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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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Subject: Presentation/information by the European Judicial Network (EJN)  
- Biennial report on the activities and management of the EJN (2017-2018)

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Delegations will find in the Annex the biennial Report of the European Judicial Network on activities and management (2017/2018).

EUROPEAN JUDICIAL NETWORK SECRETARIAT

# European Judicial Network Report on activities and management

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2017-2018

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## Foreword by the Secretary to the European Judicial Network

Dear reader,

I am pleased to present the 5<sup>th</sup> Bi-annual Report on European Judicial Network (EJN) activities and management, providing insight on the activities of the Network in the years 2017- 2018.



*OLA LÖFGREN, SECRETARY TO THE EJN*

The reporting period 2017-2018 was marked by great achievements for the EJN as a key actor in the area of judicial cooperation in criminal matters. The EJN, through its Contact Points, continued to be a reliable channel for facilitating the judicial cooperation between the national authorities in the EU Member States by supporting them in establishing direct contacts and resolving legal issues in their investigations of cross-border criminal activities. The EJN also strengthened even further its contacts with judicial authorities of third countries and other judicial networks, with the aim of ensuring better and more efficient communication in operational matters of judicial cooperation in criminal matters.

An important milestone for the EJN was the 20<sup>th</sup> anniversary of the Network in 2018. It was an opportunity to reflect on the development of the EJN over the years and to look at its present contribution to the EU criminal justice area. The EJN Contact Points have proven to be a reference to their colleagues regarding various questions on judicial cooperation, particularly in the application of (new) legal instruments. The EJN has also become a centre of expertise and can provide valuable input from the practitioners' point of view to the EU Institutions. During the reporting period the EJN, in close cooperation with the EU institutions, had an active role in the relevant debates and activities with the aim of contributing to the development of the EU legal framework in the area of judicial cooperation in criminal matters.

The EJM continued to support practitioners in the EU Member States with regards to the application of the various legal instruments for judicial cooperation such as the European Investigation Order (EIO), European Arrest Warrant (EAW) and other EU mutual recognition instruments by providing a forum for discussion and exchange of best practices.

Over the last two years the EJM has enhanced and improved its website and electronic tools with the aim of effectively supporting the judicial authorities in their daily work involving judicial cooperation in criminal matters. The Judicial Atlas, Compendium and Fiches Belges have been regularly updated in order to be more user-friendly, but also to reflect the most up-to-date information on the competent judicial authorities, as well as amendments in the national legislations implementing the EU legal framework. A reorganisation and update of the Judicial Library was undertaken in order to include as much relevant information as possible. With the aim of reaching even more practitioners, selected areas of the EJM website were translated into all the EU official languages. Moreover, the EJM Secretariat developed additional tools in order to better gather and analyse case-related information from the cases facilitated by the EJM Contact Points.

I am pleased to present the achievements of the EJM as outlined in this Report and I would like to take the opportunity to thank all the EJM Contact Points, EJM National Correspondents and EJM Tools Correspondents for their dedication, expertise and professionalism in undertaking their responsibilities. I would also like to thank the Maltese, Estonian, Bulgarian and Austrian Presidencies for very good cooperation and for sharing responsibilities, in particular for hosting the EJM Plenary meetings.

On behalf of the EJM Secretariat, let me express our continuous commitment to supporting the activities of the EJM.

Ola Löfgren

## 20 years of the European Judicial Network

Ever since its establishment in 1998<sup>1</sup>, the European Judicial Network has functioned as an essential instrument for facilitating international judicial cooperation in criminal matters, resulting in more than 10,000 cases per year today. The success of the EJN is based on a combination of the Contact Points' expertise, willingness to support and the flexible nature of the Network.

The EJN is currently composed of approximately 400 Contact Points designated by each Member State from central authorities in charge of international judicial cooperation and judicial or other competent authorities with specific responsibilities in the field of international cooperation.

2018 marked 20 years since the establishment of the EJN. The **20<sup>th</sup> Anniversary of the EJN** was celebrated at the EJN Plenary meeting in Sofia in June 2018. The EJN took the occasion to reflect on the development of the Network over the years and the way forward to continue to develop in its role to support national authorities.

Focus was put on **raising awareness of the role and functions of the Network**, the **systematic involvement of the EJN in the EU legislative process**, the continuous development of **the EJN website and tools** and further cooperation with EU institutions and bodies, as well as third countries and other judicial networks. The informal and flexible nature of the EJN was confirmed and the Plenary concluded that the EJN should continue to work in this manner to ensure that practitioners receive the support they need.

Over the 20 years of its existence, the EJN has confirmed its important role in making judicial cooperation in criminal matters work and has gained a central role regarding the practical application of the instruments based on the principle of mutual recognition.

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<sup>1</sup> Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network, replaced by Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (EJN Decision)

# I. EJN CONTACT POINTS' ACTIVITIES: PRACTICAL APPLICATION OF JUDICIAL COOPERATION INSTRUMENTS

## 1.1. Cooperation within the EU

### 1.1.1. Overview

Facilitating judicial cooperation in criminal matters is the core task of the EJM Contact Points. In line with the legal basis of the EJM, [Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network<sup>2</sup>](#) ("EJM Decision"), the Contact Points assist with establishing direct contacts between competent national authorities, assist in the drafting stages of the judicial requests for assistance, provide assistance in urgent cases and cases of delayed execution of requests for judicial cooperation. They also assist with providing information about national law.

During the 2017 - 2018 reporting period, the EJM continued to actively support the national judicial authorities in the application of the various judicial instruments such as the European Arrest Warrant (EAW), MLA requests and freezing orders, as well as less commonly used mutual recognition instruments such as the European Protection Order. A major development was the introduction of the European Investigation Order (EIO), replacing the traditional Mutual Legal Assistance within the EU. The EJM has been a crucial actor in supporting the national judicial authorities in the Member States in various aspects of the application of the EIO and also collecting and providing information about the legal requirements in the Member States on the execution of the EIO.

By the end of 2016, the EJM Secretariat introduced a new reporting system for the Contact Points to record their case-related activities – the EJM Reporting tool. The tool has been developed in such a way as to allow the EJM Contact Points to enter information on the cases that they support, but also to reflect various aspects of the cases such as the legal instruments used, the type of assistance provided by the EJM Contact Points, the specific investigative measures involved and the type of

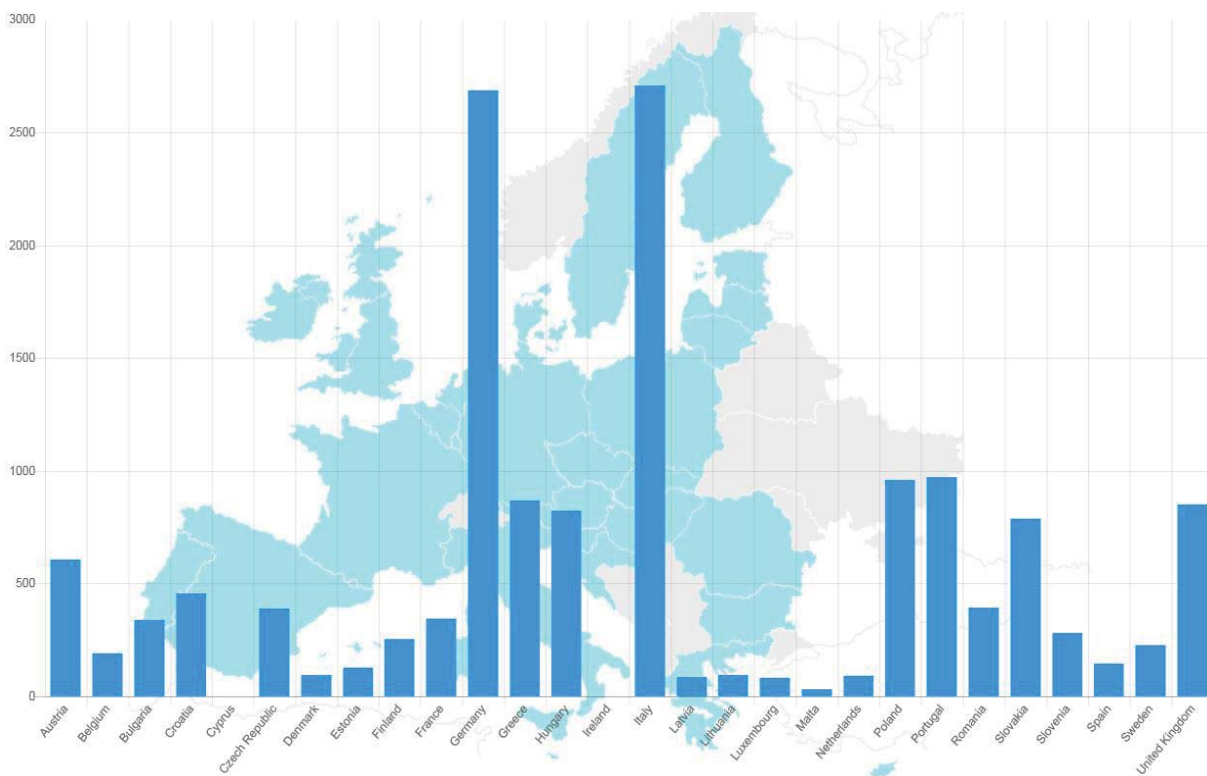
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<sup>2</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).



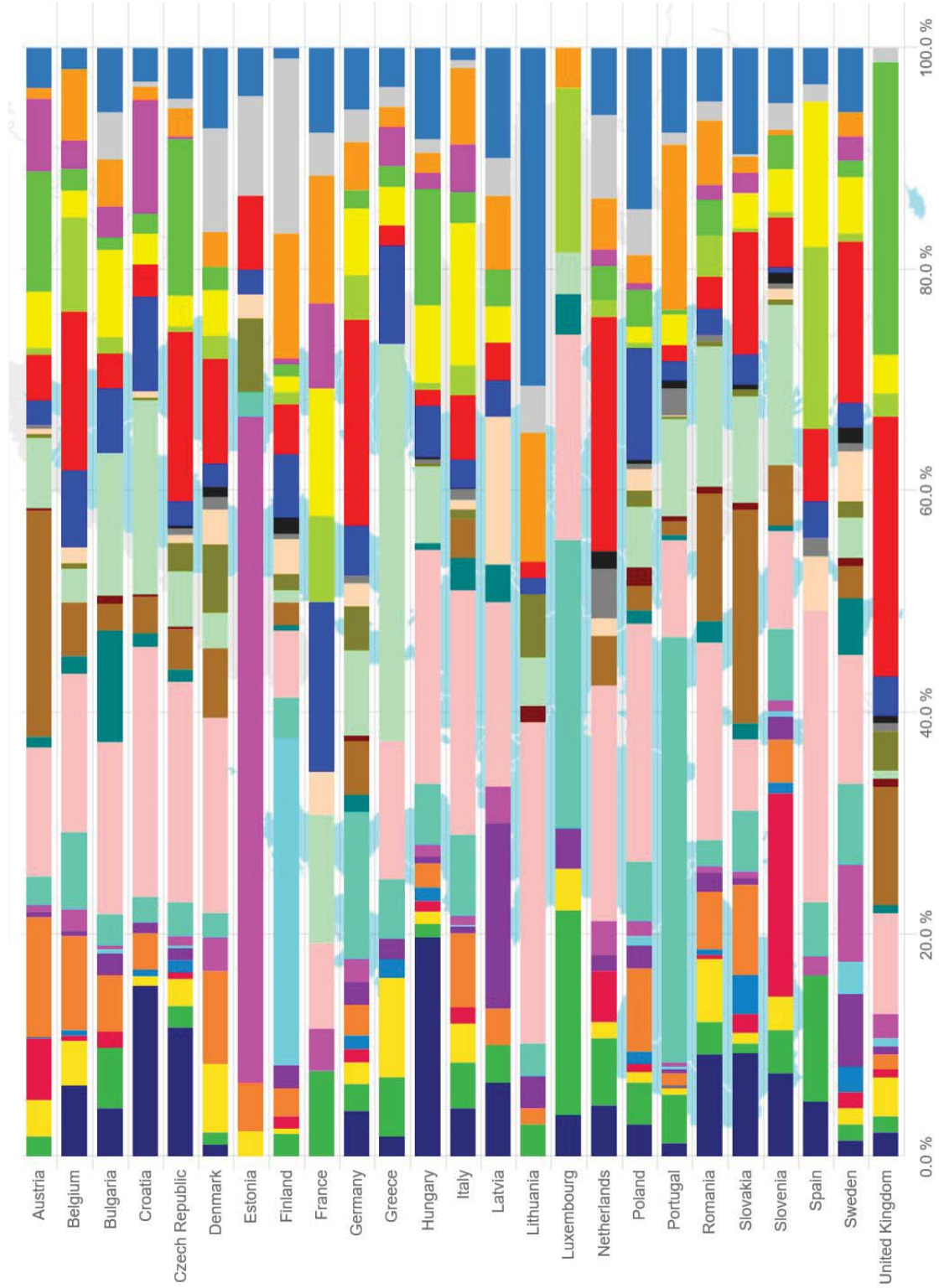
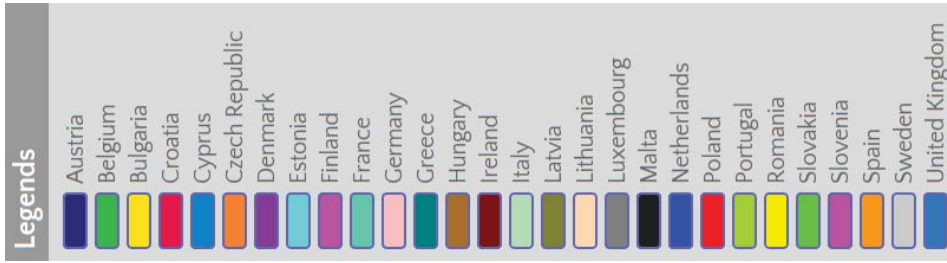
crime that was being investigated. It is the first time that the new tool has been used to collect data on the activities of the EJM Contact Points for the EJM Report. The new Reporting tool can be used to observe the activities of the EJM Contact Points and to detect trends with regards to the application of different legal instruments in the area of judicial cooperation.

The following graph gives an overview of the number of cases that were reported by the EJM Contact Points in the period 2017 – 2018; a total of **more than 14,000 cases**.



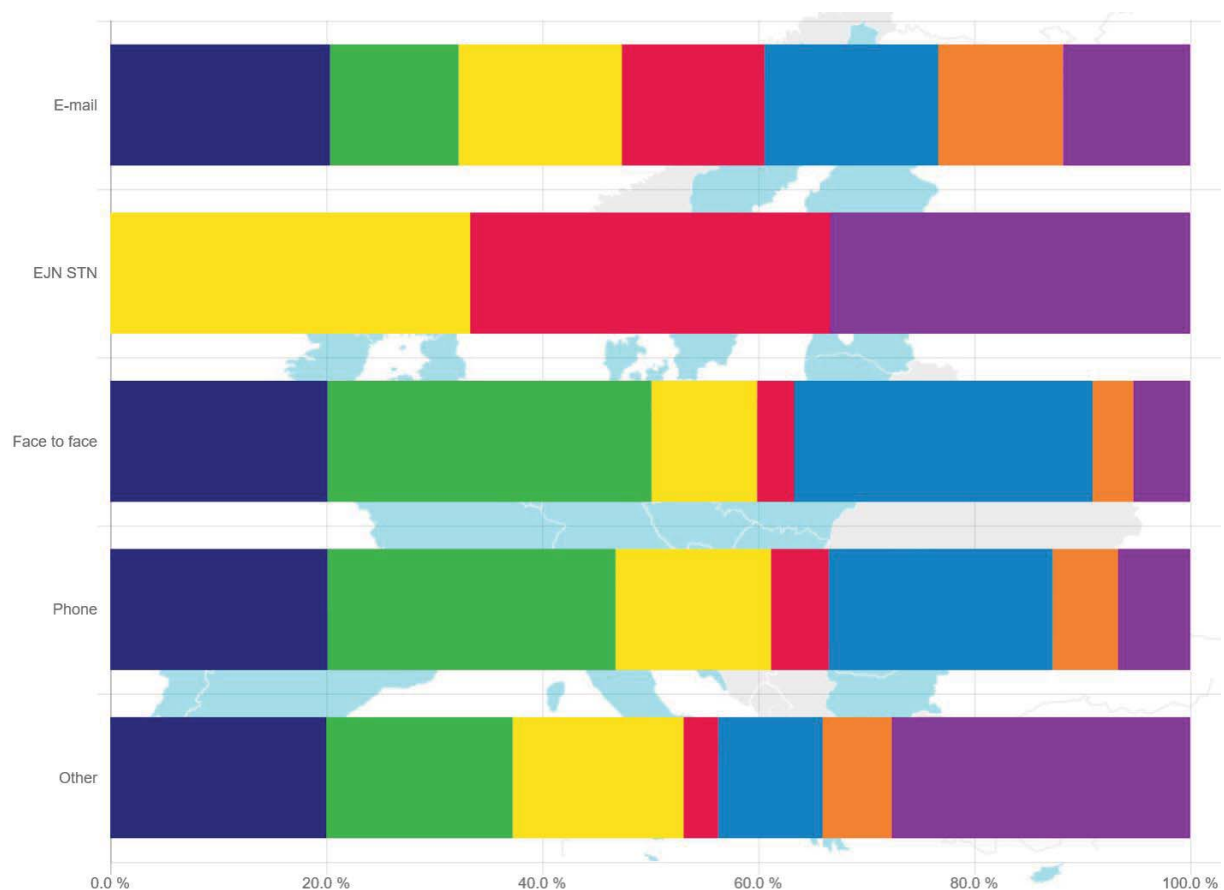
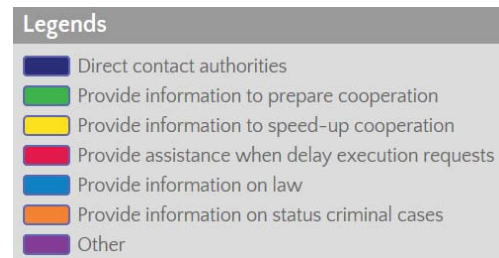
*NUMBER OF CASES PER MS 2017-18*

Additional information has been extracted from the overview of the total number of cases, namely more detailed information on the cooperation on cases between the EU Member States. As illustrated in the graph below, most Member States are involved in cases with almost all other Member States. At the same time, cooperation between neighbouring Member States is usually more frequent.





