JIT evaluation report is to provide an overview of the content of the JIT evaluation forms received by the Secretariat over a certain period of time (for more details on the scope of the report in this respect, please refer to subsection 3.1 below).

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

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

should enhance knowledge of the functioning of JITs, particularly by identifying trends, challenges and issues related to the setting up and operation of JITs.

JIT evaluation forms will, in most cases, be filled in in two different moments in time: Sections 1-4 at the closure of the JIT and Section 5, dealing with the 'follow-up of JITs', at a later stage, after the last trial in the involved countries has ended. **Because of the difference in time and the fact that JIT evaluations may be partial (i.e. covering either the first four sections or Section 5), the two parts should be considered separately.**

3. Facts and figures: quantitative analysis

***Note:** in the charts presented in section 3, percentages are used to reflect the answers given to a question of the evaluation form that includes only one possible answer. In contrast, numbers are used to reflect the answers given to a question allowing multiple choices and should be then compared to the total number of evaluations received.*

3.1. General Information on data analysed

3.1.1. Number and language of evaluation forms received

By 31 October 2015, the Secretariat had received a total of **42** JIT evaluation forms, of which 39 contained information in relation to the follow-up of the JIT (Section 5 of the evaluation form); 38 forms were transmitted in English and 4 in German.

3.1.2. Period covered by the overview

The report covers evaluations received between April 2014 and October 2015².

3.1.3. Approach to evaluation³

The Secretariat received 28 evaluation forms filled in by one of the JIT parties. Two unilateral evaluations were carried out in relation to the same JIT: these two evaluations are reported together and counted as one. 14 JIT evaluations were prepared jointly by the parties to the JIT.

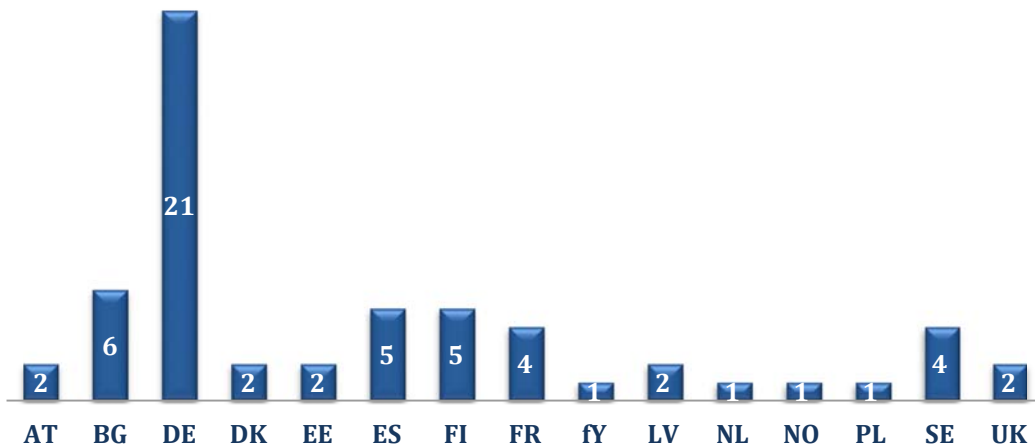
In addition, 6 JIT evaluations were directly supported by the Secretariat during dedicated meetings.

13 Member States and 2 non-EU States (FYROM and Norway) performed the evaluations (see overview below).

² The overview includes three evaluation forms filled in prior to this period as a part of the testing phase of the project.

³ See [Practical steps on JIT Evaluation](#), pt. 5. "How to Evaluate JITs".

States performing evaluations



3.1.4. Means of transmission of the evaluations

The channels of transmission of the evaluations are summarised in the chart

Means of transmission of the JIT evaluations

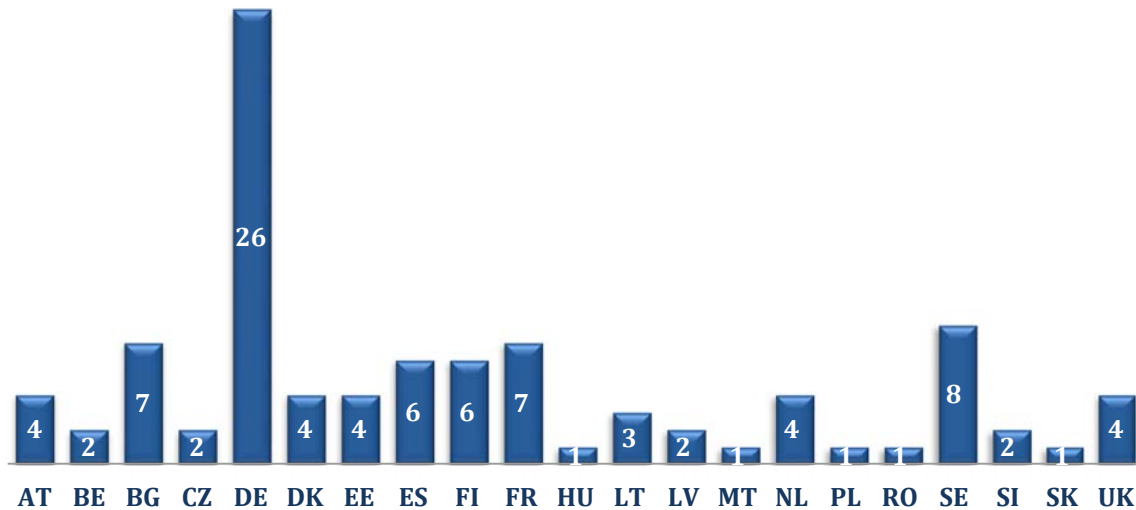


below:

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

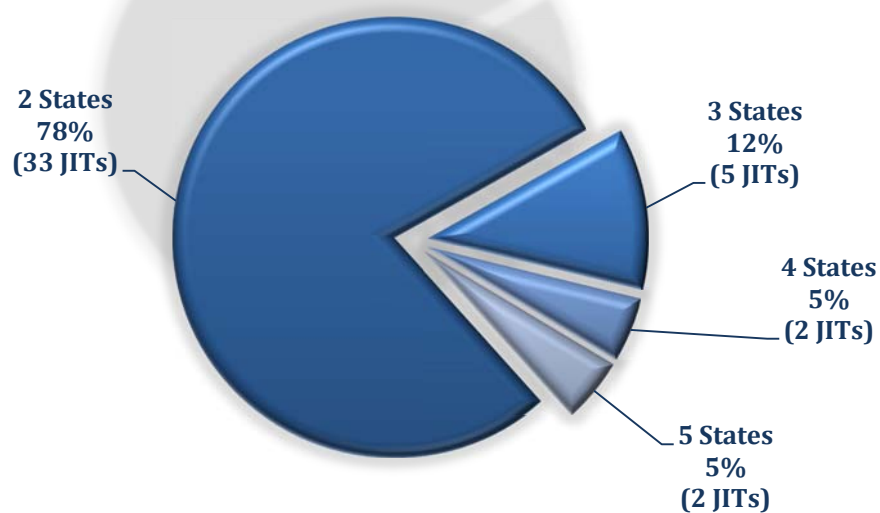
21 Member States, as well as 2 non-EU States (FYROM and Norway) were parties to the evaluated JITs (see the summary table below).

Member States involved in the evaluated JITs



Most of the analysed JITs were bilateral (33). For a more complete overview, including the JITs set up between more than two States, please consult the chart below:

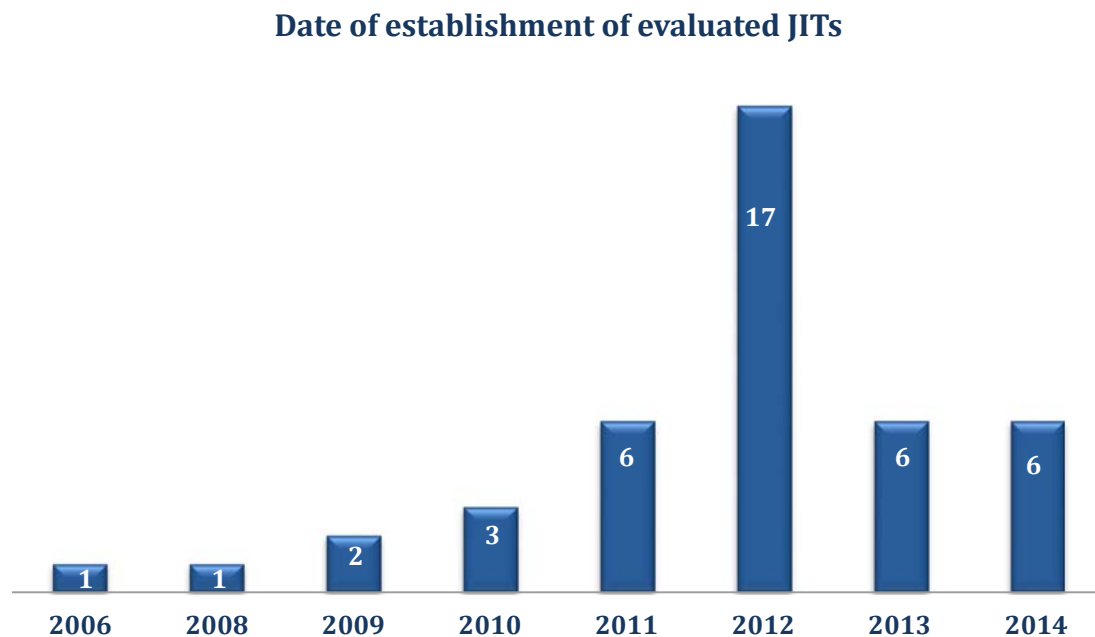
Number of States involved in the evaluated JITs



In terms of their geographical scope, 20 JITs were set up between neighbouring States, whereas the other 22 were set up between non-bordering States.

3.1.6. Date of establishment of evaluated JITs

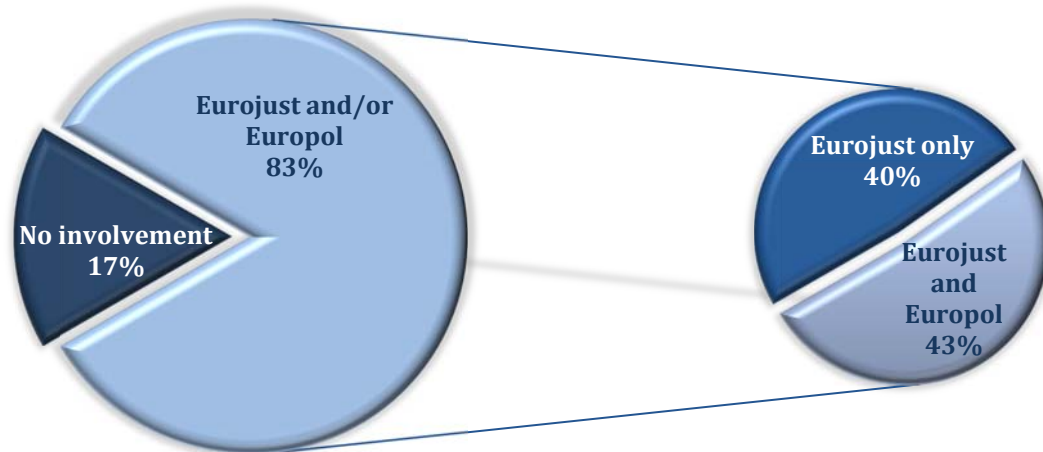
The JITs cover a rather long period, as they were set up between 2006 and 2014, according to the following breakdown:



3.1.7. Involvement of Eurojust and Europol

In 35 (out of 42) of the analysed cases, either Eurojust only or Eurojust and Europol together supported the case, with only seven cases in which neither agency was involved, as summarised in the chart below:

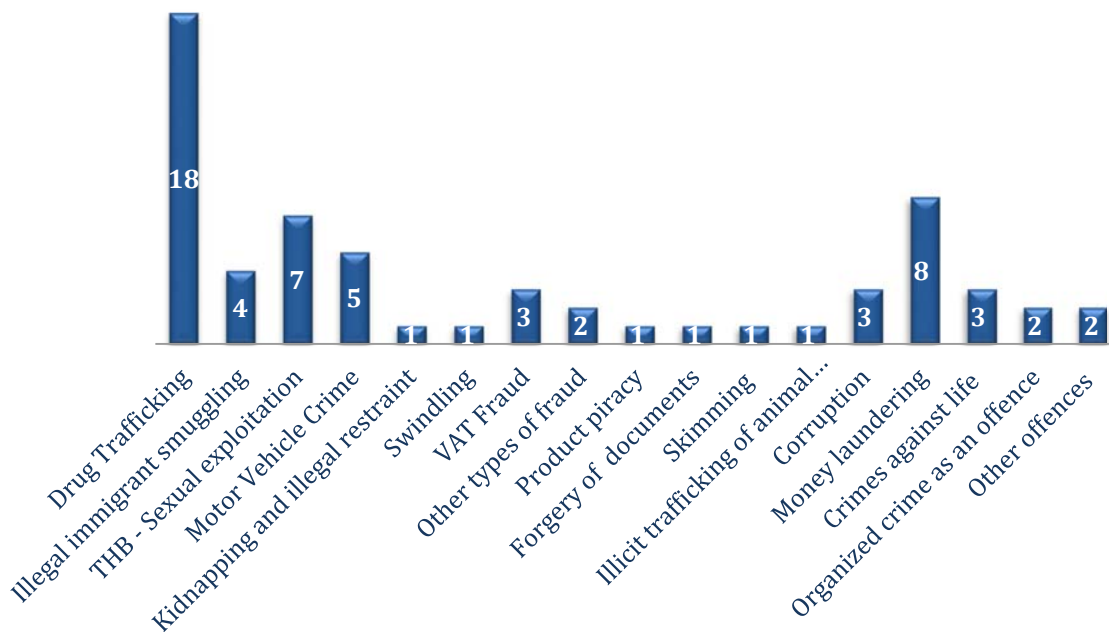
Involvement of Eurojust and Europol



3.1.8. Crimes investigated by the evaluated JITs

The crimes under investigation in the evaluated JITs are displayed in the overview below. In 57% of the cases, these crimes fall within the priorities identified in the Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017⁴.