With respect to the actual cooperation, the data available shows that email is by far the main tool of communication being used by the EJM Contact Points – half of the requests made, or information exchanged, is by email. It does not seem to depend on the type of assistance provided though, as email is used equally often regardless of the type of assistance provided. Providing assistance over the phone or face to face is used more in order to provide information on law and to prepare a request for cooperation.



CHANNEL OF CONTACT VS TYPE OF ASSISTANCE PROVIDED

The following sections of the report illustrate the activities of the EJM Contact Points with respect to the application of the various judicial cooperation instruments.

### 1.1.2. European Investigation Order

Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters<sup>3</sup> (EIO Directive) represents a major change. It replaces MLA as the tool for obtaining evidence across borders. The deadline for transposing the EIO Directive into national law was 22 May 2017. By September 2018, all 26 Member States bound by the EIO Directive<sup>4</sup> had transposed it; see the [Status of Implementation table for the EIO](#).

The EJM was working on facilitating the practical application of the EIO Directive well before the transposition deadline on 22 May 2017. With this aim, the EJM initiated several measures in order to facilitate its transposition into national legislations and a smooth practical implementation to support the EJM Contact Points and practitioners. The Secretariat prepared the website to meet the EIO requirements, but also tackled this matter at EJM meetings and in meetings with EU institutions. Further information on the specific activities undertaken by the EJM in relation to the EIO Directive is provided in section 2.1.1. of this Report.

Because of the changes it introduced, the EIO was a topic for discussions and exchange of best practices in many of the EJM meetings in the period 2017 – 2018, both in EJM Plenary meetings and in Regional and National EJM meetings. The EJM Contact Points discussed in detail different aspects of the practical application of the EIO, such as the scope of the EIO, time limits, competent authorities for the execution, the relationship with other legal instruments, etc. The conclusions of the meetings were compiled in documents prepared by the EJM Secretariat and presented in Brussels and on the EJM website<sup>5</sup>.

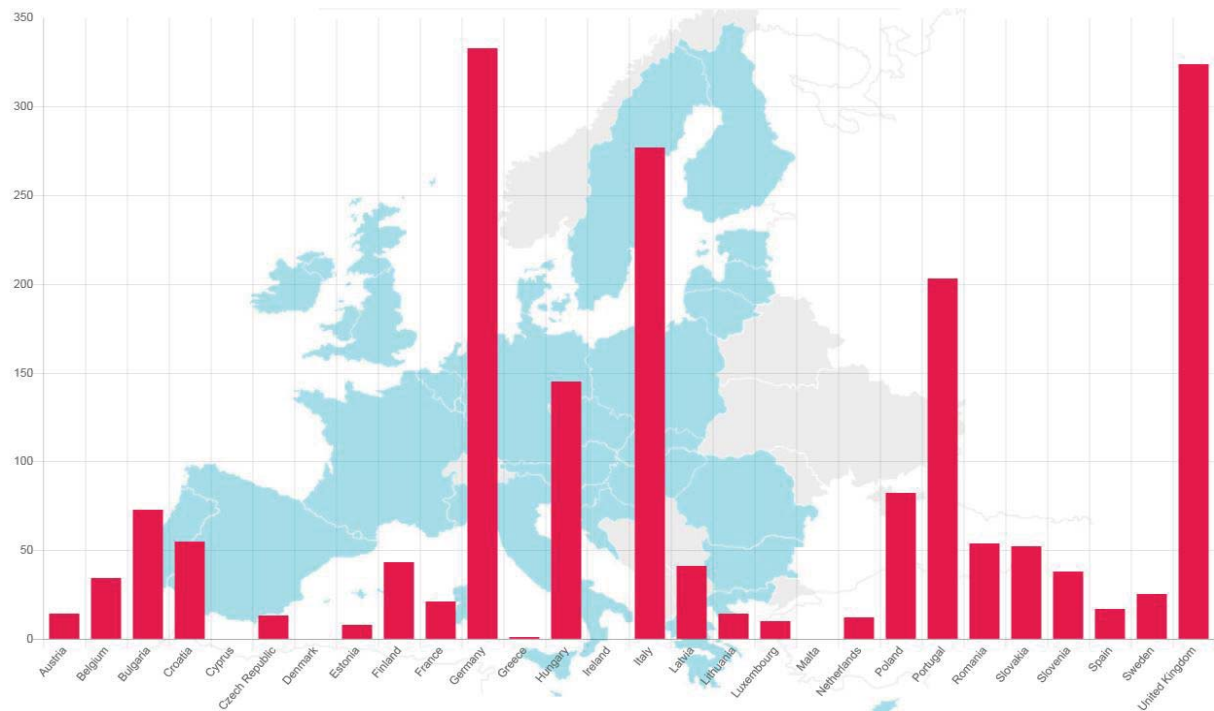
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<sup>3</sup> Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters.

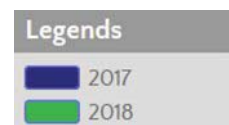
<sup>4</sup> The EIO Directive is not applicable to Ireland and Denmark

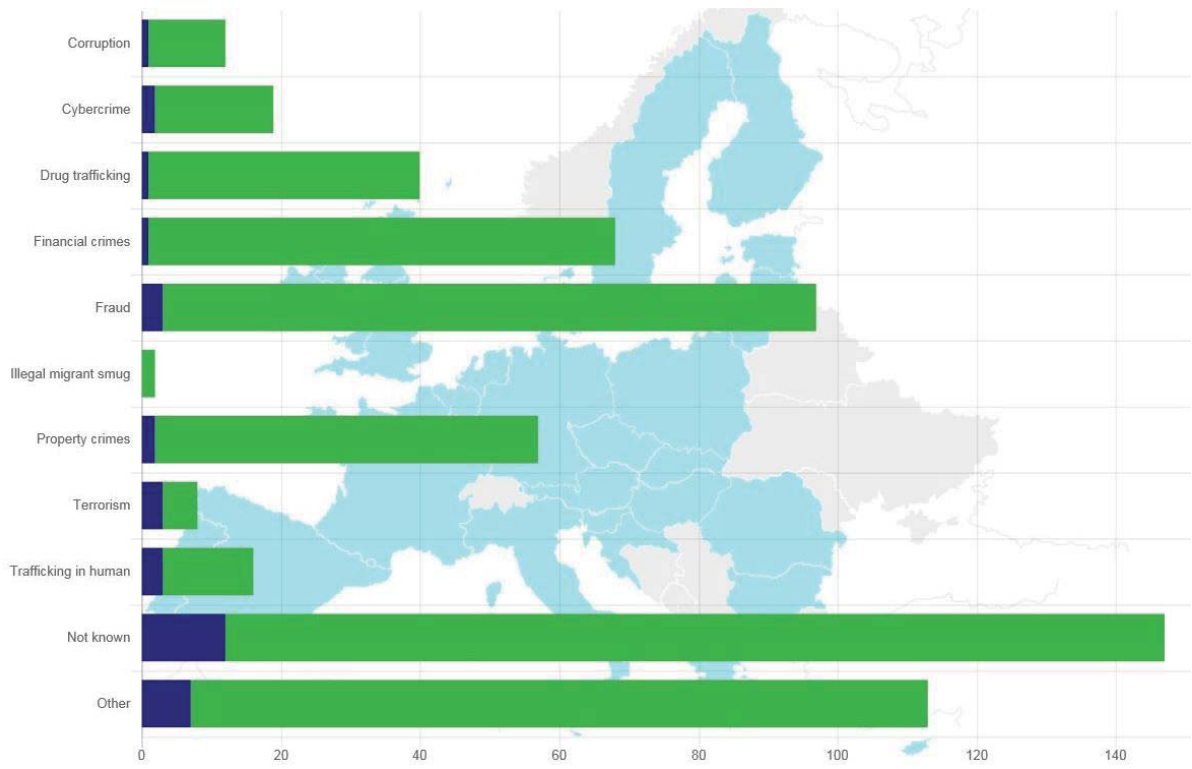
<sup>5</sup> Council Doc 15210/17 and 14755/18

As illustrated in the graph below, the EJM Contact Points reported more than 1,850 cases in which they have assisted with the handling of the EIO, number of orders issued/executed in different crime categories and share of different types of assistance with regard to EIO.










*EIO DIRECTIVE APPLIED IN EU MSs (AS ISSUING/EXECUTING MS) (NO OF CASES)*





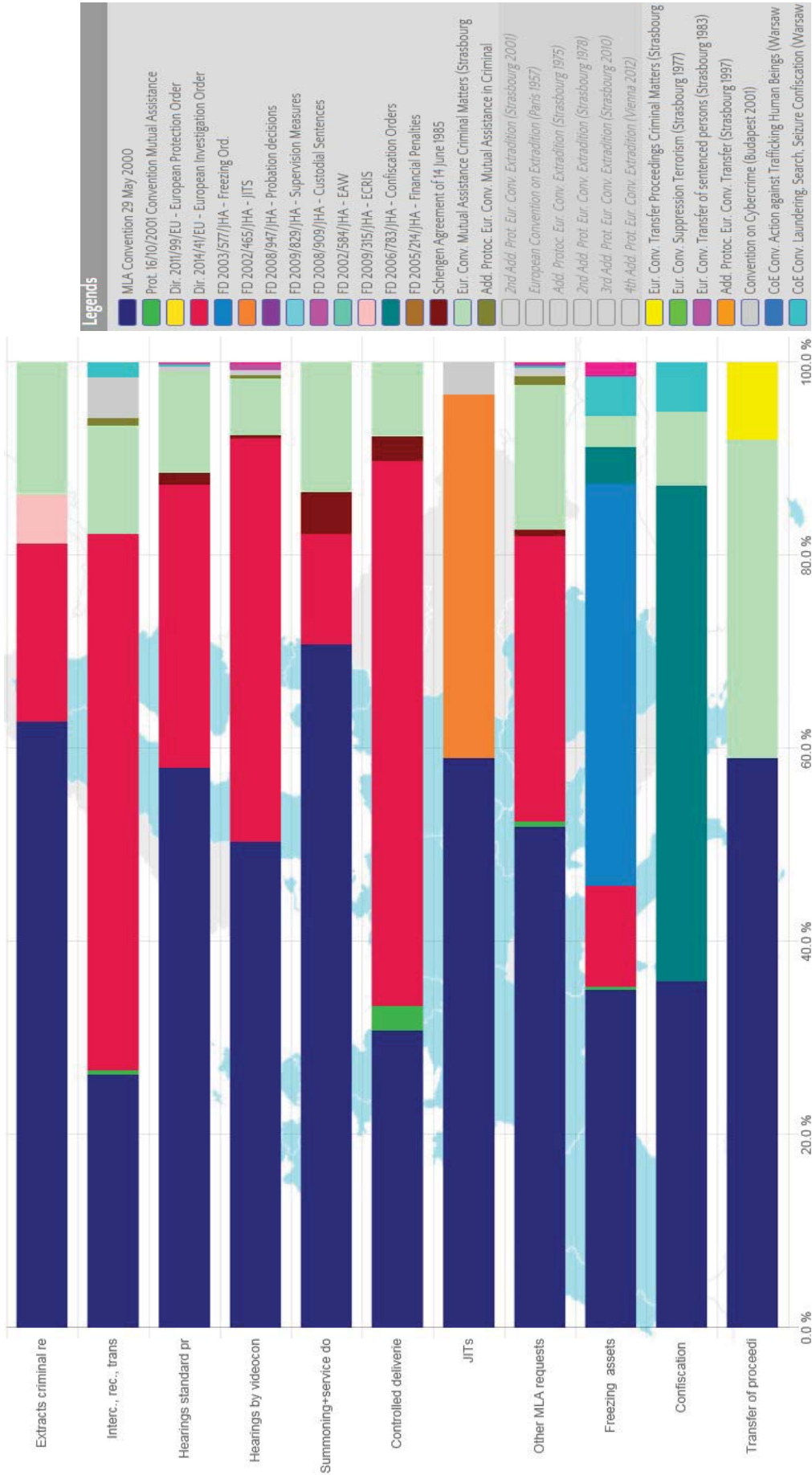
NUMBER OF CASES EIO USED IN DIFFERENT CRIME CATEGORY



Legends	
	Direct contact authorities
	Provide information to prepare cooperation
	Provide information to speed-up cooperation
	Provide assistance when delay execution requests
	Provide information on law
	Provide information on status criminal cases
	Other

The graph below illustrates the different investigative measures the EIJ has assisted with, which confirms that the EIO (red section) has gradually taken over most of the commonly requested measures, such as hearing of suspects and witnesses, including by **videoconference**, while others such as the transfer of criminal proceedings are still covered by other legal instruments, such as the MLA 2000 Convention.

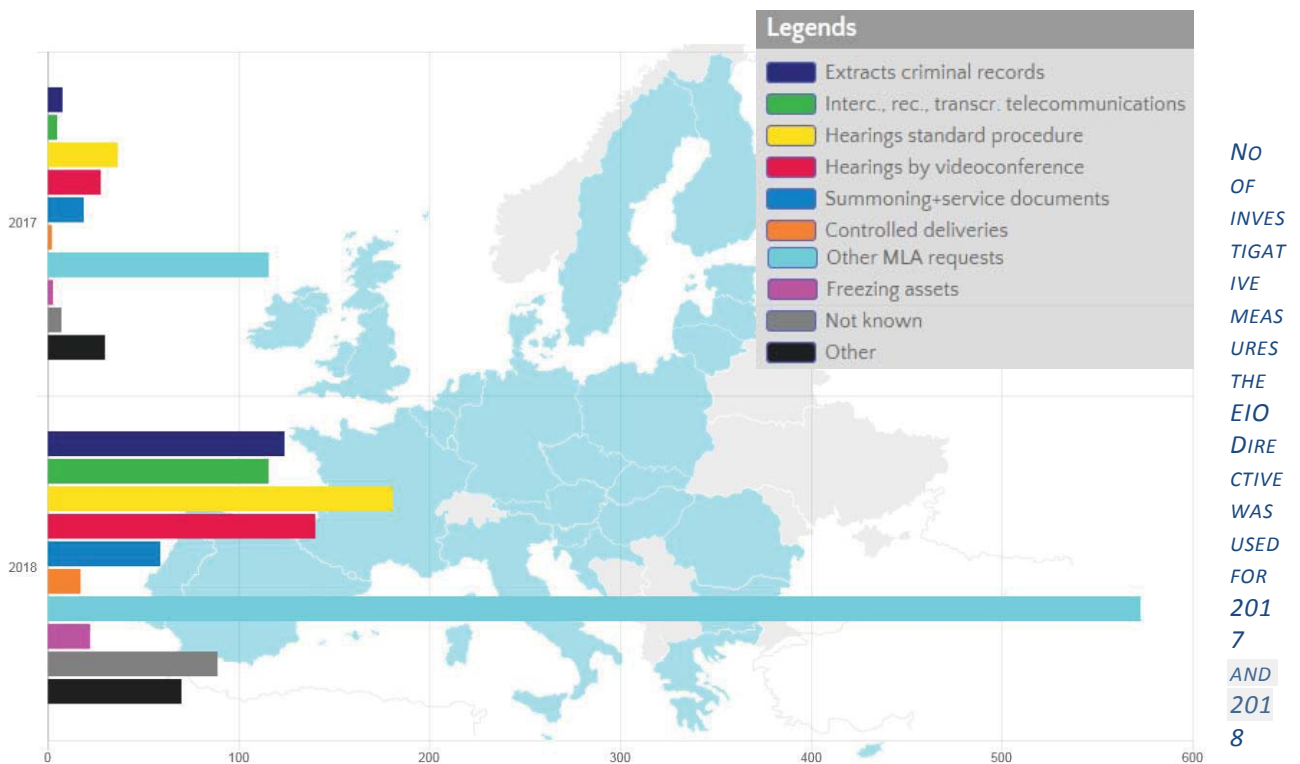




LEGAL INSTRUMENT APPLIED IN RELATION TO AN INVESTIGATIVE MEASURE (2017-2018)

Certain investigative measures such as the freezing of assets/property for the purpose of confiscation were discussed by the EIJ Contact Points in the EIJ meetings over the two-year reporting period in more detail due to questions arising with regard to the scope of the EIO. As concluded in the 50<sup>th</sup> Plenary meeting of the EIJ Contact Points in Sofia (Bulgaria), while being outside the scope of the EIO, the freezing of property for the purpose of confiscation might still be requested in an EIO in situations where the property is also being secured for evidentiary purpose. In such situations the EIO could be used, as the primary aim of the freezing is evidence gathering rather than confiscation, as evident also from the graph above. In the section on “Freezing assets”, such cases have been reported by the EIJ Contact Points.

The EIO instrument is being used for different kinds of investigative measures, as reflected in the next graph, while the numbers increased considerably in 2018 as more and more EU Member States transposed the Directive (see graph below)



### 1.1.3. European Arrest Warrant

In 2002, the Framework Decision on the European Arrest Warrant (FD EAW<sup>6</sup>) was adopted to speed up European extradition procedures and enhance judicial cooperation. The introduction of the EAW replaced several existing instruments concerning extradition used within the EU, mainly the 1957 Council of Europe Convention on extradition.

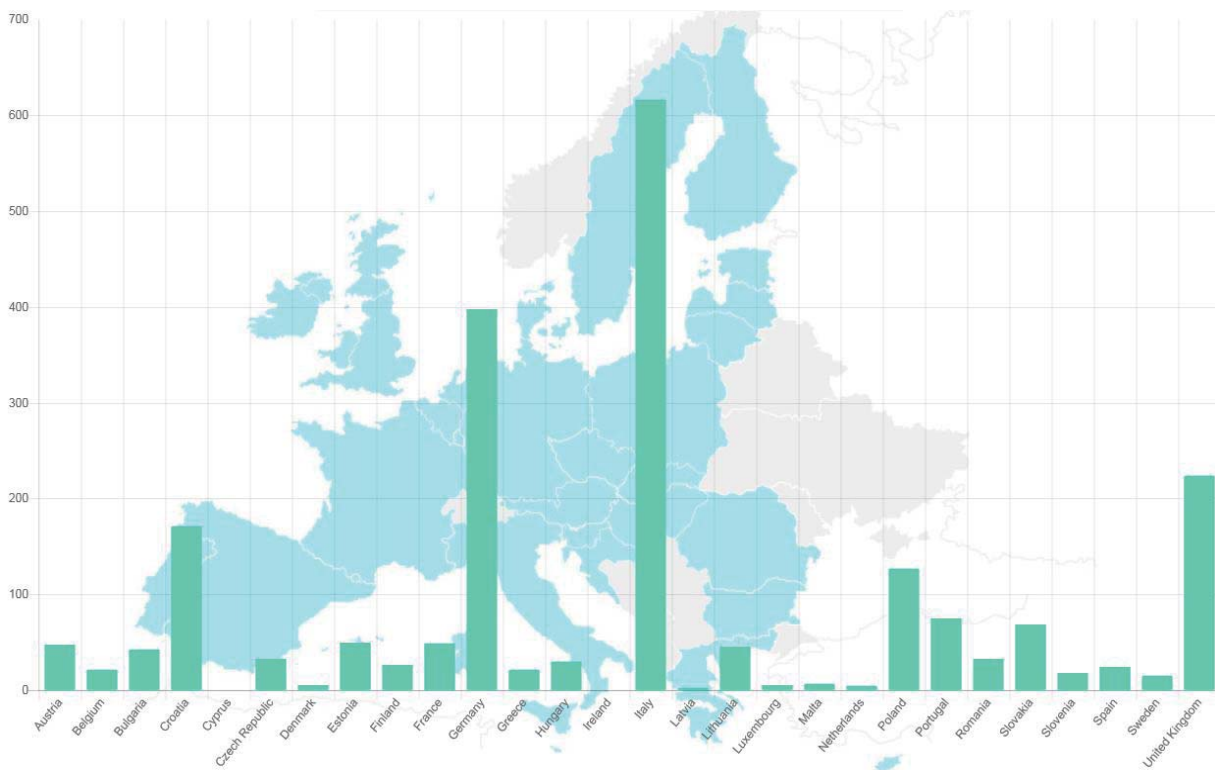
The FD EAW, based on the principle of mutual recognition, has often been described as a success story. In recent years, with an increase in judgments from the Court of Justice of the EU, the EAW has again come into focus. Hence, over the 2017 - 2018 reporting period, different aspects related to the EAW were the subject of discussion between the EJM Contact Points, in particular at the 48<sup>th</sup> and 49<sup>th</sup> EJM Plenary meetings of the EJM in Malta and in Estonia.

The EJM Contact Points have an important role in facilitating the handling of the EAW, by fostering cooperation and smoothing communication between the national authorities. Among other things, they assist with resolving arising issues and difficulties with regard to the execution of EAWs.

The central role of EJM Contact Points in assisting the practical application of the EAW is reflected in the graph below. It shows **the activities reported by the EJM Contact Points in cases of EAW execution for the period 2017 – 2018, namely more than 1,800 cases.**

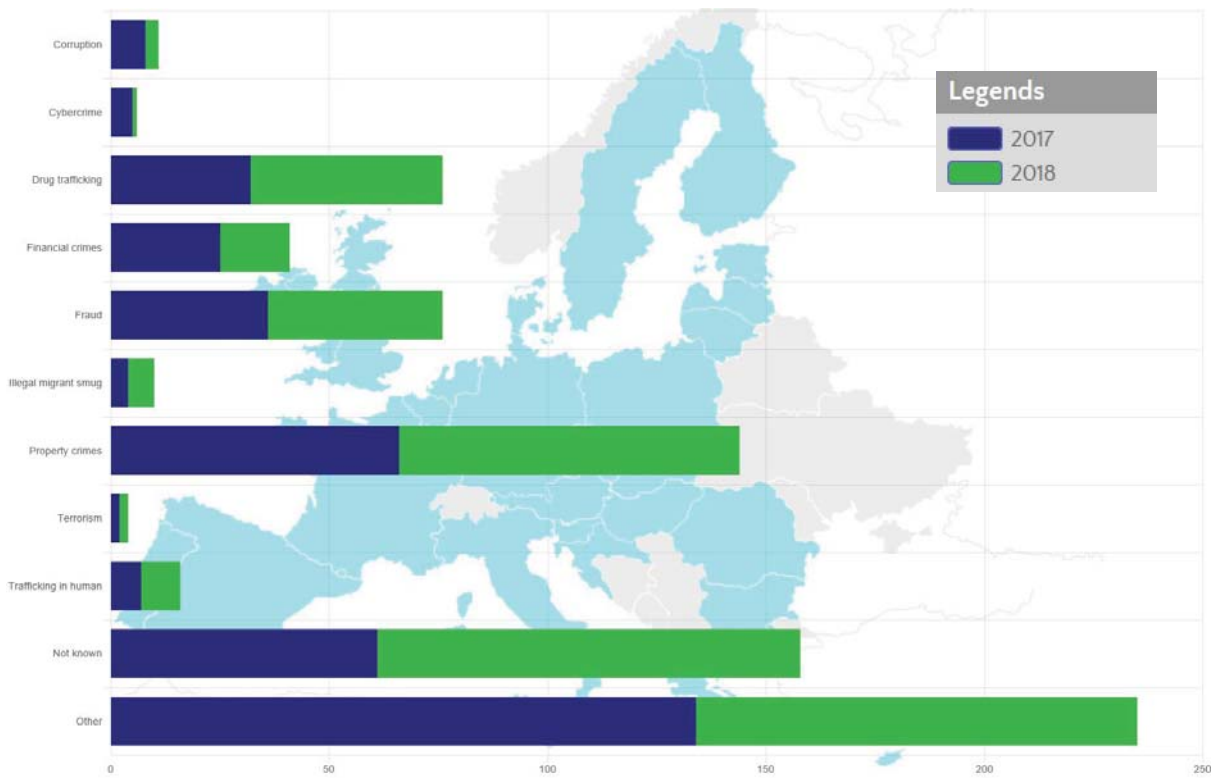
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<sup>6</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States



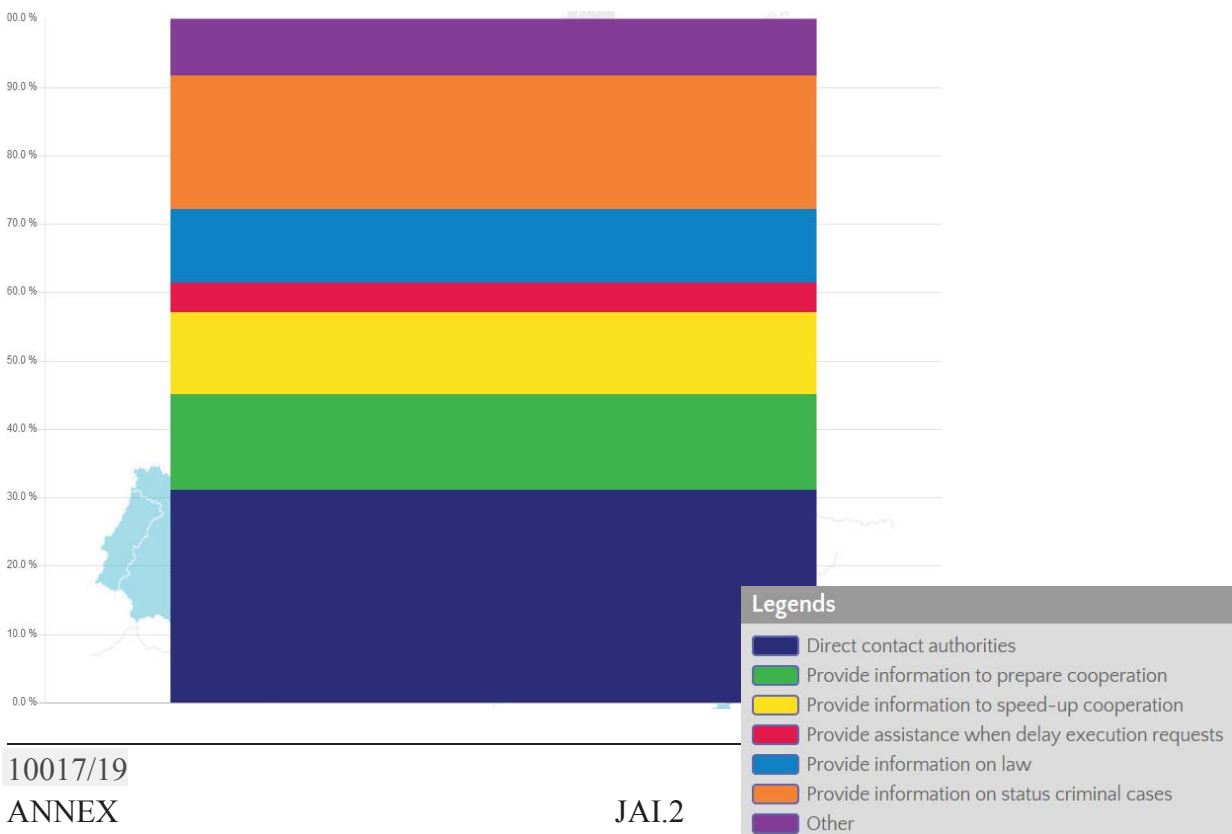
*EAW APPLIED IN EU MSS (AS ISSUING/EXECUTING MS) (NO OF CASES)*

EAW, by far the most used legal instrument over the time, is being used in all categories of crime.



NUMBER OF CASES EAW USED IN DIFFERENT CRIME CATEGORIES

The role of the EJM Contact Points in the EAW cases referred to them varies from facilitating the exchange of information between the national authorities and drafting the EAW to providing information on the status of execution of the EAW.



The EJM continues to closely follow the latest developments in the application of the EAW and to provide opportunities for practitioners to exchange views and practical experiences.

#### 1.1.4. Other mutual recognition instruments

Apart from the commonly used EIO and EAW, during the reporting period the EJM Contact Points assisted in the application of or provided information also on other mutual recognition instruments, some of which are less used by practitioners. All these instruments form an integral part of the EU legal framework in the area of judicial cooperation in criminal matters and address various aspects and needs in criminal proceedings.

These other mutual recognition instruments were also discussed in the EJM meetings. The 51<sup>st</sup> EJM Plenary Meeting under the Austrian Presidency focused on six mutual recognition legal instruments with the aim of identifying practical problems and possible solutions in their implementation and application; Framework Decision 2008/909/JHA<sup>7</sup> on custodial sentences, Framework Decision 2008/947/JHA<sup>8</sup> on probation measures, Framework Decision 2009/829/JHA<sup>9</sup> on supervision measures, Framework Decision 2005/214/JHA<sup>10</sup> on financial penalties, Framework Decision 2006/783/JHA<sup>11</sup> on confiscation orders and Directive 2011/99/EU<sup>12</sup> on the European Protection Order. The EJM Contact Points reported on their practical experience in using and applying the instruments. One finding is that these instruments are not commonly used by the practitioners in the Member States due to a lack of awareness and experience of them, but also because of the burdensome administrative procedures that must be followed. These observations are confirmed in

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<sup>7</sup> Council Framework Decision 2008/909/JHA of 27 Nov 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty

<sup>8</sup> Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

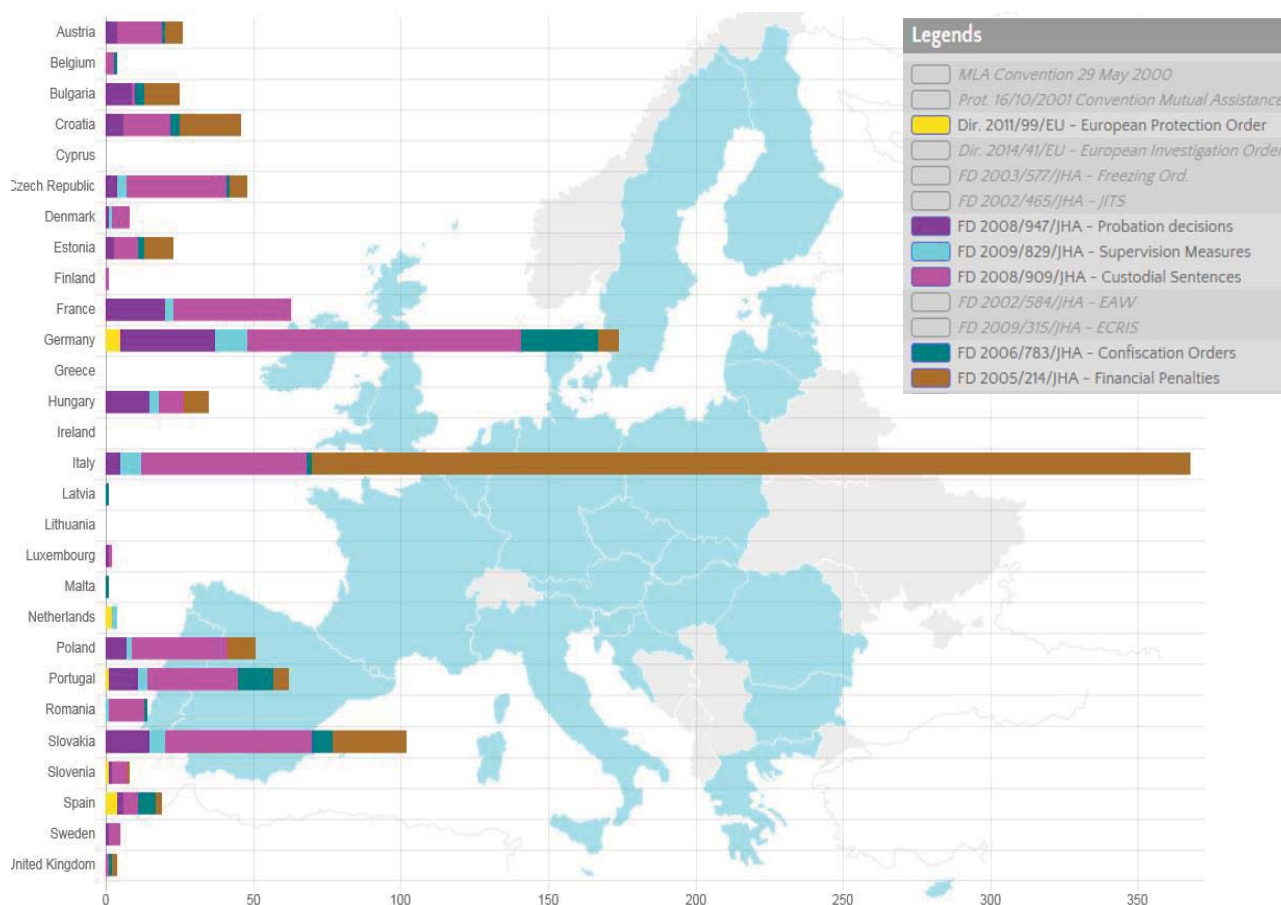
<sup>9</sup> Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

<sup>10</sup> Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

<sup>11</sup> Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

<sup>12</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

the graph below as it illustrates the number of cases reported by the EJN Contact Points where the above-mentioned legal instruments were applied.



#### DIFFERENT MR INSTRUMENTS APPLIED BY MS

The detailed EJN conclusions and observations on the application of mutual recognition instruments have been published as Council Doc. 14754/18 “Conclusions from the 51st EJN Plenary meeting (Vienna, November 2018) on the application of Mutual Recognition Instruments”.

#### 1.1.5. Requests for Mutual Legal Assistance

As discussed in the previous sections of this report, the scope of the newly introduced EIO is not covering all types of investigative measures and thus some of them should still be requested on the basis of MLA requests, mainly the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (EU MLA Convention 2000)<sup>13</sup> and the

<sup>13</sup> 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.

Council of Europe MLA Convention 1959 (Eur. Convention of Mutual Assistance)<sup>14</sup> (and the respective Additional protocols to them).

During the 2017-2018 reporting period, considering that the EIO was being implemented over this period, **the EIJ Contact Points reported more than 6,500 cases in which they supported the national authorities in the Member States with regard to the execution of MLA requests.** The graph below concerns the following instruments: MLA Convention 2000, Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Protocol 16/10/2001), Council of Europe MLA Convention 1959 (Eur. Conv. Mutual Assistance) and Additional Protocol to the European Convention on Mutual Assistance in Criminal matters (Add. Protoc Eur Conv Mutual Assistance).