Crimes investigated by the evaluated JITs

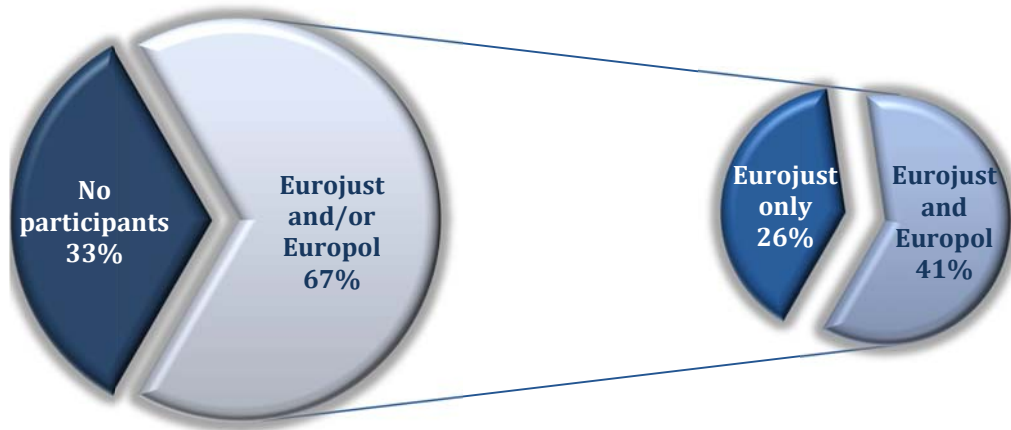


3.1.9. Participants in the JIT

Eurojust was involved as a participant in 28 of the 42 evaluated JITs. In 17 of these 28 cases, Europol was involved with the same status. Respective proportions are reflected in the chart below. No other institutions or bodies were identified as participants in the evaluated JITs.

⁴ Conclusions are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137401.pdf.

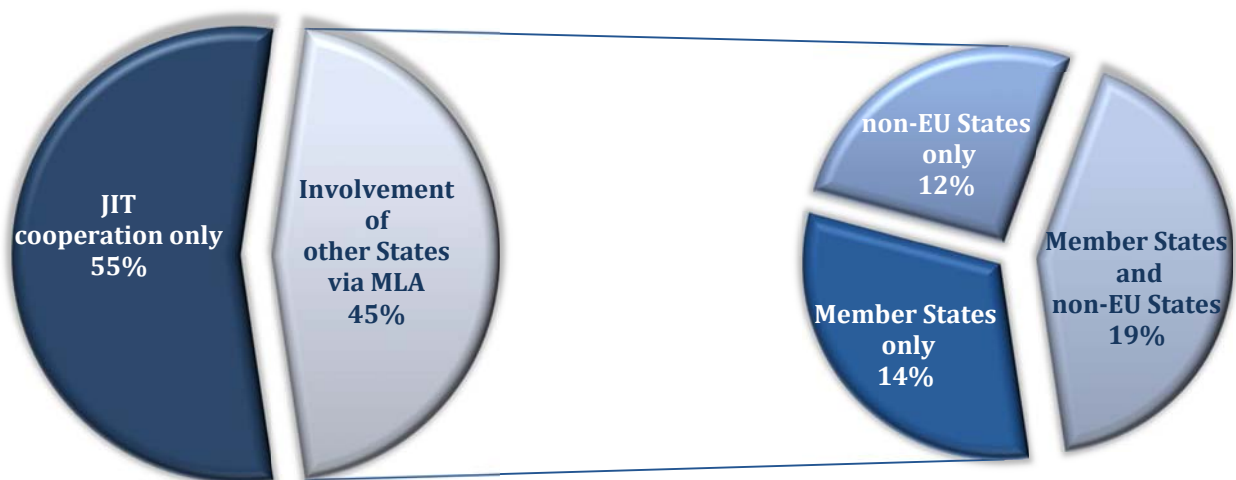
Participants in the JIT



3.1.10. Involvement of other States via mutual legal assistance

In 45% of the cases, the JIT partners needed the support of other Member States or non-EU States by way of mutual legal assistance. Detailed figures are displayed in the chart below:

Involvement of other States via mutual legal assistance (MLA)



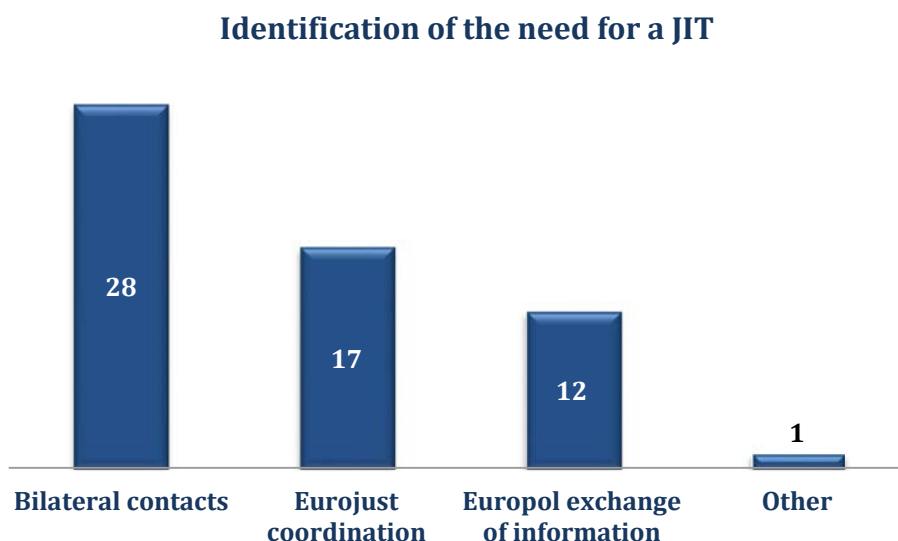
The following Member States were involved via MLA: AT, BE, BG, CY, CZ, DK, EL, ES, FR, HU, IE, IT, NL, PL, PT, RO, SE, UK.

Among non-EU states, Switzerland (6) was the most involved country, followed by Russia (3) and Norway (2). Algeria, Philippines, Singapore, Thailand and Turkey were involved in one JIT each.

3.2. Information related to the setting-up phase

3.2.1. Identification of the need for a JIT⁵

The parties identified the need to set up a JIT in one or more of the following ways:



In the majority of cases (**67%**) bilateral contacts allowed identification of the need for a JIT. In addition, Eurojust and Europol contributed very often to ascertaining this need (40% and 29% of cases, respectively). In three cases, Eurojust National Members directly requested the setting up of the JIT.

3.2.2. (Pre-)Existence of parallel proceedings

In the vast majority of cases (**88%** - 37 JITs), parallel investigations were taking place in the participating States. In 4 of the 5 JITs in which that situation did not apply, an exchange of MLA requests followed, and in the remaining case, spontaneous exchange of information took place. In most cases, the JIT was set up at an early stage of the national proceedings⁶.

3.2.3. Requirement of a letter of request for the setting up of the JIT

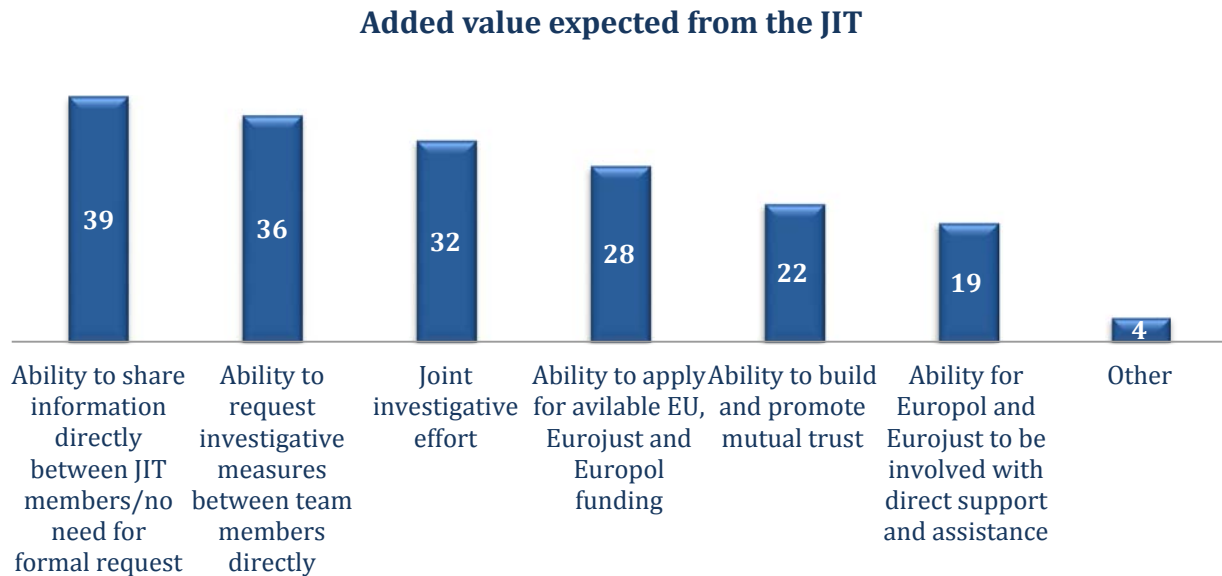
⁵ The total number of replies exceeds 42 because multiple answers could be given to this question. The total number of JITs was taken as a basis for the calculation of the percentages.

⁶ Replies to the stage of the investigation in which the setting up of the JIT was envisaged are varied and thus comparing them is difficult.

In **45%** of cases (19 out of 42 JITs), no formal request was required, whereas in 43% of cases (18 JITs), an MLA request was necessary to set up the JIT⁷.

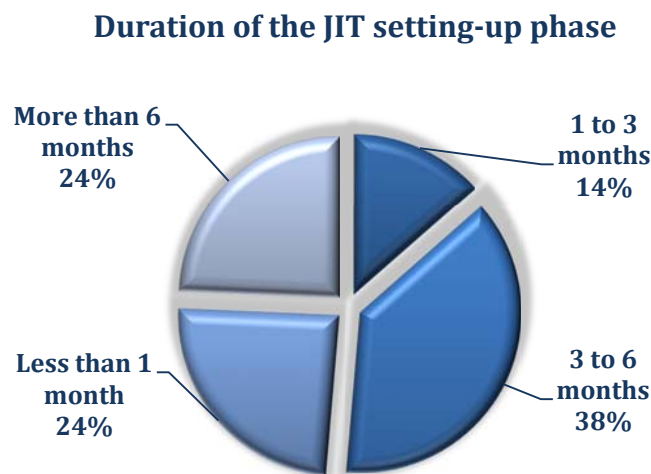
3.2.4. Added value expected from the JIT

A breakdown of the replies to this question is provided in the chart below:



3.2.5. Duration of the JIT setting-up phase

In **76%** of the cases (28), the duration of discussions prior to the signature of the JIT was six or fewer months. Of these 28 cases, a significant number of JITs (38 %) were established within three to six months:

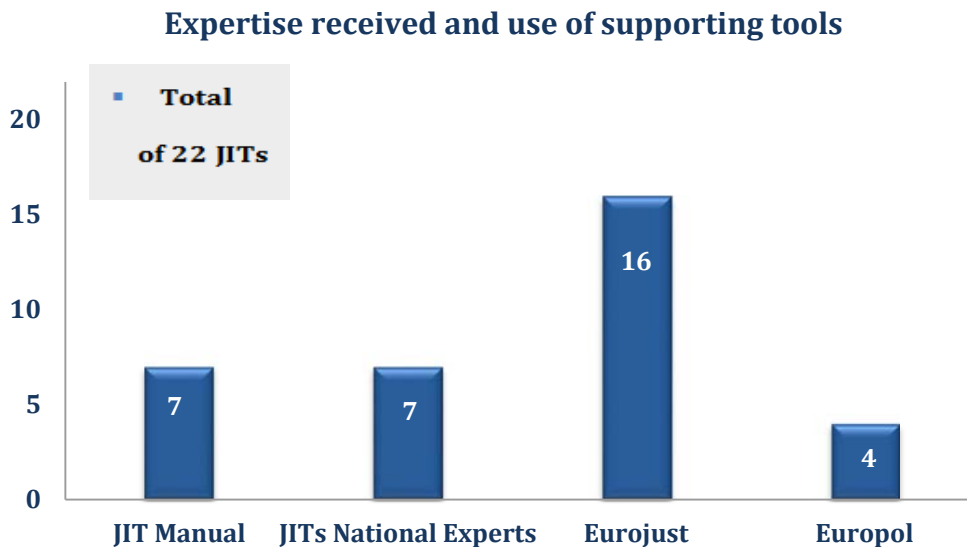


⁷ No reply was received with regard to the remaining 12% of cases (5 JITs).

3.2.6. Expertise received and use of supporting tools

The model agreement was used in **74%** of the evaluated JITs (31). In contrast, an operational action plan (OAP) was drafted in only 29% of the cases (12).

For the 22 JITs (**52%**) that did require guidance/expertise, the tools/bodies used are indicated in the chart below:



3.2.7. Legal issues or practical challenges encountered during the setting up of the JIT

More than half of the JITs (29 JITs, *i.e.* **69%**) stated that they did not encounter any legal issue or practical challenges during the setting-up phase.

3.3. Information related to the operational phase

3.3.1. Duration of the operational phase

A vast majority of the analysed JITs⁸ (30, *i.e.* **79%**) carried out their operations for more than one year. Furthermore, 87% of those 30 JITs had an operational phase of 12 to 24 months.

⁸ Four evaluation forms included no answer to this question.

Duration of the operational phase



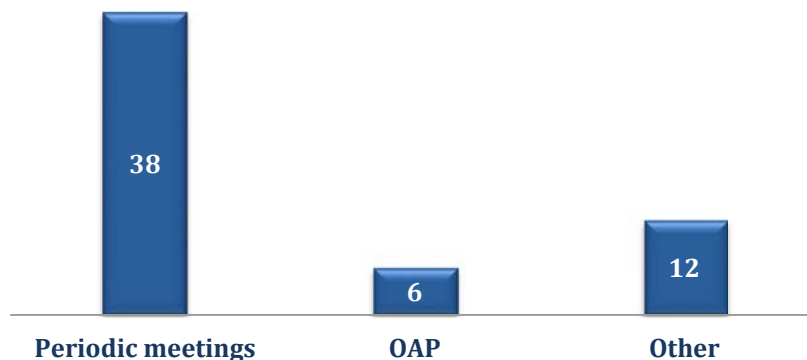
3.3.2. Use of other police and/or judicial cooperation instruments⁹

14 of the JIT evaluation forms (33%) confirmed the use of such instruments, the most frequently used ones being the EU MLA Convention of 2000 (apart from Article 13) and its Protocol, the Framework Decision 2002/584/JHA on the European arrest warrant and the Convention implementing the Schengen Agreement of 1990.

3.3.3. Means of coordination of investigative measures in a JIT

Investigative measures carried out by the team were primarily requested/planned/coordinated via periodic meetings between JIT partners (90% of the answers - 38 JITs), while the OAP was used for the mentioned purpose in only 6 cases.

Means of coordination of investigative measures in a JIT



In the other 12 cases in which alternative measures were used, the respondents mostly indicated the use of telephone calls and e-mails, the use of videoconferences or the support of seconded members.