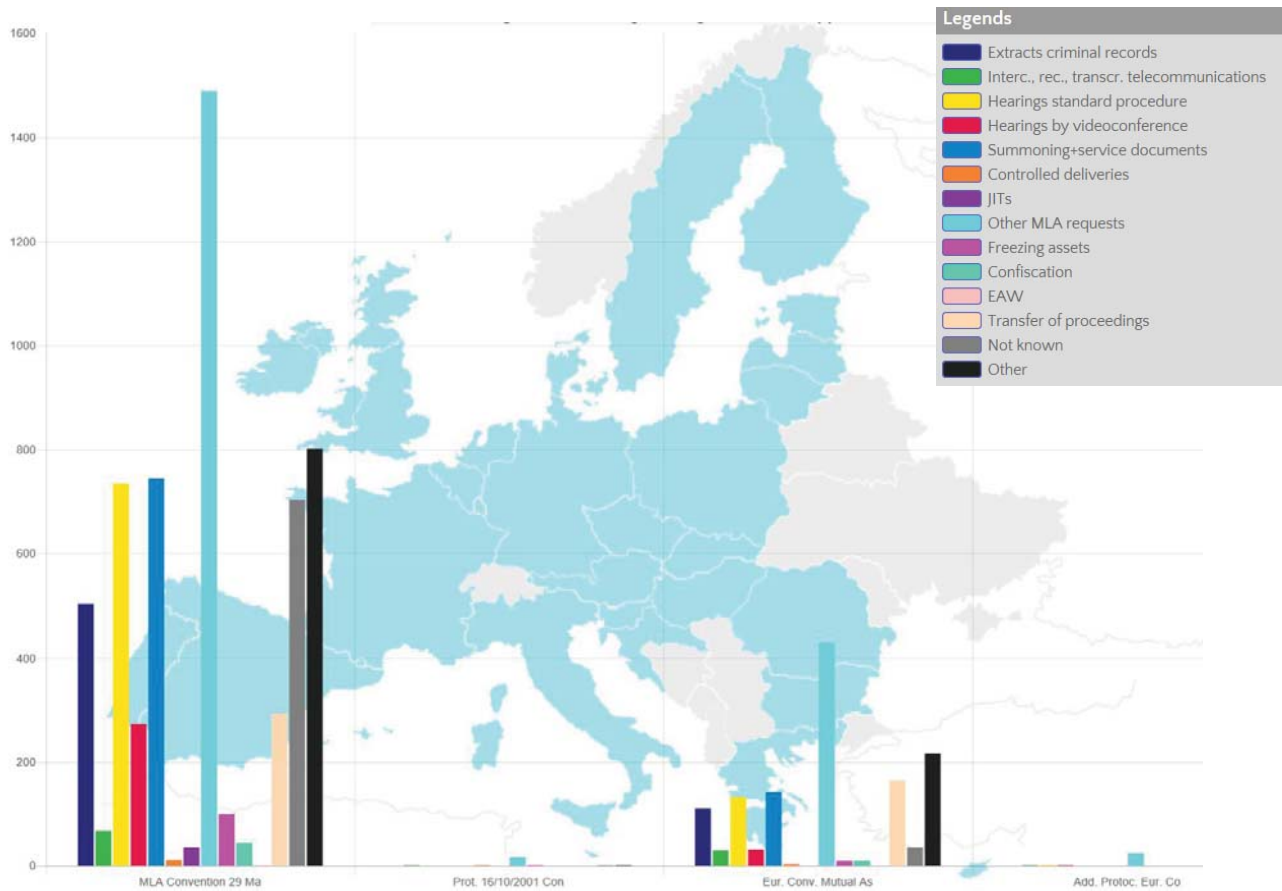


*ASSISTANCE WITH MLA REQUESTS (AS ISSUING/EXECUTING MS)*

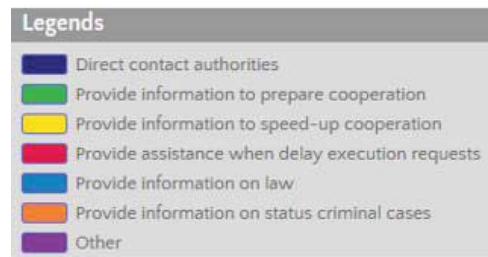
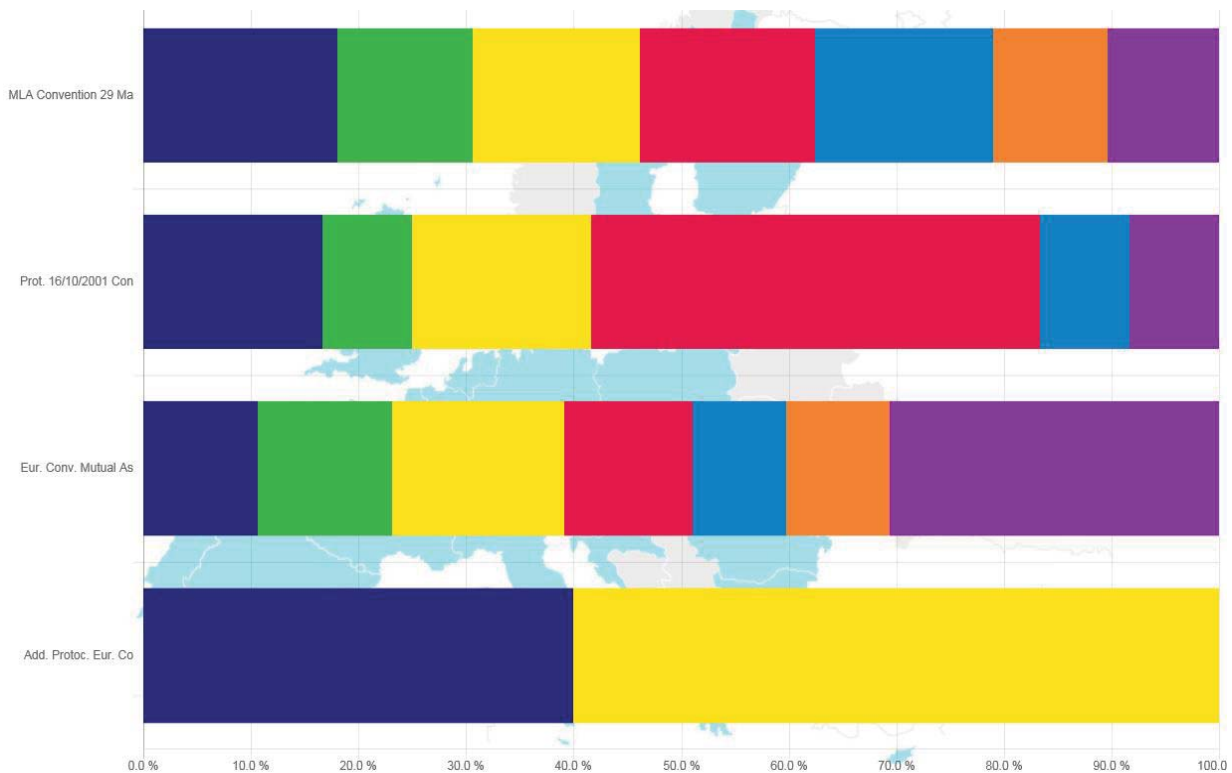
<sup>14</sup> Council of Europe Convention on Mutual Assistance in Criminal Matters, 20.04.1959.



MLA is used for the following measures:



The EJM Contact Points also reported on the different aspects of support and expertise they provided to the practitioners as regards MLA as illustrated in the graph below:



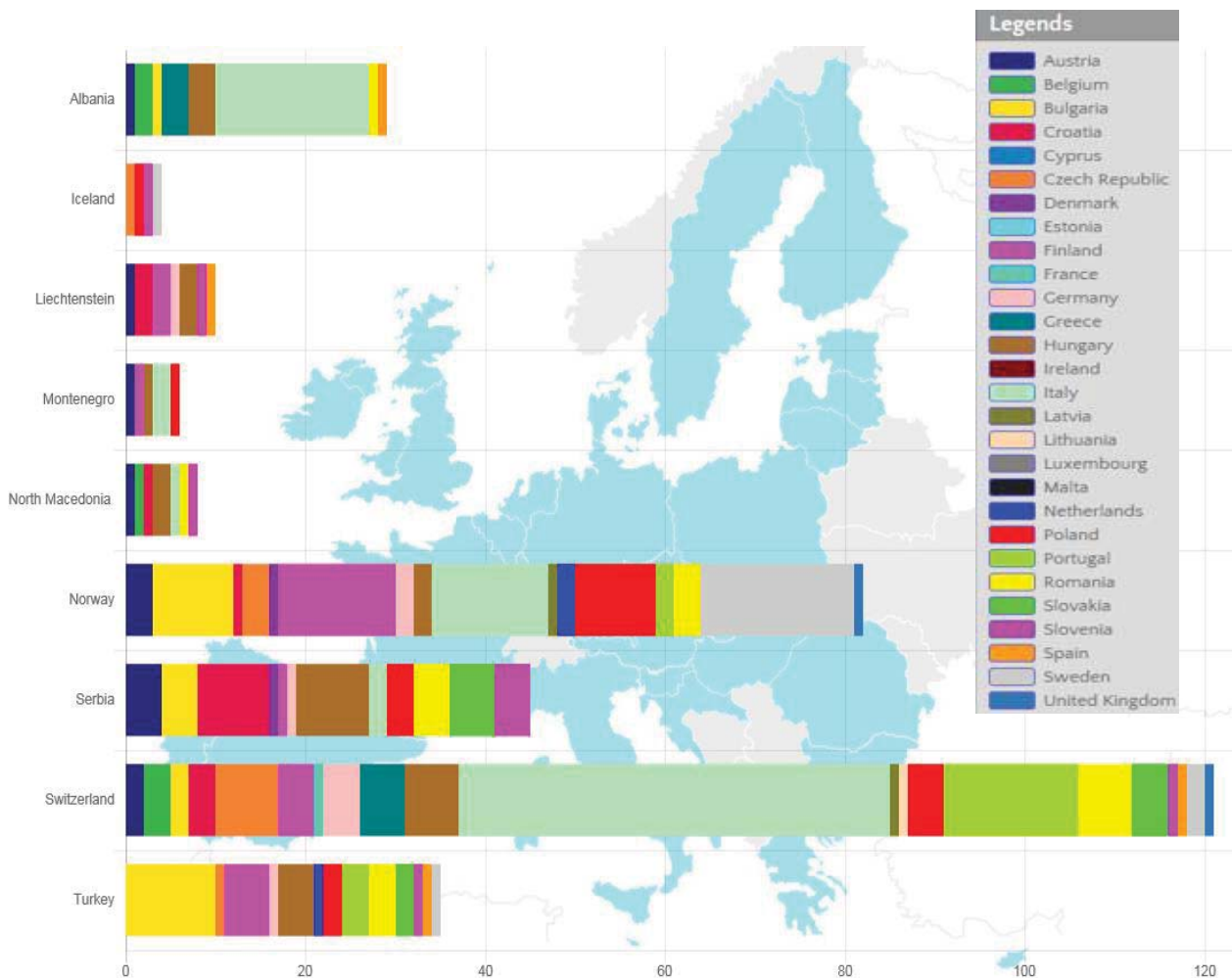
*TYPE OF ASSISTANCE PROVIDED AGAINST LEGAL INSTRUMENT APPLIED*

The reported activities of the EJM Contact Points reflect their role as active facilitators of judicial cooperation. As indicated in the graph above, the different kinds of assistance they provide are rather equally distributed, i.e. assisting in establishing direct contacts between national authorities (dark blue), assisting in the drafting stage of orders and requests (green), providing assistance in cases of delayed execution (red), otherwise speeding up the process (yellow), providing information on national laws (light blue) and providing information on the status of the execution (orange).

## 2. Cooperation with EJM associated and EU candidate countries

Over the 2017 – 2018 reporting period, the EJM developed its operational cooperation with the EU candidate countries (Albania, Montenegro, North Macedonia, Serbia and Turkey) and EJM associated countries (Norway, Iceland, Lichtenstein and Switzerland).

Years of experience prove that maintaining a close relationship with the associated countries and candidate countries is essential for the EJM due to the proximity of the countries and the consequent need for more effective cooperation. As evident from the graph below, **more than 300 cases** were reported by the EJM Contact Points where they supported a cross-border investigation involving an EJM associated or EU candidate country. Cooperation with these partners has been reinforced by common projects that are outlined further on in this report.

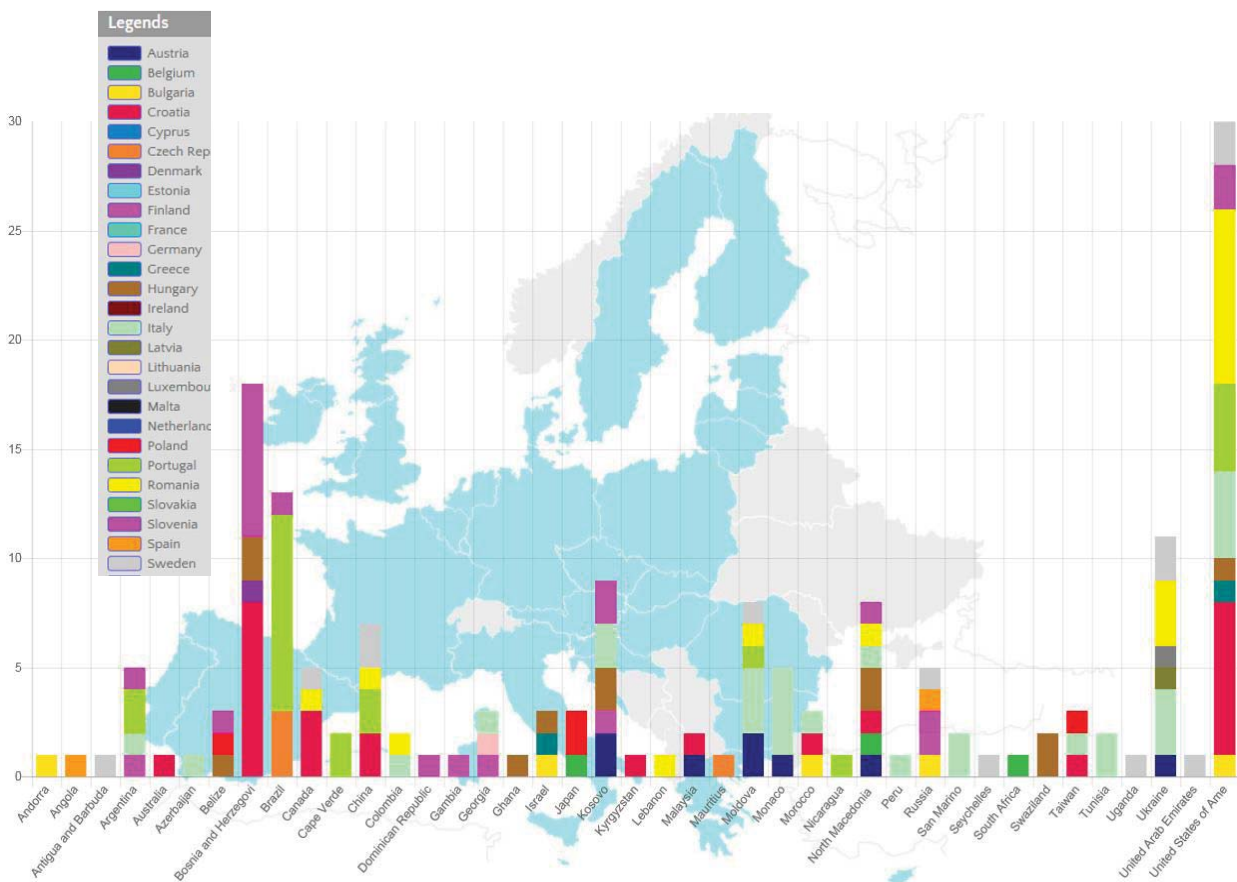


NUMBER OF CASES REPORTED BY THE EJM WITH THE EU ASSOCIATED/CANDIDATE COUNTRIES INVOLVED

### 3. Cooperation with judicial networks and third countries

Apart from the cooperation established with the EJM associated and EU candidate countries, the EJM has continued to strive to establish and maintain relations with judicial authorities in third countries, either directly or via one of several other judicial networks established around the world, as explained further in the following sections of this report.

The graph below illustrates more than 100 cases reported by the EJM Contact Points where they cooperated with partners from third countries.



NO. OF CASES REPORTED BY THE EJM WITH THE NON-EU COUNTRIES INVOLVED

## II EJM CONTRIBUTION TO JUDICIAL COOPERATION

### 2.1. EJM activities in relation to judicial cooperation within the EU

#### 2.1.1. European Investigation Order

##### *EJM meetings*

In 2017, the EIO was one of the main topics for the 48<sup>th</sup> and 49<sup>th</sup> Plenary meetings of the EJM under the MT and EE Presidency in June and November 2017, as well as in two regional EJM meetings (FI and PL). In 2018, the EIO was discussed at the 39<sup>th</sup> Regular meeting in February, the 50<sup>th</sup> plenary meeting in Sofia in June and in several Regional EJM meetings (DE, PT, SE, PL, ES).

The outcomes of the EJM meetings have been presented at various occasions in the Working Party on Cooperation in Criminal Matters (COPEN) in the Council, see Council doc [15210/17](#) and [14755/18](#).

The Secretary to the EJM attended the Eurojust seminar on the EIO on 19-20 September 2018 and presented the EIO support on the EJM website.

##### *EIO area on the EJM website*

In 2017, the EJM Secretariat created an area for the EIO on the home page of the EJM website. In this area there are links to documents/information on the EIO and the EJM tools relevant for the EIO (Atlas, Compendium, etc.). The EIO Conclusions from the EJM meetings in 2017 and 2018 have been added to this area. Other documents have also been made available on this section of the EJM website as support to practitioners:

- EJM document on *Competent authorities, languages accepted, urgent matters and scope of the EIO Directive*
- Eurojust/EJM Note on the meaning of “corresponding provisions” and the applicable legal regime in case of delayed transposition of the EIO Directive (2 May 2017, available in the EJM restricted area on the EJM website).

Furthermore, the EJM Contact Points provided valuable information on the application of the EIO during the transitional period, the scope of application of the EIO and national guidelines. This information is available on the website and has been welcomed by all EU practitioners as it assists them in their everyday work with the new challenges posed by this new legal instrument.

### ***Other activities***

EJM Contact Points have also provided contributions to their colleagues at national level and participated in a Commission expert group **to support the practical application of the EIO**, e.g. guidelines on how to fill in the EIO form and an electronic version of the form, with text suggestions to fill in, especially for the purposes of obtaining e-evidence.

Some Members developed EIO **national guidelines / circular letters** to provide guidance to their own practitioners on how to apply this new instrument. Some of the Member States that have already drafted such EIO national guidelines have made them available to the other EJM Contact Points via the EJM restricted access area on the EJM website.

Finally, in 2017, the 7<sup>th</sup> **Legal English Training organised for the EJM Contact Points** by the EJM Secretariat combined lessons on the theoretical and practical use of the English language, in particular related to the drafting of the EIO.

### ***EIO issues***

**The scope of the EIO** is one of the issues that had already been identified at an early stage, before the transposition deadline of the Directive. Art. 3 of the EIO Directive, which refers to “any investigative measure”, and Art. 34 of the EIO Directive, which states that the Directive replaces “the corresponding provisions” of the “1959 CoE Convention” and its two additional protocols, as well as the “2000 MLA Convention” have thus been some of the main topics of discussion among the EJM Contact Points.

In order to assist with the interpretation of the scope of the EIO Directive, the EJM has published a document **“Competent authorities, languages accepted, urgent matters and scope of the EIO Directive”**, which is available to all practitioners on the EJM website. The EJM has concluded that

while many investigative measures are now covered by the EIO, some still clearly fall outside of its scope and are covered by other legal instruments. Such measures are the transfer of criminal proceedings, the setting up of a Joint investigation team, freezing property for the purpose of subsequent confiscation, restitution, spontaneous exchange of information and service of procedural documents. A list of measures and actions was drawn up within the EIO Conclusions 2018, where there is a common understanding that they fall outside the scope of the EIO.

There are however **different views** on whether the EIO should be used for **cross-border surveillance**. Most Member States consider cross-border surveillance (referred to in Recital 9 of the EIO Directive) as a matter for police cooperation and that an EIO should not be issued in these cases. Some Member States, on the other hand, are of the opinion that Recital 9 is not binding and that cross-border surveillance could be a matter for judicial cooperation.

Another issue that has been discussed is how to proceed at the stage of securing an object; either the EIO (obtaining evidence) or the Freezing order (for subsequent confiscation) should be used. Here there seems to be a common view that the EIO should be used if the primary aim is to obtain evidence. As regards the related issue of restitution to an injured party, most Contact Points are of the opinion that the freezing of property for this purpose is not within the scope of the EIO –an MLA request should be used instead.

Matters that were discussed together with solutions proposed by the EJM Contact Points:

- ▶ **Filling in the EIO form:** In the event that several measures are to be executed in one Member State, all of them should normally be included in one EIO form. If several competent authorities are required for the execution of this single EIO, it is still the executing Member State who is responsible for the timely involvement of the relevant national authorities.
- ▶ **Urgent requests:** Based on mutual trust, and with the support of the EJM Contact Points, informal channels of cooperation could facilitate the execution of urgent requests, even before an EIO has been issued and transmitted.
- ▶ **Proportionality:** there is a need to find a common understanding on what are to be considered as minor offences.
- ▶ **National decision in the Issuing Member State:** When executing the EIO, some Member States require a national decision issued by a competent authority in the issuing Member State.
- ▶ **Language regime:** Member States should include more than one accepted language in their national provisions, recognising that English is already widely spoken among practitioners.
- ▶ **Options for transmitting an EIO:** EJM secure telecommunication connection, Eurojust secure connection, COM secure online portal once available (e-evidence digital exchange system), eMLA (Interpol), Schengen Information System (SIS), the use of modern techniques for encryption.

- ▶ **Role of the EJM:** the EJM should be prepared to increase its support, in order to avoid unnecessary delays in the issuing and execution of EIOs.
- ▶ **EJM website:** The website should keep the designated EIO area with practical information for its application up to date. Member States should provide information on the EIO for the Fiches Belges tool on the EJM website.
- ▶ **Rule of Speciality:** there are different opinions as to whether the rule of speciality applies in the context of an EIO. Therefore, a cautious approach is to send a request to the executing Member State, before the previously obtained evidence is used for other purposes than that stated in the EIO.

The EJM Contact Points suggest **continuous training and support at national level for the legal and practical application of the EIO**. Training sessions should be of a practical nature and involve sharing of best practices and identifying the main problems on the EIO. Simulations of concrete cases have proven to be a very successful format, since this activates the participants in the different roles of the procedure. The EJM on the other hand continues to promote its national and regional meetings, which are considered a very valuable way of **disseminating information and raising awareness of the EIO**.

Member States have also been invited to issue **national guidelines/ handbooks/ compendium of practices**. Several Member States have issued such documents, which provide guidance to practitioners on how to interpret and apply the EIO Directive and the national legislation transposing it.

Finally, an **EU Handbook on the EIO**, developed by the Commission, is highly desirable. The EJM is ready to support in the drafting of such a handbook.

### **2.1.2. European Arrest Warrant**

#### *EJM meetings*

The EAW was discussed in 2017 at **the 48<sup>th</sup> Plenary meeting of the EJM in Valletta under the Maltese Presidency** and at the **49<sup>th</sup> Plenary meeting of the EJM in Tallinn under the Estonian Presidency**, as well as in two regional meetings organised with financial support from the EJM (DE, NL).

The items discussed were **the relationship between extradition and the EAW surrender procedures** in view of the judgment of the Court of Justice of the European Union (CJEU) in the Petruhhin case – i.e. the execution of a request for extradition presented by a third country to a Member State of the



EU against a national of another EU Member State. The EJM also analysed the consequences of the CJEU judgments in the Aranyosi and Căldăraru cases. These two judgments deal with **inadequate detention conditions** in the issuing Member State as a ground for non-execution of the EAW. Another topic was **the time limits for surrender** in light of the CJEU Tomas Vilkas case (Art. 23 of the EAW FD).

The Conclusions of the two Plenary meetings were presented in COPEN on 18 December 2017 ([15207/17](#)). The expertise of the EJM and its Contact Points was confirmed as a key element for facilitating the communication and exchange of information between the competent national authorities as well as for consultations on national legislation and procedures.

### ***Relationship between extradition and the EAW***

On 6 September 2016, the Grand Chamber of the Court of Justice of the European Union (CJEU) delivered its judgment in [Case C-182/15 Petruhhin](#).<sup>15</sup> This judgment has a significant impact on the cooperation between the Member States and third countries on extradition matters, and namely on the execution of a request for extradition presented by a third country to a Member State of the European Union against a national of another EU Member State, and it determines serious implications regarding the relation between extradition and the surrender procedures provided for in the Council Framework Decision [2002/584/JHA](#) on the European arrest warrant and the surrender procedures between Member States.

The EJM concluded the following:

- ▶ **Obligation to inform the Member State of nationality and the extent of the information:** There is as a consequence of the Petruhhin judgment an obligation to inform the Member State of which the requested person is a national about the extradition request, to give that Member State the opportunity to issue an EAW. It would be sufficient to provide the same type of information that is usually contained in an SIS alert.
- ▶ **Recipient of the information in the Member State of nationality:** The information should normally be provided to the Central Authority in the Member State of nationality. The EJM can be used to facilitate the communication.
- ▶ **Time Limits:** A period of 10 days would normally be sufficient to allow for an assessment of the possibility to issue an EAW, with the possibility to extend it under certain circumstances.

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<sup>15</sup> CJEU (C-182/15)

- ▶ **Confidentiality:** Extradition cases do not require confidentiality by default, but there are cases where the investigation could be jeopardised if the request for extradition from a third state was known.
- ▶ **Role of the EJM:** The EJM Contact Points should be used as facilitators of the communication and to ensure that all parties are updated on the status of the requests.

### ***EAW and detention conditions***

Following the examination of the questions posed in the Aranyosi and Căldăraru cases<sup>16</sup>, the CJEU held that the execution of EAWs must be deferred or eventually ended if there is a real risk of inhuman or degrading treatment because of the conditions of detention in the issuing Member State. As a consequence, the executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk.

The EJM concluded the following:

- ▶ **Assessing systemic and generic risks:** A comprehensive database describing the current information per country and judgments would be useful to gather the available sources in one place
- ▶ **Information on detention conditions:** Upon the receipt of a request for additional information under article 15.2 of the EAW FD, it would be preferable to receive tailored replies since providing information that is not required could lead to additional questions being raised in the executing Member State
- ▶ **Facilitating exchange of information:** EJM Contact Points that are specialists in detention conditions could be indicated on the EJM website, for practitioners to identify the most suitable contact.
- ▶ **Information on the EJM website:** it would be useful to gather national case law on this topic and to present it on the EJM website.

The EJM suggested that it would be advisable to **facilitate awareness-raising among the CJEU and ECHR as well as the national courts** about the different issues affecting international judicial cooperation in criminal matters and the practical consequences of the judgments.

There was a general agreement that the efficiency of the EAW and as a consequence **public security in the Member States will continue to be at risk unless detention conditions in all Member States are brought to an appropriate level.** In this regard **the funding possibilities** offered by the European Commission **to accelerate the restorative process of prisons** and detention centres should be further explored to solve a swiftly growing problem of impunity that affects the security of EU citizens.

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<sup>16</sup> CJEU Decision on Pál Aranyosi (C-404/15) and Robert Căldăraru (C-659/15 PPU)

## ***EAW and time limits***

On 25 January 2017, the CJEU delivered its judgment in the Vilkas case.<sup>17</sup> The Court interpreted Articles 15(1) and 23 of the EAW Framework Decision (EAW FD) and concluded that the authorities responsible for executing a EAW must, in the event of force majeure being established, set a third surrender date where the first two surrender attempts have failed on account of the resistance put up by the requested person. In its judgment, the CJEU clarifies the meaning of the concept of “force majeure” (“circumstances beyond the control of the Member States concerned”) in the context of the EAW FD, but underlines that it is for the national court to make the final assessment as to whether the circumstances in the case at hand constitute “force majeure” or not. The CJEU concluded that authorities remain obliged to agree on a new surrender date if the time limits mentioned in Article 23 have expired.

The EJM concluded the following:

- ▶ **Time limits and procedures for surrender of the person (Article 23 EAW FD):** to acknowledge the national differences regarding the time limits, a compilation of the national legislation transposing Articles 17 and 23 of the EAW FD would be a useful source of information.
- ▶ **Postponement of the surrender due to “circumstances beyond the control of any of the Member States” (force majeure) (Art 23(3) EAW FD):** The opportunity to collect important examples of national case law regarding the concept of “force majeure” was raised in the discussions as one way of reaching a common understanding. It was however agreed that for several reasons (such as the issue of translation of national case law), the need to implement this suggestion should first be analysed further)
- ▶ **Best Practices regarding the surrender of the person:** One problem while executing an EAW is that the issuing Member State is sometimes not able or willing to collect the requested person on time. This situation could result in the requested person being released from detention, either because force majeure could not be established or because the executing Member States might apply strict deadlines on the length of detention. The key to solving these situations is efficient communication between the authorities of the executing and issuing Member States.
- ▶ **Role for the EJM Contact Points and the EJM website:** The major role for the EJM Contact Points in relation to the situations in the Vilkas judgment is consultation and communication between the issuing and executing Member States. The EJM is available to assist in case of a delay from the side of the issuing Member State or with any other issue that may cause unnecessary delays to the surrender.

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<sup>17</sup> CJEU Decision on Tomas Vilkas (C-640/16)

## ***Other activities***

The EJM supported the Commission on the revised EAW Handbook, including by participating at an expert meeting on 7 July 2016 in Brussels, where the EJM input was presented. The Handbook was published in October 2017 in the Official Journal and on the EJM website.

### **2.1.3. Other mutual recognition instruments**

#### ***Council Conclusions on Mutual Recognition Instruments***

On 7 December 2018, the Council adopted the Conclusions on Mutual Recognition in Criminal Matters (Council [doc 15272/18](#)<sup>18</sup>). In the Conclusions, the Council acknowledges that the EJM plays an active role in addressing obstacles for, and identifying best practices in, mutual recognition. The Council encouraged the EJM “to continue improving its website with practical information on mutual recognition instruments, among other things, since this has proven to be a very helpful tool for practitioners”. The Council also invited the EJM “to continue paying regular attention to instruments of mutual recognition in their meetings with practitioners”.

#### ***New Regulation on freezing and confiscation***

In March/April 2018 the EJM gave its input on the draft certificates annexed to the new Regulation on the mutual recognition of freezing and confiscation orders (Council doc [7606/18](#)). This document was presented and discussed in a COPEN meeting in the Council in Brussels on 13 April 2018. The EJM input was greatly appreciated as support for the further process of finalising the new Regulation and the certificates.

#### ***Mutual Recognition Instruments at the EJM Plenary meeting in Vienna***

The EJM plenary meeting under the Austrian Presidency in Vienna in November 2018 focused on the implementation and application of six EU legal instruments based on mutual recognition, namely:

- Custodial sentences (FD 2008/909/JHA)
- Supervision of probation measures and alternative sanctions (FD 2008/947/JHA)
- Supervision measures as an alternative to provisional detention (FD 2009/829/JHA)

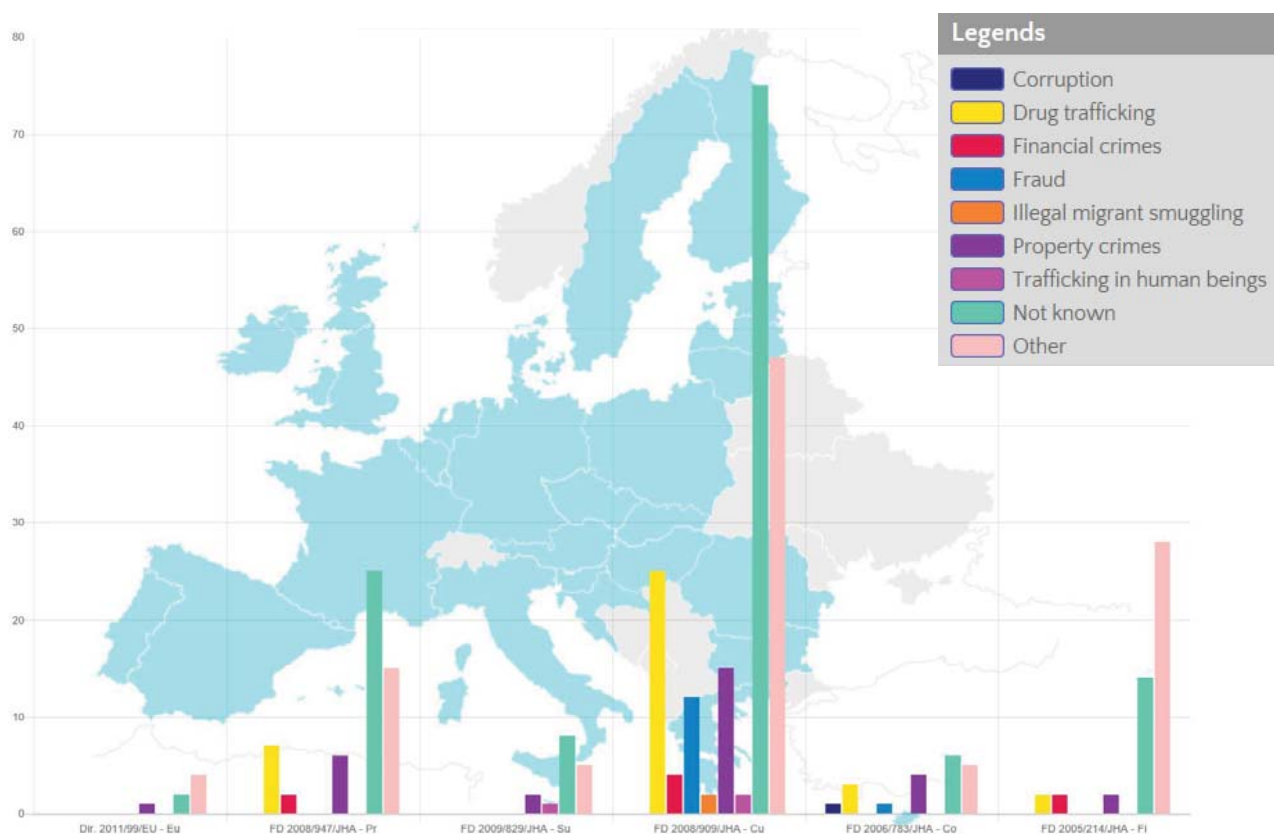
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<sup>18</sup> Council Conclusions on mutual recognition in criminal matters ‘Promoting mutual recognition by enhancing mutual trust’ (2018/C 449/02), 13 December 2018

- Financial penalties (FD 2005/214/JHA)
- Confiscation Order (FD 2006/783/JHA)
- European Protection Order (Directive 2011/99/EU)

The EJN Contact Points' experiences of the instruments vary. While the FD 2008/909/JHA was the only instrument for which a majority of the Contact Points reported having experience of, their experience of FD 2005/214/JHA, FD 2006/783/JHA and FD 2008/947/JHA is much less. For FD 2009/829/JHA and Directive 2011/99/EU, the experience is even less, which also reflects the rare use of these two instruments in general.

The graph below illustrates the number of these six instruments where the EJN Contact Points were involved in 2017-2018 in different categories of crime.



#### NO. OF MR INSTRUMENTS USED IN A CATEGORY OF CRIME

The Plenary meeting in Vienna served to identify and discuss practical problems in the (non-)application of the instruments. It was also an occasion to raise awareness of the instruments and to address how they are implemented and used in the Member States. While noting the difficulties in the application of the legal instruments in question, the EJN discussed different possibilities to provide assistance to the practitioners in the Member States when it comes to their practical

application, e.g. in assisting the authorities of the issuing State to identify the competent authority in the executing State.<sup>19</sup>

A further need of training for practitioners on the application of the instruments was identified. Such training should be organised both at national level and at EU level, with the involvement of the EJM and EJTJ, where appropriate. The need for handbooks and guidelines for the practical application of the instruments was also underlined.

The importance of the EJM website was also highlighted as a source of information to facilitate the identification of the executing competent authorities, (through the EJM Atlas tool), as well as with possible additional legal and practical information to be added regarding these instruments in the Fiches Belges and the Judicial Library. It may be noted that the Council, in its Conclusions of 7 December 2018, invited Member States “to encourage practitioners to use the practical tools for judicial cooperation and the (electronic) forms and certificates of mutual recognition instruments that are available on the website of the EJM, as this may facilitate the application of these instruments”.<sup>20</sup>

The EJM concluded that it should continue to promote through its Plenary meetings, as well as in Regional and National meetings, the discussions on the different legal instruments to raise awareness and strengthen the understanding of them. The Conclusions from the meeting were presented at the COPEN meeting in Brussels on 13 December 2018, Council [doc 14754/18](#).

#### **2.1.4. e-evidence/COM secure online portal for sending EIO and MLA**

The use of electronic devices, online messaging apps and social media for criminal purposes pose significant challenges to law enforcement and judicial authorities, from both a technical and legal perspective. The advent of the digital age and its technological breakthroughs has led to an increasingly complex environment for investigating and prosecuting crimes.

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<sup>19</sup> See Framework Decisions 2008/909/JHA, Article 5(4); 2008/947/JHA, Article 6(6); 2009/829/JHA, Article 10(7); 2005/214/JHA, Article 4(5); 2006/783/JHA, Article 4(4); and Directive 2011/99/EU, Article 8(2).

<sup>20</sup> Council Conclusions on mutual recognition in criminal matters ‘Promoting mutual recognition by enhancing mutual trust’ (2018/C 449/02), 13 December 2018, Point 12.