⁹ In addition to the JIT.

3.3.4. Exchange of information and evidence

The following chart illustrates the means used by JIT members to exchange information and evidence during the operational phase of the JIT.

Use of the Secure Information Exchange Network Application (SIENA)¹⁰ was reported in approximately 25% of the evaluated cases. An equal proportion of JITs reported the use of other channels, such as meetings (including coordination meetings), e-mail and other means of telecommunications¹¹ or personal contacts.

¹⁰ The Secure Information Exchange Network Application (SIENA) is a tool designed by Europol to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence.

¹¹ One of the JITs listed here used the Trans European Services for Telematics between Administrations (TESTA), and another one used diplomatic mail as a channel for information and evidence exchange.

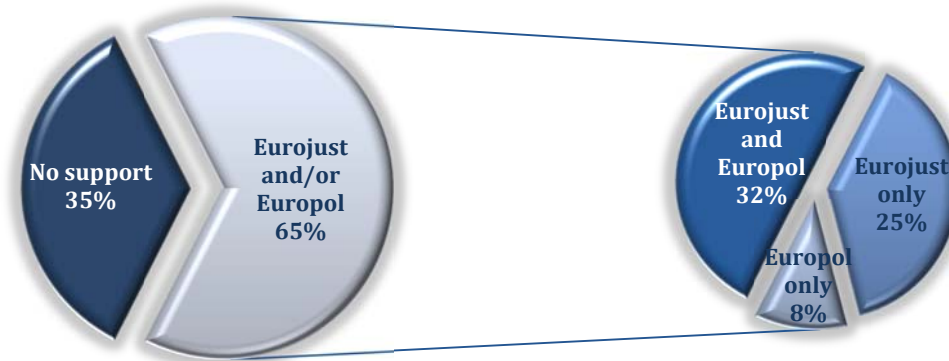
Exchange of information and evidence within the JIT



3.3.5. Eurojust/Europol support to the operational phase

Eurojust's and Europol's support to the operational phase is summarised in the chart below:

Eurojust/Europol support to the operational phase



3.3.6. Legal issues or practical challenges encountered during the operational phase of the JIT

of the 42 evaluations (55%) indicated that no legal issues or practical challenges were encountered during the operational phase of the JIT. Four evaluations (11.7%) include no answer, while 15 evaluation forms (36%) reported some problems.

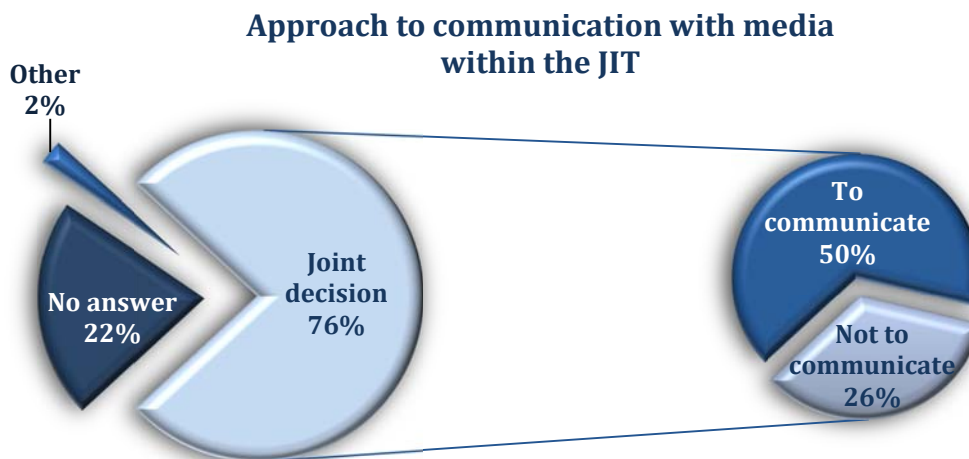
3.3.7. Arrangements related to disclosure

Only 9 of the 42 JITs adopted special arrangements related to disclosure, while 30 JITs provided negative answers¹².

21 JITs reported having included the JIT agreement/OAP in the national proceedings, 18 JITs did not and 3 JITs did not respond to this question.

3.3.8. Media strategy

The approach of the JIT partners in this field is displayed in the chart below:



In the vast majority of the cases (76%) JIT partners agreed on a common approach.

3.3.9. Participation of seconded members

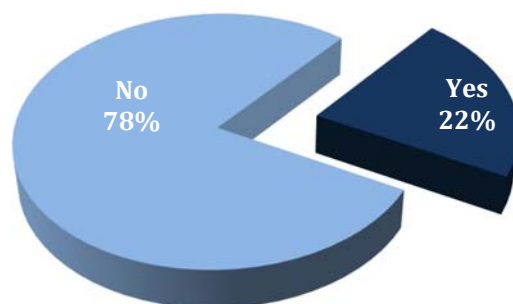
Seconded members were not present during investigative measures in 57% of the cases (21 JITs), and were present in 43% of cases (16 JITs).

Actual participation of seconded members in JIT activities outside their State of origin is summarised below¹³:

¹² 3 evaluation forms did not answer this question.

¹³ 5 evaluation forms did not answer this question.

Participation of seconded members



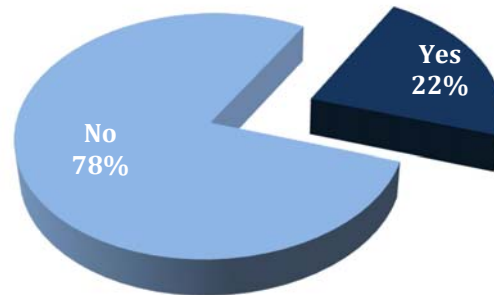
Moreover, in **76%** of cases (32 out of 42 JITs), no specific arrangements were adopted on this issue. Special arrangements were included in 17% of cases (7 JITs)¹⁴.

¹⁴ No reply was provided in the remaining 7% of cases (3 JITs).

3.3.10. Arrangements related to jurisdiction

The arrangements taken by the evaluated JITs are summarised in the chart below¹⁵:

Arrangements related to jurisdiction



In two of the eight cases in which specific arrangements were adopted, these arrangements were made before the operational phase. In three other cases, arrangements were made after the operational phase, while in the three remaining cases, no indication was given. As to the outcome, in 2 cases jurisdiction was split between JIT parties, and in other 3 cases, prosecution was transferred from one JIT partner to another.

3.3.11. The added value of the JIT to the investigation

In a vast majority of cases (**88%**, 37 JITs out of 42) the JIT was found as of added value for the investigation. In 7% of cases (3 JITs), the answer was negative.¹⁶

Equally, practitioners stated that the JIT achieved its purpose in **86%** of cases (36 JITs), while it did not in 9% of cases (4 JITs)¹⁷.

3.3.12. Best practice identified during the operational phase of the JIT

25 JITs reported having identified best practice during the operational phase; 5 respondents did not elaborate.

3.4. Information related to the support provided by Eurojust and Europol

3.4.1. Added value of Eurojust/Europol support

The views of practitioners with respect to the added value of Eurojust/Europol support can be seen in the chart below¹⁸:

¹⁵ Based on 37 answers to this question.

¹⁶ No answers were provided in 5% of the cases (2 JITs).

¹⁷ No answers were provided in 5% per cent of the cases (2 JITs).

¹⁸ Two evaluation forms did not reply to the question.