As one way to tackle this issue, on 17 April 2018 the Commission presented a proposal for a Regulation on obtaining e-evidence directly from service providers through Preservation and Production Orders. The European Production Order allows a judicial authority in one Member State to obtain e-evidence in a short period of time directly from a service provider or its legal representative in another Member State. The European Preservation Order is to be used as a first step to prevent data from being deleted in view of a subsequent request to obtain the preserved information via a European Production Order (or a European Investigation Order/mutual legal assistance). The Regulation is supplemented by a Directive which makes it mandatory for any service provider who is providing services within the EU to appoint a legal representative.

In the second semester of 2018, the EJM worked on giving its input to the negotiations on the draft Regulation and the certificates annexed to the Regulation (as well as the Directive on legal representatives of service providers in the EU). This work, which is set to continue in 2019, and the above-mentioned EJM input on the new Regulation on freezing and confiscation are examples of a more pro-active way adopted by the EJM to support the legislative process in Brussels in drafting instruments that take into account their practical use<sup>21</sup>

### **2.1.5. Judicial training**

#### ***Overview***

On several occasions, the EU Commission has called for training of the judiciary.<sup>22</sup> With the entry into force of the Lisbon Treaty, the scope of EU competence in the field of judicial training was widened. Articles 81(2) and 82(1) TFEU provide that the EU is competent to "support the training of the judiciary and of judicial staff" in judicial cooperation in civil and in criminal matters. A landmark communication from the Commission of September 2011, Building trust in EU-wide justice<sup>23</sup>, is currently being evaluated.

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<sup>21</sup> See the EJM Decision, Article 5.2 and Council Conclusions on mutual recognition in criminal matters 'Promoting mutual recognition by enhancing mutual trust' (2018/C 449/02), 13 December 2018, Point 25

<sup>22</sup> COM (2009) 262, p. 11.

<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Building Trust in EU-wide Justice. A new dimension to European Judicial Training', COM(2011)551 final, Brussels, 13.9.2011



A new dimension to European judicial training set the goal of ensuring that half of all legal practitioners in the EU (around 700,000) be trained in EU law or the national law of another Member State by 2020.<sup>24</sup> According to the latest report issued in 2018, the 2020 target was surpassed last year.<sup>25</sup>

### ***Legal English training for EJM Contact Points***

In line with the EJM Work Programmes for 2017 and 2018, the EJM Secretariat organised Legal English training for the EJM Contact Points, with the focus on judicial cooperation.

The 7<sup>th</sup> Legal English training took place on 4 – 7 April 2017 in The Hague. This edition of the language training sessions attracted a total of 54 participants. It combined intensive lessons on the theoretical and practical use of the English language, in particular related to the drafting of the European Investigation Order (EIO) and probable cause statements for requests to the United States. The training included a speaker from the European Commission and two expert panels that discussed the key issues to consider when applying the EIO and the different elements needed for drafting effective requests for judicial cooperation to the United States for electronic and non-electronic evidence, as well as for extradition cases.



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<sup>24</sup> European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Building trust in EU-wide justice: a new dimension to European judicial training. Brussels, 13.9.2011.COM (2011) 551 final.

<sup>25</sup> [European Judicial training 2018](#).



The 8<sup>th</sup> Legal English training took place in The Hague on 17 – 20 April 2018. This training was organised with a focus on international judicial cooperation with Latin America and the challenges regarding e-evidence requests within the EU and beyond. Experts in the field of judicial cooperation from Brazil and Mexico provided an overview on the applicable procedures in cases involving extradition, mutual legal assistance and confiscation requests. During the second part of the training on e-evidence, led by a representative of the European Judicial Cybercrime Network (EJCN), the EJC Contact Points got an insight into how to solve challenges related to requests for e-evidence.

### ***European Judicial Training Network (EJTN)***

The cooperation with the European Judicial Training Network (EJTN) continued to be in the form of seminars on International Judicial Cooperation in Criminal Matters: Practical Case-Based Simulation.



In the four seminars for each year 2017 and 2018 that were organised by the EJTN, the EJC was represented by EJC Contact Points who presented the role and functions of the Network.

In addition to that, within the EJTN series of seminars on EU Cross-border evidence in practice, two EJC Contact Points performed as experts on the EIO at the seminar on the EIO.

#### **Article 4(3) of the EJC Decision:**

“At their respective level the contact points shall be involved in and promote the organisation of training sessions on judicial cooperation for the benefit of the competent authorities of their Member State, where appropriate in cooperation with the European Judicial Training Network.”

## 2.2. Cooperation with actors in the field of judicial cooperation

### 2.2.1. Overview

The EJM has established cooperation with the Council and the European Commission, as well as the other EU bodies that have been created over the years. During the reporting period the EJM was actively involved in various initiatives of the EU Commission and the Council of the EU covering different aspects of cooperation in criminal matters and the mutual recognition instruments such as EIO implementation, EAW handbook, E-evidence and Freezing and Confiscation certificates.

### 2.2.2. Cooperation with EU institutions

#### *European Commission*

The cooperation between the EJM and the Commission consists of several parts, for instance:

- As part of the project for the possible migration of the EJM website to the e-Justice Portal<sup>26</sup>, the EJM and the Commission have been working on links from the revamped e-Justice Portal to the EJM website and its tools. The aim is to present the relevant information on the EJM and its support on the e-Justice Portal and to ensure that as many practitioners as possible are aware of and use the EJM website in their daily work.
- Notifications from the Commission to the EJM Secretariat regarding EU legal instruments. In order for the EJM to be able to provide all relevant information on EU Legal instruments, the Commission is providing notifications from the Member States related to them, including a translation in English.<sup>27</sup>
- Mutual participation and contributions in meetings (COM experts' meetings and EJM Plenary meetings, etc.);
- Consultations on topics for the EJM Plenary meetings.

#### *Secure Online Portal/Digital Exchange System*

The Commission was asked by the Council in June 2016 to develop a **Secure Online Portal for sending electronic requests regarding e-evidence**. When developing the Portal (Digital Exchange System), the Commission decided to provide an online interactive EIO form with guidance on how to fill in the EIO form. The Secure Online Portal will therefore be both a drafting tool for the EIO and a way of sending the EIO and receiving the replies/evidence in a secure manner. Within this project,

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<sup>26</sup> Conclusions by the Justice and Home Affairs Council in October 2013 on the cooperation between the website of the European Judicial Network (EJM) in criminal matters and e-Justice (Council doc 13407/13).

<sup>27</sup> See the Council Conclusions on mutual recognition in criminal matters 'Promoting mutual recognition by enhancing mutual trust' (2018/C 449/02), 13 December 2018, Point 22

the Commission asked the EJM, Eurojust and the EJCJ to assist with developing the EIO online interactive EIO form and guidance.

The tools were not yet ready by the end of 2018, but as soon as they are available they will be provided via the EJM website and later included in the Secure Online Portal (Digital Exchange System).

### *The Commission at EJM Plenary meetings*

Representatives from the European Commission always attend and make presentations at EJM Plenary meetings. Topics that were included during the reporting period were: an overview of the EIO Directive and certain aspects of its scope, the Commission initiatives in the field of e-evidence, aspects of the application of the EAW, developments in matters such as the European Public Prosecutor's Office (EPPO), European Criminal Records System, the e-evidence legislative package and initiatives related to the field of detention conditions.

### *The Council of the EU*

The cooperation with the Council of the EU has been strengthened over the last two years, in particular as regards the more systematic way of working with and presenting the Conclusions from the EJM Plenary meetings in the Council.

Further to that, as mentioned above the EJM has provided input to the new Regulation on Freezing and Confiscation<sup>28</sup> and a new Regulation on Production and Preservation Orders.

### *E-Justice – migration of the EJM website to the e-Justice Portal*

<sup>28</sup> Section 2.1.3

#### **EJM documents in COPEN 2017-2018:**

##### **21 June 2017**

EIO - State of Play of the Implementation Process – Eurojust and the EJM) ([9936/17](#)).

##### **18 December 2017:**

Conclusions on the EIO from the EJM Plenary meetings in Malta and Tallinn ([15210/17](#)).

Conclusions of Plenary meetings of the EJM concerning case-law on the EAW ([15207/17](#)).

##### **12 December 2018:**

Conclusions from the 51<sup>st</sup> EJM Plenary meeting (Vienna, November 2018) on the application of Mutual Recognition Instruments ([14754/18](#)).

20th Anniversary Conclusions (Sofia, June 2018) on the “EJM in retrospective and the way forward” ([14753/18](#)).

EJM Conclusions 2018 on the EIO ([14755/18](#)).

Since the adoption of the Conclusions by the Justice and Home Affairs Council in October 2013, several steps have been taken in order to agree on a model for the cooperation.

### 2.2.3. Cooperation with Eurojust

Eurojust and the EJM maintain privileged relations based on consultation and complementarity, both at operational and institutional level. These privileged relations are repeated in the new Regulation for Eurojust, adopted at the end of 2018 (Reg 2018/1727)<sup>29</sup>. One main area for the cooperation has been the follow-up of the recommendations addressed to the EJM and Eurojust in the 6<sup>th</sup> Round of Mutual Evaluations (6RME). In order to respond to the recommendations, both the EJM and Eurojust set up their respective Action Plans. The areas of common interest were reflected in both Action Plans.

Most of the measures in the 6RME Monitoring table were implemented over the 2017-18 period. Some of the measures are of a continuous/permanent nature, including those with a common EJM/Eurojust interest, and will continue to be implemented in coordination.

As one of the outcomes of the 6RME, Eurojust and the EJM decided to update the Joint Paper – Assistance in International Cooperation in Criminal Matters for Practitioners – What can we do for you? This paper gives advice to practitioners on whether to contact the EJM or Eurojust in a specific case. The updated version of the Joint Paper was ready in January 2018 and has subsequently been translated into several of the EU languages and uploaded on the EJM and Eurojust websites.

As a follow-up to the updated Joint Paper, **Eurojust and the EJM have jointly engaged in a project on “Assessment of allocation of cases to Eurojust and to the EJM”**. The aim was to further clarify the roles of Eurojust and EJM and to provide supplementary guidance, by identifying best practice and possible difficulties and solutions on when and under which circumstances cases should be sent to either Eurojust or the EJM. The outcome of the project will be a Report on the assessment of allocation of cases to Eurojust and the EJM. The project is expected to be finalised in mid-2019.

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<sup>29</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

The annual meeting between the EJM Presidency board and the Eurojust Presidency team took place on 21 February 2017 and on 20 February 2018 respectively. In these meetings topics of common interest are discussed, including budgetary issues. The importance of creating synergies and working jointly has been recognised by both entities.

As part of the cooperation, Eurojust representatives are always invited to attend EJM Plenary meetings in the Member States.

#### **2.2.4. Cooperation with EU Networks**

In 2002 the **European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes** (*“the Genocide Network”*)<sup>30</sup> was established. The aim of the Genocide Network is to facilitate cooperation and assistance between the Member States' investigation and prosecution authorities and to exchange information on criminal investigation and prosecution of persons suspected of having committed or participated in the commission of the relevant crimes.

In 2005 the **Network of National Experts on Joint Investigation Teams** (*“the JITs Network”*)<sup>31</sup> was established. The aim of the Network is to promote and facilitate the setting-up of JITs, the possibility of which is provided for in Article 13 of the 2000 MLA Convention<sup>32</sup>.

In 2016 the **European Judicial Cybercrime Network (EJCN)**<sup>33</sup> was established. The aim of the EJCN is to facilitate and enhance cooperation between competent judicial authorities by enabling the exchange of expertise, best practice and other relevant knowledge regarding the investigation and prosecution of cybercrime.

The secretariats of the EJM, the JITs Network and the Genocide Network are located at Eurojust and draw on its administrative resources.<sup>34</sup>

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<sup>30</sup> Council Decision 2002/494/JHA, amended by Council Decision 2003/335/JHA.

<sup>31</sup> Council document 11037/05.

<sup>32</sup> Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union

<sup>33</sup> Council Conclusions of 9 June 2016.

<sup>34</sup> Article 25a of Eurojust Decision; Article 48 of Eurojust Regulation.

An EJM White Paper on the implementation of the “Explanatory Memorandum on the need for enhancing the collaboration and improving the interconnection between the European Judicial Network (EJM) and similar judicial cooperation Networks and structures in criminal matters; and the regional cooperation with 3<sup>rd</sup> countries and cooperation with other EJM partners”, adopted during the 43<sup>rd</sup> Plenary meeting of the EJM Contact Points under the Italian Presidency in 2014, emphasised the need to collaborate with Eurojust, the Genocide Network and the JIJs Network.<sup>35</sup>

The cooperation between the EJM and the JIJs Network has resulted in a number of improvements aimed at improving the functioning of the networks and thereby facilitating the work of the practitioners in the Member States. Thus, the EJM Contact Points have access to the JIJs’ restricted internet area, which contains legal and practical information about the setting up of JIJs, etc. and the contact details of the JIJs experts. These contact details are also available to the EJM Contact Points on the EJM website. Furthermore, the EJM is presented in the JIJs’ restricted internet area, including the credentials to restricted areas on the EJM website, through which access is given to the contact details of the EJM Contact Points and certain documents that are not publicly available. Vice versa, the EJM website has a specific area on the JIJs network.

Additionally, representatives of the two networks are always invited to each other’s annual/plenary meetings. For instance, the Secretary to the EJM attended and had the role of chair and rapporteur of one of the workshops at the 13<sup>th</sup> Annual meeting of JIJs experts on 17-18 May 2017 in The Hague. This workshop dealt with the relationship between the JIJs experts and Partners, which is an area where the EJM has wide experience.

The cooperation between the EJM and the EJCJ is mentioned in the EJCJ Work Programme 2017/2018 and focuses on the sharing of contact details, access to restricted areas/website and uploading documents, etc. from the EJCJ on the EJM website. With regard to access to each other’s contact details, the situation is the same as for the JIJs network. Accordingly, the contact details of the members of the EJCJ are available to the EJM Contacts Points on the EJM website, and the members of the EJCJ have been provided with credentials to have access to the contact details of the EJM Contact Points on the EJM website. When a technical solution is found, the plan is to allow the EJM to have access to certain areas of the EJCJ’s restricted website. Finally, it should be

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<sup>35</sup> EJM/2014/11; point 3.3. In addition, the EJM Work Programmes for 2017 and 2018 specifically mention the cooperation with the three networks

mentioned that, with the aim of establishing cooperation already at an early stage, the Secretary to the EJM attended the EJM meetings that took place at the Eurojust premises during the reporting period.

As for the cooperation between the EJM and the Genocide Network, both are invited to each other's respective annual/plenary meetings. The list of the Genocide Network Contact Points is a document published by the Council and shared according to the LIMITE policy of Council documents.

Joint or bilateral meetings of the heads of the three Secretariats and the EJM support team at Eurojust take place on a regular basis.

The EJM website is an important platform for providing information and tools to practitioners on judicial cooperation in criminal matters. Therefore, consultations on which documents of the other Networks should be published on the EJM website as well as other possible ways of cooperation will continue in 2019.

### **2.2.5. Other structures**

#### ***European Network on Victims' Rights (ENVR)***

The Victims' network was established by Council Conclusions adopted at the JHA Council on 9 June 2016. The role of the ENVR is to facilitate cooperation between the competent authorities responsible for victims' rights of the Member States, e.g. in cross-border cases and with respect to the compensation of victims. Already in the previous reporting period (2015/16), the EJM had established relations with the ENVR, e.g. with a presentation by the ENVR at the EJM Plenary meeting in Bratislava in November 2016 and with a discussion about the role of the victim in criminal proceedings, including in terrorist cases. The contact details of the members of the ENVR are available to the EJM Contact Points on the EJM website and information about the ENVR is presented in a specific area of the website.

In view of the fact that the ENVR has been recognised as an affiliated network and has received an Operating Grant from the Commission (January 2018), discussions on the cooperation between the EJM and ENVR have continued. It has been concluded that involvement in the respective meetings

and common interests in certain topics for the meetings is one of the main points to develop, in particular when it comes to the implementation of the legal framework in the area of victims' rights.

### ***Europol***

The EJM has been invited to participate in the **SIRIUS project, managed by Europol**, together with Eurojust and other partners.

This project aims at improving cross-border access to electronic evidence, by providing opportunities for the exchange of best practice and training on cooperation with US-based service providers and to provide opportunities for the exchange of best practice and further training for EU practitioners on applicable rules in the US on MLA procedures.

A number of EJM Contact Points participated in the first SIRIUS Conference in November 2018, where representatives from several US-based service providers were present. The newly set-up SIRIUS platform and the tools that are being developed to facilitate obtaining electronic evidence, mainly from the United States, were presented.

The EJM Contact Points, and through them also other national authorities, have been invited to sign up to join the SIRIUS Platform, so that they get access to the different tools that are offered.



## 2.3. Judicial cooperation outside of the EU

### 2.3.1. Overview

In addition to the EJM Contact Points nominated in the EU Member States, contact points are also nominated in the EU candidate countries<sup>36</sup> and in EJM associated countries<sup>37</sup>. Furthermore, the EJM has established relations with other judicial networks around the world and through contact points in various other third countries. The contact points are judges, prosecutors or other practitioners from local judicial authorities and central authorities. As a result, the EJM Contact Points enjoy direct access to contacts on a global scale.

The strategic aim of the cooperation with third countries and judicial networks is to develop and maintain a coordinated approach, based on operational needs. The EJM Secretariat continues to update the section "[\*Cooperation with 3<sup>rd</sup> Countries and Judicial Networks\*](#)" on the EJM website on a regular basis.

The EJM Secretariat and EJM Contact Points regularly attend meetings organised by other judicial networks, e.g. the 28<sup>th</sup> Conference of the Southeast European Prosecutors Advisory Group (SEEPAG) on 26 September 2017 in Sinaia, Romania and the meeting of the West African Network of Central Authorities and Prosecutors (WACAP) on 20-23 November 2018 in Cotonou, Benin, where the EJM Secretariat made a presentation via video link.