Assessment of Eurojust/Europol support



3.4.2. Financial support provided by Eurojust/Europol/Commission

Thirty of the evaluated JITs (71%) received financial support from Eurojust. One JIT received financial support from both Europol and Eurojust, and reported that the JIT partners applied partly together for such funding.

3.4.3. Legal or practical challenges related to financial support

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

No legal or practical challenges were encountered in 18 of the cases, while in another 15 cases, no reply was given to this specific question.

Legal and practical challenges regarding funding were identified by nine JITs and related mostly to the funding procedure.

3.4.4. Added value of financial support received

22 out of 42 JITs stated that the funding brought added value to the JIT.

Two JITs indicated that the funding provided by Eurojust did not bring added value, while in 18 cases no answer was provided.

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

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

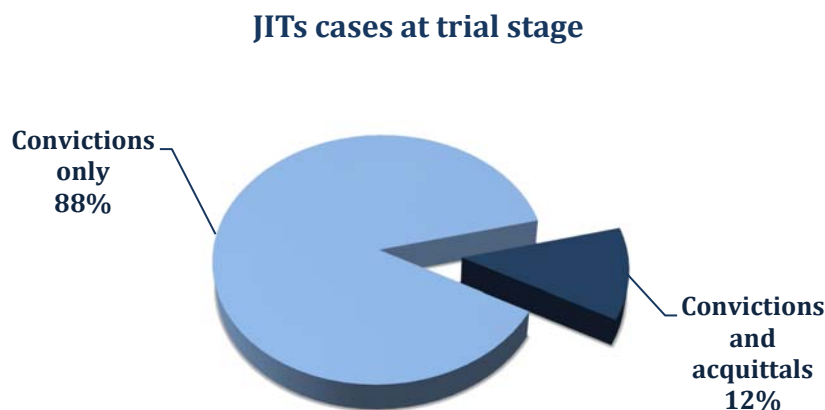
Three of the forms contained no answer to this question; 93% of the forms (39 JITs out of 42) include information in Section 5¹⁹.

3.5.2. Judicial outcome of the JIT

¹⁹ At least with regard to one of the participating Member States; in only three of those cases did no judicial follow-up to the JIT occur.

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

Out of the 39 JIT evaluations in which Section 5 was completed, 22 did not provide any specific answer concerning the subsequent trial(s). Out of the 17 that ended in a trial, the outcome is summarised in the chart below:



3.5.3. Admissibility of evidence

In 13 cases, the evidence collected by the JIT was not challenged in court, as opposed to 5 cases in which the JIT was challenged. The remaining 24 JITs did not provide any information about any (possible) challenges during the trial phase in this respect.

For 19 of the analysed JITs, the evidence gathered was admitted in national courts, including the five cases mentioned above in which the evidence had been challenged. No information was provided in the remaining cases at this stage.

4. Qualitative analysis

Note: in examples provided in this section, all details allowing identification of specific cases have been removed, except in situations in which these details had already been included in public documents (e.g. Eurojust annual report).

4.1. General trends

4.1.1. In relation to the JIT evaluation process

Since the launch of the JIT evaluation form 19 months ago, the form can be considered to have supported the evaluation of a significant number of JITs established between a large number of

countries and covering a broad geographic area. This result indicates that the objectives of this tool have been achieved and its support to the JIT evaluation process is relevant.

As initially foreseen, JIT National Experts (NE) play a key role in the evaluation process, since they represent the main vector of transmission of the completed evaluation forms to the Secretariat. Moreover, NE very often initiate or facilitate the evaluation process. After the launch of the JIT evaluation form, many evaluations were carried out upon the recommendation/proposal of the NE to assess most relevant closed JITs. Consequently, a relatively large number of unilateral evaluations were received by the Secretariat, at least in the first phase of this project. In the last months, however, an awareness-raising effort led to an increase in the number of joint evaluations.

Joint evaluations include the viewpoints of all parties involved and therefore contain the most valuable findings.

So far, two main approaches to carrying out joint evaluations were identified: either one of the JIT parties took the lead in filling in the evaluation form and the other party/parties supplemented it afterwards, or dedicated meetings were organised to allow face-to-face discussion. In a certain number of evaluation meetings, direct support was provided by the JITs Network Secretariat.

As an additional measure to trigger new evaluations, the terms and conditions of Eurojust's funding programme should state clearly that beneficiaries of such financial support should perform an evaluation²⁰, thus linking clearly JIT funding and JIT evaluation. One JIT also recommends that a specific clause of the JIT agreement is included to anticipate the organisation of an evaluation meeting.

When a dedicated evaluation meeting is not possible, evaluation can be carried out during the last operational meeting of the team, allowing for a 'wrap-up' of pending issues (coordination of prosecutions, seized assets, exchange of evidence, etc.) and sometimes even to consider future cooperation (*e.g.* a 'spin-off' JIT, as reported in one evaluation). The lack of availability of national authorities for the evaluation could also be solved by using the last operational meeting for this exercise.

JITs leaders and NE should be assured that the Secretariat is committed to facilitating the evaluation process, including by attending and supporting these evaluation meetings upon request.

Most evaluation forms contain information regarding the follow-up to the JIT (*i.e.* Section 5 of the form), mostly because a large number of the evaluations covered JITs closed several years ago, therefore allowing sufficient time to finalise proceedings in the trial phase. Nevertheless, the data contained in Section 5 of the evaluation forms show inconsistencies and must be interpreted with caution. To collect more reliable data, a revision of the evaluation form might be beneficial.

In the second half of the reporting period, however, we noticed a clear tendency to perform evaluations either at the closure of JITs or shortly afterwards. In the future, a specific process should be considered by the JITs Network to ensure gathering of information regarding follow-up (*e.g.* reminders to be sent after a certain period of time to relevant authorities by NE).

²⁰ See Annex I of the JIT funding application form, 'Terms and conditions applicable to JITs' of the Application form for Financial Assistance to a Joint Investigation Team'.

4.1.2. In relation to the use of JITs

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

The majority of the evaluated JITs were supported by Eurojust and close to half of all evaluated JITs received support from both Eurojust and Europol, therefore confirming that EU practitioners value the services offered by the two agencies. Further analysis reveals that Eurojust is providing support to JITs in various ways, regardless of whether it is formally involved as a participant in the JIT agreement. In contrast, Europol formalises its involvement more systematically by means of a dedicated annex.

Not surprisingly, JITs are mostly used to support investigations of trafficking cases (drugs or human beings) and other forms of serious or organised crime. The tool should be counted as contributing to the implementation of the EU Policy Cycle on the fight against organised crime.

Many evaluations reported that MLA is used towards States that are not involved in the JIT. This finding may indicate that JITs are not always the appropriate tool for all States involved in complex cross-border cases, and other forms of cooperation may also be required. In addition, direct involvement in JITs might not be feasible for a variety of reasons: for non-EU States, an adequate legal basis and/or legal safeguards may be missing; for EU Member States, in some instances, involvement in a JIT is not needed to provide the expected cooperation.

4.2. Findings related to the setting up of the JIT

4.2.1. General overview

In the evaluated JITs, bilateral contacts appear to play a prominent role in the identification of the need to set up a JIT. However, in an equal number of cases, the facilitation role of Eurojust and/or Europol was highlighted. In a small number of cases, Eurojust National Members actually requested the setting up of JITs by exercising their powers under Article 6 of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust. In the vast majority of cases, parallel proceedings were already in place before the setting up of the JIT.

These statistics indicate that the JIT tool is now better known by practitioners who proactively contact potential partners to suggest the use of the tool in cross-border cases. However, Eurojust and Europol also appear to play a key role in the setting-up phase, particularly to trigger the initiation of investigations that have not yet started.

Once the contact is established, practitioners are keen to keep the process rather informal. For instance, half of the evaluated JITs did not require the formal submission of an MLA request before setting up a JIT.

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

'At the time of registration of this case at Eurojust, investigations were ongoing at a judicial level in AT and DE. Following a coordination meeting (CM) at Eurojust on 19.07.2010, the former Yugoslav Republic of Macedonia opened its own national proceedings [...]. A second CM took place in Vienna on 25.10.2010. Coordinated investigations resulted in the arrest and conviction of the main suspects and several other perpetrators. Subsequently, the criminal organisation rebuilt its network and a third CM (14.11.2011) was held at Eurojust to discuss how to foster cooperation. The meeting allowed an in-depth debate to take place on how to overcome legal issues and all involved parties agreed that they would consider the legal possibilities and usefulness of setting up a JIT. After consultation and agreement at national level, a fourth CM at Eurojust (05.09.2012) resulted in the setting up of a JIT between AT, DE, NL and the former Yugoslav Republic of Macedonia. The setting up of the JIT triggered approval for initiating criminal proceedings in NL.'

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

In relation to non-EU States and in line with the conclusions of the 10th annual meeting of the National Experts on JITs, an important triggering point for the setting up of the JIT is the need to initiate proceedings in the non-EU State, in the absence of extradition of nationals. Indirectly, the possibility of the JIT facilitates the starting of domestic proceedings in non-EU States and enables effective prosecution of suspects who might not otherwise be prosecuted.

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

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

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

The standard amount of time necessary to establish a JIT seems to be between three and six months. This amount of time exceeded six months in only 25% of the cases. A clear conclusion cannot be reached, however, regarding whether this relatively lengthy process is linked to the time needed to agree on the basic principle of using a JIT or the discussion related to the JIT agreement itself. Furthermore, the majority of JITs did not identify any legal or practical issue during the setting-up phase. Replies to this question identify several issues: difficulties in identifying common goals, need to plan the timing of operations, and the requirement of clarifying legal systems, especially regarding secrecy of proceedings.

An examination of further issues that may delay the setting-up process may be beneficial, since practitioners cannot *'afford to invest so much time to set up a JIT for the sake of efficiency'*, as was stated in one evaluation.

In this respect, it is also worth noting that in a number of cases, the setting-up phase lasted less than one month (one JIT even reported that only one day was required to set it up). Moreover, the evaluations confirm the outcome of the 11th meeting of the National Experts on JITs in relation to the

use of the JIT supporting tools: the model agreement is systematically used by practitioners and found useful to set up the JIT, whereas the JITs Manual is rarely used at this stage. The JITs Manual is currently being revised to better meet practitioners' needs.

4.2.2. Challenges encountered and solutions found

In the majority of cases, no specific challenges were identified. Those JITs that have reported challenges emphasized the following points:

Challenges at setting-up stage
➤ The identification of legal basis for setting up the JIT, in case of involvement of a non-EU State (not all Member States)
➤ A combination of several legal instruments was used.
➤ Different approaches to the level of detail to be included in the JIT agreement: <i>'The authorities [of States A and B] consider that the JIT agreement should present (only) a strategic overview.... This approach mainly takes into account the need for a clear and concise agreement.'</i>
➤ Differences in procedural laws, particularly with regard to admissibility of evidence, disclosure of information
➤ Translation costs, which happen to be the most common practical problem faced by JITs at this stage.

4.2.3. Best practices identified

The following best practices were identified:

Best practices at setting-up stage
➤ Previous experience with JITs (<i>'the actual process of setting up the JIT was facilitated by the fact there was previous experience with JITs'</i>)
➤ Using a common working language (<i>'otherwise the negotiation could be extremely cumbersome'</i> , as was stated by Eurojust)
➤ Initial drafting of the JIT agreement by Eurojust's National Desks (prior to the coordination meeting).
➤ Development of a check-list during the setting-up phase.
➤ The inclusion of (EU Member States' or non-EU States') liaison officers posted to Europol as JIT members
➤ The inclusion of a clause in the JIT agreement allowing the sharing of information obtained via MLA with the other parties
➤ The inclusion of a clause foreseeing an evaluation meeting.

4.3. Findings related to the operational phase of the JIT

4.3.1. General overview

Most evaluated JITs operated for a duration of one to two years, indicating that, in the majority of cases, JITs are used in relation to investigations of a certain complexity/duration. Should further analysis be needed (*i.e.* correlation between the duration and *e.g.* crime type, number of JIT parties, involvement of Eurojust), additional criteria must be added in the next steps of the project.

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

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

Use of videoconferencing facilities was rarely reported. Only in one case did the parties to the JIT use videoconferencing to plan and coordinate investigative measures. More effort may be needed both at Eurojust and national level to promote videoconferencing as a cost-effective and direct mean of communication. The loan of Eurojust's equipment might also contribute to the promotion of the use of videoconferencing.

As another confirmation of the outcome the 11th annual meeting of of the National Experts on JITs, a relatively low use of the OAP to coordinate JITs activities has been reported (only half of the JITs with an OAP confirmed its use for coordination purposes).

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

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

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

Legal issues and practical challenges were encountered by fewer than half of the evaluated JITs. More difficulties, however, were reported during the operational phase than during the setting-up phase. Such an outcome may indicate that JIT agreements do not provide solutions to all possible developments encountered during the operation of a JIT. More details about specific challenges are provided in sub-section 4.3.2.

Special arrangements relating to disclosure of information were made in a limited number of cases. More data is needed, however, before conclusions can be made. Only a limited number of the evaluated JITs were set up between States with common law and continental law traditions. Disclosure arrangements in such cases may require further examination. This potential challenge was flagged by at least one JIT at the setting-up stage (*cf. supra*).

Similarly, very few JITs reported formal arrangements in relation to jurisdiction. Additional information is also needed here before drawing any conclusions. Determining whether JIT partners have identified the need for such arrangements or whether they have actually agreed without formalising this aspect in the JIT agreement is difficult to determine.

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

'A lack of coordination and of common understanding in this matter may impact the execution of European arrest warrants, as the existence of domestic proceedings may be invoked to refuse the surrender'.²¹

²¹ Council Framework Decision [2002/584/JHA](#) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States:

'Article 4 Grounds for optional non-execution of the European arrest warrant

JITs clearly appear to facilitate a common approach to communicating with the media, with two main options identified: either no communication took place or a coordinated approach was agreed upon between the JIT partners. In only one case did relations with the media adversely affect the confidentiality of the procedure. The evaluation of this JIT also contained a recommendation for an amendment to the standard clause on press communication, *'to make it applicable also to participants [...] in order to avoid information to be provided to the press while the investigation is still confidential.'*

At the time of the setting up of JITs, three out of four JITs had high expectations concerning the potential of the seconded members of the JIT to join investigative efforts. In contrast, during the operational phase, only one in three JITs actually benefitted from the involvement of seconded members in investigative measures. In practice, JITs are primarily seen as a tool to efficiently coordinate parallel investigations and exchange evidence, and not always as a way to carry out investigation jointly.

On the other hand, in cases in which seconded members were present, they proved to make a valuable contribution to the investigations, participating mostly during the operational phase (arrests, interrogations and searches of premises):

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

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

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

4.3.2. Challenges encountered and solutions found

In more than 50 per cent of the JITs evaluated, no legal issues/practical challenges were reported during the operational phase. Evidence-related issues were not identified, but differences between procedural systems were referred to (*'principle of legality vs/ opportunity principle'*).