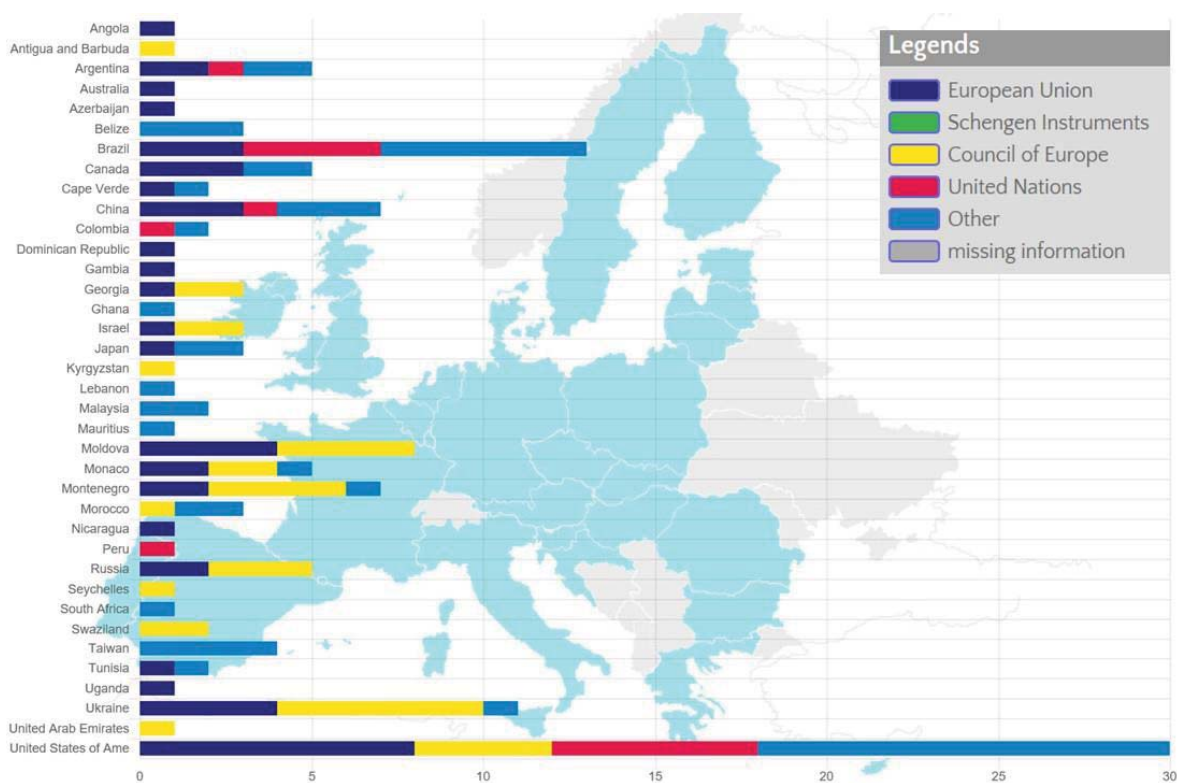
With regard to specific activities, the EJM Secretariat organised the 8<sup>th</sup> Legal English training in April 2018 in The Hague with experts provided by IberRed, in line with the MoU between the EJM and IberRed. The focus was reinforcement of knowledge about MLA and extradition requests with Latin American countries and challenges regarding e-evidence requests within the EU and beyond.

Judicial cooperation in criminal matters between EU Member States and third countries continues to be governed by international law treaties and agreements, either bilateral or multilateral, as also reflected in the graph below. As far as the multilateral instruments are concerned, there are legal instruments adopted under the aegis of the Council of Europe and the United Nations (UN) and the Agreements that the EU has concluded with some third countries.

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<sup>36</sup> Albania, Montenegro, North Macedonia, Serbia and Turkey

<sup>37</sup> Norway, Iceland, Lichtenstein and Switzerland



NUMBER OF CASES WITH THIRD COUNTRIES AND USED LEGAL FRAMEWORK AS REPORTED BY EJM CONTACT POINTS OF THE EU

### 2.3.2. Western Balkans

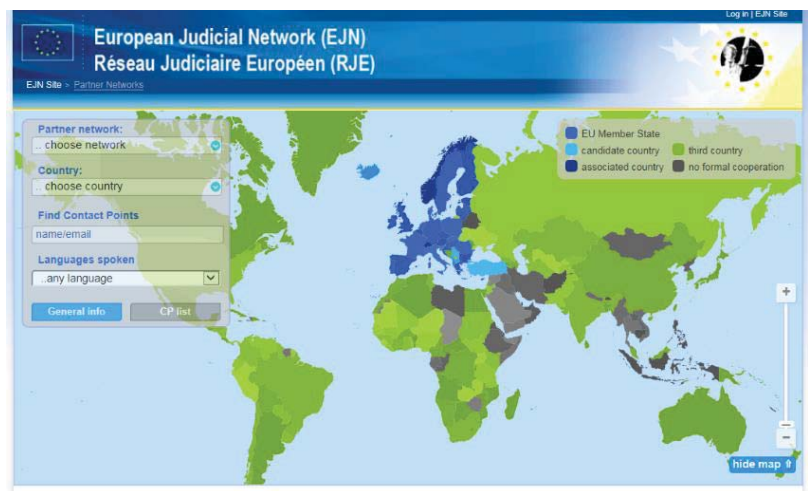


The EJM has developed its cooperation with the Western Balkans. As a result, the EJM nowadays has contact points in the entire Western Balkans; in the EU candidate countries Albania, Montenegro, North Macedonia and Serbia, and in the potential EU candidates Bosnia & Herzegovina and in Kosovo\* (This designation is without prejudice to the positions on status, and is in

line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence). Contact Points there have been nominated both in the Office of the General Prosecutor as well as in the Ministry of Justice, and in some cases in other relevant authorities.

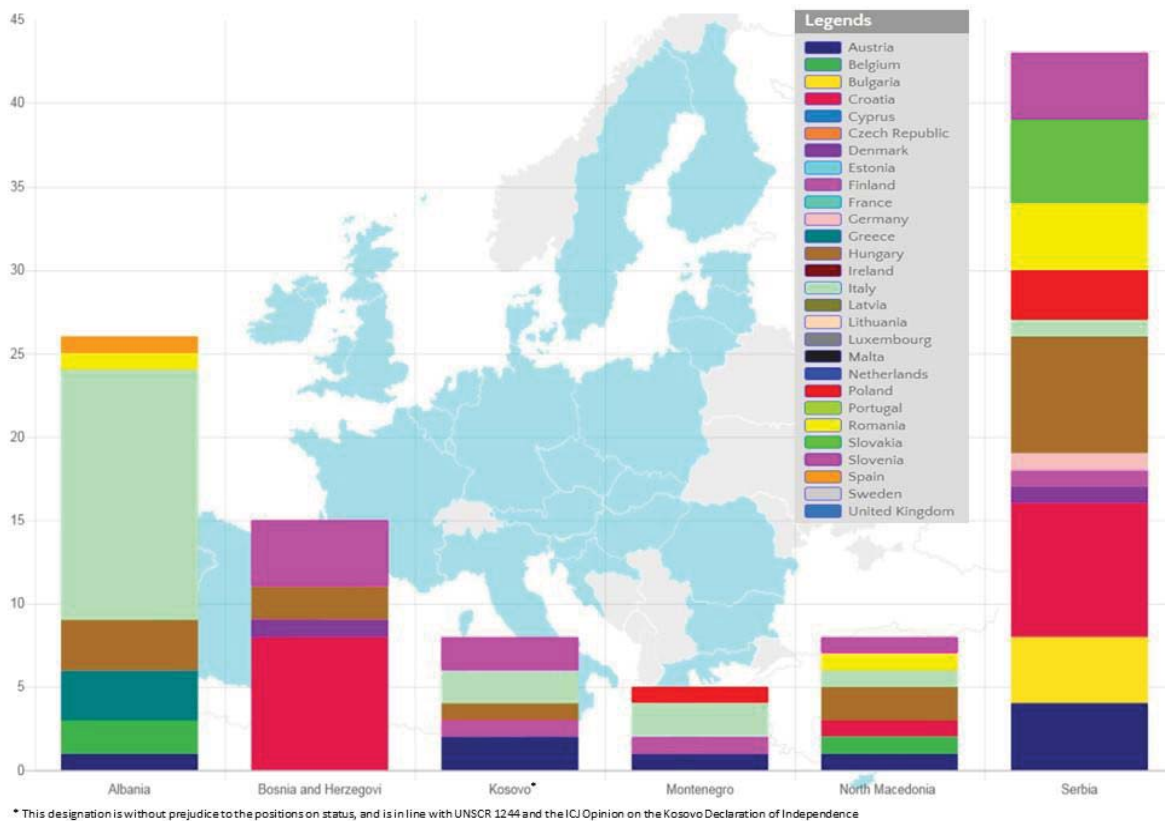
Western Balkan is also represented on the website. Depending on their status in relation to the EU, the location of the information about that country on the EJM website differs; the EU candidate countries are presented on the homepage of the website, whereas the potential candidates have their place in the Section on Cooperation with non-EU countries and other judicial networks. Regardless of the location on the website, the Western Balkan has information on their national systems on the EJM website and the contact details of their contact points.

The contact points of the Western Balkan participate frequently in the EJM Plenary meetings, as the high value of these meetings is recognised by the authorities in the Western Balkan area. The purpose of the plenary meetings is to allow contact points to get to know each other and share experience, and to



provide a forum for discussion on the practical and legal problems encountered by the Member States in the context of judicial cooperation. For this reason, the attendance of the EJM contact points from Western Balkan in the EJM meetings is therefore essential and very much appreciated by the EJM Contact Points of the EU Member States.

The following graph reflects the number of cases of different EJM Contact Points from EU Member States where the Western Balkan was involved in numerous cases for the last reporting period:



#### EU MSS REPORTING CASES INVOLVING WESTERN BALKANS

A

contributing factor for the well-functioning cooperation with the Western Balkan is the **IPA 2017 project “Countering Serious Crime in the Western Balkans”**, to which the EJM is associated.

The IPA 2017 project follows the two IPA projects that have already ended: the IPA 2010 project “Fight against organised crime and corruption: Strengthening the Prosecutors` Network” and the IPA 2014 project “International Cooperation in Criminal Justice: the Prosecutors' Network of the Western Balkans”.<sup>38</sup> The EJM Secretariat participates as an observer in the project’s Steering Committee meetings, together with other members of the Committee (PCC SEE Secretariat, Regional Cooperation Council (RCC), Eurojust, Europol, CEPOL and UNODC).

One representative from the Project Management Team is regularly invited and attends the plenary meetings of the EJM contact points, to further foster the cooperation between the EJM and the project.

<sup>38</sup> The purpose of the IPA instrument is to assist the beneficiary countries in facing the challenges of European integration, to implement the reforms needed to progress in the Stabilisation and Association Process, and to lay down the foundations for fulfilling the requirements for achieving EU membership (the Copenhagen criteria).

### 2.3.3. Euro-Mediterranean cooperation: EuroMed Justice IV

The EuroMed Justice Project is focused on judicial cooperation in the field of criminal law, in coordination with Eurojust and the EJM, as well as in the field of civil law, independence of justice and access to justice. The overall objective is to contribute to the “development of a Euro-Mediterranean area of cooperation in the field of justice and of effective, efficient and democratic justice systems”<sup>39</sup>. The EU together with the South Partner Countries – the People’s Democratic Republic of Algeria, the Arab Republic of Egypt, Israel, the Kingdom of Jordan, Lebanon, Libya, the Kingdom of Morocco, Palestine and the Republic of Tunisia – began in 2016 the new phase of the EuroMed Justice process, EuroMed Justice IV.

The EuroMed Justice IV officially kicked-off on 1 February 2017 and was implemented over a period of two years. The EJM Secretariat participated in the 1<sup>st</sup> Forum of the EuroMed General Prosecutors, on 23 January 2018. The Prosecutors General from European countries (Belgium, Cyprus, France, Malta, Portugal and Spain) and the South Partner Countries adopted a declaration aimed at improving the international judicial cooperation between these regions. This declaration, the “Tallinn Roadmap”, underlines

#### EuroMed Justice projects

The EuroMed Justice III project funded by the EU over the period 2011-2014 followed the success of EuroMed Justice I and II for the development of a Euro-Mediterranean area of cooperation in the field of justice. The EuroMed Justice IV is financed by DG NEAR.

EJM and Eurojust are key partners to this project and are represented in the steering committee of the project. In order to implement the activities a group of experts

the

importance of creating a judicial network in the Mediterranean region. One important operational outcome was that the EJM Contact Points can address the CrimEx members (via the EJM Secretariat) for operational matters and vice-versa.

The 4<sup>th</sup> CrimEx meeting took place in Tallinn to establish closer relations between the CrimEx group from the South Partner Countries and the EJM Contact Points. The EJM was represented by a number of Contact Points and by the EJM Secretariat. The EJM representatives presented the EJM, practical experiences, and how the EJM operates in the Member States. The Members of the CrimEx group attended during the first day of the EJM Plenary meeting in Tallinn. As a result of this

<sup>39</sup> <https://www.euromed-justice.eu/en/content/project-information>

networking, practical cases between some countries were discussed (Tunisia, Germany, Lebanon, Norway)

With an increased awareness of the project over these two last years, there has been an increase in requesting contacts between EJM Contact Points and the EuroMed CrimEx group, via the EJM Secretariat and the EuroMed Project team. To ensure the continuation at this cooperation, the EJM Secretariat will continue to attend the EuroMed activities in 2019 and will explore further the possibilities of having relevant information on the South Partner Countries in the website (e.g. the documents produced by the project, e.g. the EuroMed fiches and e-evidence manual).

#### **2.3.4. Other Partners**

##### ***Council of Europe (CoE)***

The EJM is regularly represented in the PC-OC meetings of the Council of Europe in Strasbourg. At the PC-OC meeting on 19-21 June 2018, during a session on extradition, the Conclusions from EJM Plenary meetings regarding the Petruhhin case and the Aranyosi/Căldăraru cases were used as a basis for the discussions.

In addition, the Council of Europe, through the PC-OC, is assisting the EJM in finding suitable contact points for the EJM in third countries.

The EJM is following up with an initiative from PC-OC on a project on the Interconnection of networks. The aim is to identify the existing judicial networks in the area of judicial cooperation in criminal matters and encourage their interconnection to facilitate the work of practitioners in fighting transnational organised crime. The PC-OC Secretariat prepared to this end an inventory with all the operational judicial networks that are working in internal cooperation to identify the relevant actors and establish a mechanism to facilitate the investigation of transnational crime globally.

## ***United Nations Office on Drugs and Crime (UNODC)/ UNITED NATIONS (UN)***

In October 2017, the EJM Secretariat attended a Networks' meeting in Vienna organised by UNODC to strengthen the relations between the networks and to discuss the setting-up of a cooperation mechanism between networks to: encourage operational meetings; exchange good practices; establish a yearly working meeting for the secretariats to ensure continuity. The discussions are going to continue in 2019.

In July 2018 the EJM Secretariat met in The Hague with representatives from UNODC for a discussion about cooperation with the three networks that UNODC is currently managing, i.e. the West African Network of Central Authorities and Prosecutors in Africa (WACAP), Great Lakes Network (Central Africa) and the Network for Central Asia and Southern Caucasus (CASC).

### ***INTERPOL***

The Interpol e-MLA project that started in November 2017 aims at creating a world-wide secure channel for sending MLA requests. The third and last meeting of the Interpol e-MLA project took place on 12-13 September 2018 in Lyon; the EJM was represented at the meeting. The aim is to have e-MLA Rules adopted by the Interpol General Assembly in 2019. Ultimately, the e-MLA project could be connected to the Secure online portal (Digital Exchange System) for the secure transmission of evidence requests within the EU, developed by the European Commission<sup>40</sup>.

## **2.4. EJM Website**

### **2.4.1. EJM e-tools for judicial cooperation**

Fulfilling the EJM Decision and the EJM annual Work Programmes for 2017 and 2018, as well as Council Conclusions 2010<sup>41</sup>, the EJM Secretariat continued to work on the improvements of the EJM website also in 2017 and 2018.

The **Judicial Atlas**, which is the tool to find the competent executing authority, is regularly updated in cooperation with the EJM Tool Correspondent of each Member State. One of the more important updates to the Atlas in 2017 and 2018 was the adaption to the European Investigation Order (EIO), which in several Member States has caused changes regarding the competent executing authorities.

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<sup>40</sup> See 2.2.2.

<sup>41</sup> OUNCIL documents 13403/1/10 Rev 1 and 13405/1/10 Rev 1

The **Compendium**, the drafting tool for a request, was also subsequently adapted to the EIO as soon as the EIO came into force in the respective Member State. One update of the Compendium was the possibility to choose a form directly from the starting page of the Compendium.

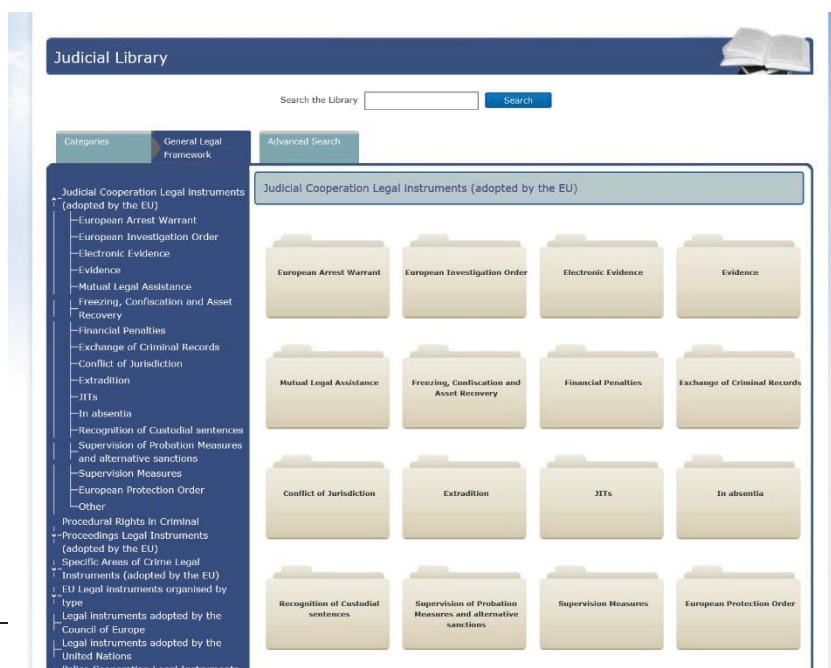
Further to that, the EJM Secretariat started working on updating the **Fiches Belges** based on information received from the National Correspondents with regard to the coming into force the EIO. The Fiches Belges is a tool that provides legal and practical information on all possible investigative measures covered by judicial cooperation in criminal matters. In line with the outcome of the EJM Working Group on e-evidence, “fiches” will be created for e-evidence in the coming year. At the end of 2018, a decision was taken by the EJM to add e-evidence measures to the Fiches Belges (which is currently missing) and to revise the whole list of measures in the Fiches Belges.