Among the practical challenges identified, language difficulties (with the risk of *'losing momentum and context'*), high costs or technical difficulties in exchanging information were mentioned.

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

'Article 24 Postponed or conditional surrender

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

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

Different mandatory deadlines for the investigation might also interfere with operations, as reported by another JIT. This situation may also generate the obligation for one of the JIT partners to conclude its investigation and therefore leave the JIT despite the fact that cooperation needs may still exist (particularly the further exchange of information or evidence). Consultation between JIT partners prior to the closure of domestic proceedings is therefore crucial to prevent such an adverse effect.

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

4.3.3. Best practice identified

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

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

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

In addition, several evaluations indicated that the JIT facilitated a coordinated approach to cooperation with one or more countries outside of the JIT.

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

In a case of smuggling of migrants, the Member States involved in the JIT decided to join efforts to obtain cooperation from the country of origin (a non-EU State) by issuing and transmitting letters of request towards this non-EU State simultaneously. Unfortunately, however, the expected results were not achieved.

4.4. Findings related to Eurojust's and Europol's support

The evaluations disclose that both Europol and Eurojust provide support to JITs during the setting-up phase and during the operational phase, offering a wide range of supportive tools, *i.e.* mobile offices, cross-match and analytical reports, coordination/operational centres, dedicated meetings, coordination of prosecutions and funding. More specific comments in this respect can be found below.

4.4.1. Eurojust's support

As outlined in the quantitative section of the JITs evaluation report, Eurojust seems to play a prominent role in the setting-up process of the JIT, both by facilitating the decision on the establishment of the JIT and by actively supporting the drafting of the JIT agreement. As stated above, Eurojust may even, in some cases, ensure the initial drafting on the basis of specific details of the case communicated by the national authorities. Swift communication between National Desks is also valued as a way to speed up the negotiation process.

During the operational phase, Eurojust is perceived to be an actor that facilitates a good level of interaction between JIT partners, particularly via coordination meetings and coordination centres. Its support is also appreciated to overcome various operational issues, such as admissibility issues, participation of seconded members, and prevention/resolution of conflicts of jurisdiction.

In the evaluated JITs, Eurojust also appears to be the main source of financial support, which is considered an added-value in almost all cases. This financial support particularly enables more frequent face-to-face meetings between JIT partners and the exchange of investigators during simultaneous operations in several countries. For instance, one JIT reported that *'support for the meetings of the JIT partners helped to plan [the] next steps of [the] investigation, exchange information, foster mutual trust and make contact easier by phone or email'*.

However, difficulties were identified in relation to the funding procedure, which is considered too burdensome, particularly in view of operational constraints.

4.4.2. Europol's support

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

Europol's financial support is reported by only one JIT. However, these results should be interpreted with caution, since many JITs reported that Europol organised operational meetings to support the case, which constitutes a form of financial support, although not limited to JIT cases.

4.5. Findings related to the follow-up to the JIT

Analysis of data is extremely difficult, both in quantitative and qualitative terms. In most cases in which a judicial follow-up took place, effective convictions were the result. Concerning control by national courts over JIT activities, evidence obtained via the JIT was only challenged in five cases. In all cases, such evidence was finally declared admissible.

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

4.6. Recommendations received

In the course of JIT evaluations, practitioners addressed several recommendations concerning the setting-up and operation of JITs, some of which may be useful for future JITs. Several of them have already been considered and solutions implemented by the JITs Network or at Eurojust level.

Recommendations received from practitioners

- *The need to ensure a sufficient allocation of human resources to a JIT case.*
- *The necessity of more thoroughly developing the financial aspects of the investigations within the JIT.*
- *The possibility to finance costs of non-EU States via Eurojust JITs funding; this possibility was implemented in 2014.*
- *The extension of the funding scheme to costs incurred after the closure of the JIT: since January 2015, follow-up activities are covered by Eurojust's JITs funding.*
- *The need to appoint one JIT member or the National Expert to deal with funding issues.*
- *Amendment of the standard clause on press communication to make it applicable to JIT participants.*
- *Address admissibility requirements at the earliest stage possible. This process should be facilitated by summaries of national legislation in the field. This recommendation has been taken on board in the framework of a current project of the JITs Network (so-called '**fiches espagnoles**').*

PRACTICAL STEPS FOR JIT EVALUATION

NOTE:

THIS DOCUMENT IS INTENDED TO PROVIDE GENERAL GUIDANCE ON THE USE OF THE JIT EVALUATION FORM

Please read carefully before filling in the form!

1. WHY EVALUATE JITs?

- To centralise information on the functioning of JITs;
- To disseminate periodic reports outlining best practice and common practical and legal issues for the benefit of all JIT practitioners; and
- To enhance and improve the use and functioning of JITs.

2. WHICH JITs TO EVALUATE?

- All JITs should be evaluated; regardless of how simple or complex a JIT may be, something can always be shared with others.

3. WHEN TO EVALUATE?

- At the closure of the JIT for Sections I – IV of the form;
- Once a final court decision is reached in the involved countries for Section V; and
- In JITs benefitting from Eurojust funding, evaluation is crucial to ensure that funding possibilities meet operational needs.

4. WHO SHOULD EVALUATE JITs?

- Both judges/prosecutors and law enforcement authorities should be involved to the greatest possible extent. Depending on the specificities of the legal systems, prosecutors may be the most appropriate authorities to fill in Section V of the form; and
- If deemed appropriate, JIT national expert(s) may also be involved.

5. HOW TO EVALUATE?

- Joint evaluation shall be carried out whenever possible; this approach promotes further collaboration and enhances the quality of the data;
- If the above approach is adopted, a dedicated meeting for all JIT partners is recommended. Alternatively, you may wish to organise a videoconference. *For more details on Eurojust and Europol's support in this regard, see point 7; and*
- If joint evaluation is not possible, unilateral evaluation is also an option. In such situations, please bear in mind that (i) your consent will be requested to share your evaluation with your JIT partner(s); or (ii) in the event of lack of consent, your JIT partner(s) will be invited to submit separate evaluation(s).

6. HOW TO FILL IN THE EVALUATION FORM?

- Download the latest version of the JIT evaluation form from Eurojust's website or other available sources at national level;
- Complete the evaluation form in English. You may also consult the translated versions for reference only;
- Fill in and submit the evaluation form electronically. If you print it, certain fields will not be displayed; and
- Please refrain from using any personal data when filling in the form.

7. WHAT SUPPORT CAN EUROJUST/EUROPOL PROVIDE?

- Eurojust and Europol can support the evaluation process by offering a venue for evaluation meetings or by providing videoconference facilities;
- The JITs Network Secretariat is available to participate in evaluation meetings and to assist practitioners in completing the form on the spot; and
- JIT funding may also be used to finance evaluation meetings in the countries involved.

8. WHAT USE WILL BE MADE OF THE JIT EVALUATION?

- The completed evaluation form will be used to compile periodic reports reflecting in a general manner the quantitative and qualitative outcome of the evaluations over a certain period of time;
- Any statement included in the evaluation will be reflected in an anonymised and non-identifiable manner; and
- Under no circumstances shall the specific details (States involved, specific duration, etc.) be disclosed.

Completed JIT evaluation forms should be sent to

jitsnetworksecretariat@eurojust.europa.eu

Acronyms and abbreviations

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