In the section on **Info about National Systems**, a uniform structure was introduced and the information consequently updated for all Member States and for the candidate countries and EJM associated countries.

In 2018, with the assistance of the website contractor, the EJM Secretariat initiated and developed a **Monitoring tool** for keeping track of the needs for updates to the EJM website tools. The tool was finalised by the end of 2018 to be introduced to the EJM Tool Correspondents at their meeting in March 2019.

The development of a renewed **Judicial Library** was concluded by the end of the first half of 2018 and the library was made available on the website. The new version introduces a major change in the structure of the Library as well as an updated search engine. The Judicial Library is designed to

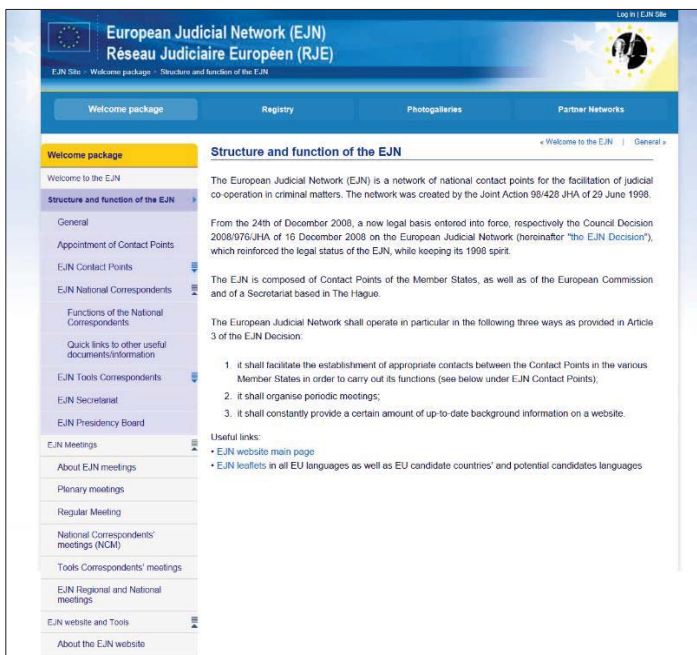
provide all available documents related to the EU legal instruments relevant for the area of judicial cooperation in criminal matters. It also includes tables with the **Status of Implementation** of the different legal instruments. These tables include information on the date





of entry into force, national legislation, links to official notifications and additional information.

The **Reporting tool** for the individual registering of the activities of the EJM Contact Points became fully functional for EJM Contact Points and started to be used as of 1 January 2017. This Report is very much based on the information that the EJM Contact Points have provided through the new tool. A new application was developed for the Reporting tool to visualise the data on the activities of the Contact Points. Through the application, useful information can be extracted from the large amount of data and presented in a visually appealing way.



In 2018, the EJM Secretariat updated the so-called **Welcome package**. This package gives guidance to (newly) appointed EJM Contact Points about their role and function, and information to anyone who is interested in knowing how the EJM works. Here the Contact Points and other practitioners can find an overview about the EJM in general, including the EJM meetings and the EJM partners, and also about the tasks of the network.

Finally, the EJN Secretariat continued to keep the section about non-EU countries and judicial networks up to date. Changes regarding partners and third countries were made upon request.

Through the section "Cooperation with non-EU countries and judicial networks", the EJN Contact Points have online access to the contact details of the members of judicial networks and to contact points in non-EU countries, for the purpose of assisting national authorities with cases that concern countries outside the EU.

With regard to the **European Investigation Order (EIO)**, the EJN Secretariat has created an area on the home page of the EJN website with links to relevant documents/ information on the EIO and the EJN tools relevant for the EIO.

Finally, based on feedback from EJN Contact Points, the EJN Secretariat analysed and worked on improving the **EJN Secure telecommunication connection**, a secure way of sending emails between the EJN Contact Points. The changes to the secure email are going to be implemented in the first semester of 2019.

#### Article 7 of the EJN Decision

Content of the information disseminated within the European Judicial Network

The Secretariat of the European Judicial Network shall make the following information available to contact points and competent judicial authorities:

- a) full details of the contact points in each Member State with, where necessary, an explanation of their responsibilities at national level;
- b) an information technology tool allowing the requesting or issuing authority of a Member State to identify the competent authority in another Member State to receive and execute its request for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
- c) concise legal and practical information concerning the judicial and procedural systems in the Member States;
- d) the texts of the relevant legal instruments and, for conventions currently in force, the texts of declarations and reservations.

#### Article 8 of the EJN Decision

Updating of information

1. The information distributed within the European Judicial Network shall be constantly updated.
2. It shall be each Member State's individual responsibility to check the accuracy of the data contained in the system and to inform the Secretariat of the European Judicial Network as soon as data on one of the four points referred to in Article 7 need to be amended.

## *EJN website statistics*

As in past years, the statistical data indicates the page views of the EJN website over 2017 and 2018.

Section	Number of views 2017/18	Share of overall views 2017/18
home	2130972	47.50%
Atlas	1087789	24.20%
library	409429	9.10%
tools	237556	5.30%
compendium	131746	2.90%
Ejn forum	99986	2.20%
fiches belges	86444	1.90%
contact points	46458	1%
news/events	30351	0.70%
other	229808	5.10%

At the end of 2018, the EJN Secretariat organised training for the EJN Tools Correspondents in The Hague, led by the EJN Webmaster. The training was open to all Tools Correspondents, around 10 of which chose to attend the training.

### **2.4.2. Translation of the EJN website**

A Project to translate the EJN website into all EU languages started in March 2018. The project was expected to be completed by early 2019. Even though most parts of the website are still only available in English, a number of areas of the website were translated, as agreed upon. The EJN Contact Points emphasised the importance of offering wider accessibility to the EJN website to those practitioners for whom having English as the only language available could be an obstacle.

In this respect, the following areas were translated:

- ▶ website homepage;
- ▶ Introduction to the EJM Website;
- ▶ About the EJM;
- ▶ EJM Secretariat;
- ▶ EJM meetings: i.e. description of respective types of meeting [ Plenary, Regular, National correspondents (NCM); Tool correspondents (TCM) ] ;
- ▶ start pages of each tool – Atlas, Compendium, Fiches Belges, Contact Points

The translations were carried out through a joint effort by the EJM Secretariat and the EJM Tool Correspondents. The latter were asked to translate a few words/short phrases and to check the existing translations and some new translations done by an external contractor. The tool correspondents in the final stage of the project proofread all translations ensuring the accuracy and consistency of the translated text.

## 2.5. Raising awareness of the role and activities of the EJM

### 2.5.1. EJM Policy on Awareness

Article 4(3) of Council Decision 2008/976/JHA of 16 December 2008 on the EJM (the “EJM Decision”) provides for the involvement of EJM Contact Points in promotion of training for the benefit of the judicial authorities of the Member States. In particular, the National Correspondents are responsible for the internal functioning of the EJM (Article 4(4)).

The Guidelines on the structure and

The topic on increasing awareness of the EJM was brought to the EJM agenda by the EJM Presidency Board meeting at the end of 2016. It was agreed that the EJM should aim at further increasing the awareness of the network among judicial practitioners across the EU. The EJM Contact Points should promote the EJM and the website in their Member State to their colleagues/practitioners in a coherent manner and on a regular basis. Particular importance and a role in this respect could be envisaged for the National Correspondents.

Consequently, as of 2017, EJM Awareness became an item on the list of EJM priorities and remained as such over the course of 2017 and 2018.

The EJM Policy document on Raising Awareness of its Role and Activities was agreed upon at the EJM Regular meeting in February 2017.

The Policy includes a number of measures that the EJM Secretariat shall take care of. The following measures were developed by the end of 2018.

- A first video on the EJM website homepage;
- Written instructions on how to create a visible bookmark to the EJM website;

- The updated Welcome Package for new EJM Contact Points and consequently a new methodology for introducing the EJM to the newly nominated EJM Contact Points – upon nomination, each nominated contact Point will receive an email from the EJM Secretariat with useful information, access to the restricted section on the EJM website and a reference to the Welcome package.

Implementation of the Policy will continue in 2019, with the finalisation of individual videos on the electronic tools on the EJM website and a video on how to use the Reporting tool.

### **2.5.2. EJM Regional and National meetings**

The EJM's efficiency and cooperation amongst the Contact Points is improved by organising Regional and National meetings in the Member States.

Regional meetings focus on problems which have a particular regional character. National meetings gather the Contact Points in one Member State and representatives of the judiciary, to discuss the role of the EJM and to promote the use of the Network and the EJM website.

In accordance with the EJM Work Programme, financial support is provided to these meetings from the EJM budget, in the form of a grant. This report provides an overview of Regional and National meetings organised with financial assistance over the course of 2017-2018.

#### ***EJM Regional meeting in Berlin, Germany (8-9 May 2017)***

This Regional meeting discussed Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in EAW proceedings. The German hosts invited EJM Contact Points from Austria, Luxemburg, France and Romania and provided the participants with an informative overview of the practice and legal basis, according to which access to a lawyer is granted in case of imprisonment. The Secretary to the EJM participated in the meeting.

#### ***EJM Regional meeting in Riga, Latvia (10 May 2017)***

The meeting focused on the mutual recognition of freezing and confiscation orders and was organised by the Ministry of Justice of the Republic of Latvia. It was attended by representatives from the Ministries of Justice, prosecutor's offices and police authorities from the United Kingdom, Sweden, Finland, Estonia, Lithuania and Latvia, as well as the Secretary to the EJM. The meeting was organised in the form of discussions, thus encouraging and facilitating the mutual exchange of

experience. Participants shared their experience on freezing and confiscation, providing both successful and less successful examples of cooperation within the EU and with non-EU countries.

#### ***EJN National meeting in Vilnius, Lithuania (16 May 2017)***

The first National meeting of the EJM Contact Points of Lithuania was organised by the Ministry of Justice. Among the participants of the meeting were representatives from the Ministry of Justice, the Prosecutor General's office, regional prosecutors, judges and their assistants from various regions of the country. The Secretary to the EJM presented the EJM website, especially highlighting the most used tools. The participants concluded that the assistance of the EJM is very important, since judicial cooperation often requires urgent information exchange.

#### ***EJM Regional meeting in Helsinki, Finland (21-22 September 2017)***

Finland organised this third Regional meeting in Helsinki, at the premises of the Ministry of Justice. Together with Finnish EJM Contact Points and representatives from other Finnish authorities involved in international cooperation, participants from Sweden, Estonia and Latvia attended the meeting. The Secretary to the EJM was also present. The topic on the agenda was the EIO. The meeting included a practical exercise on filling in the EIO form.

#### ***EJM Regional meeting in Paris, France (22 September 2017)***

A Regional meeting organised by the Netherlands took place in Paris. The topic of the meeting was compensation for unlawful detention based on an EAW. Experts in the field of the EAW from France, Germany, Spain and the Netherlands had taken the initiative to conduct a comparative research. Besides 12 practitioners, three academics also participated in the meeting. A compilation of the replies to a questionnaire from 16 Member States was presented and discussed. The main aim of this project was to enhance the cooperation and communication between Member States after an unlawful detention. As one of the outcomes of the project, a document with practical information on the national compensation mechanisms throughout the EU would be developed.

#### ***EJM National meeting in Belgium (28 September 2017)***

The Belgian national meeting involved the EJM Contact Points and the Contact Points of the National Network on International Cooperation in Criminal Matters. The aim of the meeting was to raise awareness about the work of the EJM and its tools. Additionally, the Belgium participants focused on the application of the relevant mutual recognition instruments, particularly on the

European Investigation Order and the role of the EJM. Special emphasis was also placed on the impact of the Belgium justice reform in the area of judicial cooperation in criminal matters.

### ***EJM Regional meeting in Warsaw, Poland (5-6 October 2017)***

The 1<sup>st</sup> Regional and 7<sup>th</sup> National meeting took place in Warsaw. Besides the Polish Contact Points representing the National Prosecutor's Office, the Ministry of Justice and 11 regional prosecutors' offices, representatives of the EJM from the neighbouring countries Germany, Czech Republic, Slovak Republic, Lithuania and Hungary as well as the Secretary to the EJM attended the meeting. The meeting was devoted entirely to the EIO and the first practical experiences of its operation in the Member States, in particular in relation to the scope of the EIO Directive and how to cooperate during the transitional period, i.e. until all 26 EU Member States bound by the Directive had transposed it. Participants also discussed new additions to the EIO regime and new challenges vis-à-vis certain investigative measures.

### ***EJM Regional meeting in Novi Sad, Serbia (9-10 October)***

This Regional meeting of the EJM organised by Slovenia was a follow-up to the Regional meeting in South East Europe in Ljubljana in October 2016. The meeting was organised in close cooperation with the Slovenian EJM Contact Points and the IPA2014 project team. The meeting was attended by EJM Contact Points from all over the region, from EU Member States, EU candidate countries and from potential candidates – Albania, Bosnia and Herzegovina, Croatia, FYROM, Kosovo\*, Montenegro, Serbia and Slovenia. The EJM Secretariat was represented.

The focus of the meeting was on the development of standardised forms for MLA requests in different areas of judicial cooperation. Templates for requests that had been developed by the Slovenian Contact Points were disseminated to participants and discussed during operational workshops held over the two days.

### ***EJM National meeting in Aveiro, Portugal (7-8 May 2018)***

The Portuguese National meeting was attended by the EJM Contact Points in Portugal, the members of the national Portuguese network, magistrates from Spain, members of the Portuguese desk at Eurojust and a representative of the EJM Secretariat.

The internal organisation of the EJM Contact Points was discussed, as well as how to perform the tasks of updating the "Fiches Belges", the Atlas and other areas of the EJM website, and the role of

several networks of the EU. Focus was also put on problems regarding the execution of the EIO and judicial cooperation with Spain.

The main conclusions were as follows:

- ▶ The negotiation of instruments of international cooperation should involve as much as possible those who will make use of them and have experienced previous difficulties or obstacles in their field of application.
- ▶ Portuguese judicial authorities are still quite unfamiliar with JITs. Bearing in mind its added value, the setting up of a JIT should be encouraged and monitored in order to be used as a case study, with the relevant sharing of best practices.
- ▶ There is a need to formalise the Portuguese network of regional contact points, in order to give them legitimacy towards their colleagues and harmonise their activities across the country.
- ▶ Meetings like this should always include concrete cases to be discussed by the participating authorities with the aim of finding the appropriate solutions.
- ▶ Training sessions for local authorities as well as the sharing of best practices and identification of the main problems on the EIO should be organised.

### ***EJN Regional meeting in Jurmala, Latvia (13-14 September)***

The State Police of the Ministry of the Interior of the Republic of Latvia hosted this Regional meeting which involved the EJN Contact Points from the authorities of Lithuania, Estonia, Poland, Germany, Sweden, Finland, Turkey and Taiwan. The Secretariat was represented by the Secretary to the EJN.

The topic of the meeting was “Establishing mutual recognition within the context of financial matters in MLA”. The main objective of the meeting was to provide mutual information exchange about current legislative and institutional matters in order to highlight existing problems and to find possible solutions. The meeting allowed for networking and discussions about cooperation with the invited third countries.

The following matters were covered: money laundering, the EIO Directive and freezing orders; actions with criminally acquired property (best practices); legal remedies - restitution; money mule and parcel mule scams.

The main conclusions were as follows:

- ▶ Threats resulting from money laundering are basically common for the EU and for third countries. The EU Member States have to focus on active cooperation with foreign counterparts (also with



third countries) in order to be more effective in providing and seeking mutual legal assistance and to be more actively engaged in JITs and coordination meetings.

- ▶ The problem of identifying whether money mules and parcel mule scams are victims or offenders is one of the most difficult issues when investigating money laundering.
- ▶ Due to differences between national legislations, there is no common understanding of the EIO Directive as to freezing and confiscation in relation to *bona fide* property.

### ***EJN Regional meeting in Stockholm, Sweden (27-28 September)***

The Swedish Prosecution Authority hosted the Regional meeting in Stockholm, with participants from Sweden, Finland, Estonia, Latvia, Lithuania, Poland and Germany. The Secretariat was represented by the Secretary to the EJN. The purpose of the meeting was to discuss the practical implementation of the EIO Directive.

The agenda included discussions about the EJN website with regard to the EIO and information on the work being done by Contact Points in order to spread the knowledge of the EIO and the EJN. The issues discussed were: the scope of the EIO Directive, EIO-forms, channels of communication, urgent EIOs and time limits, the relationship between the EIO and JITs, non-execution of EIOs and alternative measures and the principle of specialty.

### ***EJN National/Regional meeting in Warsaw, Poland (1-2 October)***

The Polish 2<sup>nd</sup> Regional and 9<sup>th</sup> National meeting of the Contact Points of the EJN took place in Warsaw at the premises of the National Prosecutor's Office.

Besides the Polish Contact Points representing the National Prosecutor's Office, the Ministry of Justice and 10 regional prosecutors' offices, representatives of the EJN from the neighbouring countries Germany, the Czech Republic, the Slovak Republic and Sweden, and participants from Austria, Latvia and the Netherlands also attended the meeting. The Secretariat was represented by the Secretary to the EJN.

Two topics were on the agenda of the meeting: the EIO and the execution of freezing orders with a view to confiscation, with a special focus on real estate.

### ***EJN National meeting in Barcelona, Spain (5 October)***

The meeting took place at the premises of the Superior Prosecution Service of Catalonia in Barcelona. The meeting was attended by 26 national authorities (prosecutors and judges), all of them EJM Contact Points or members of the domestic networks of specialised prosecutors and judges. Bringing together judges and prosecutors to discuss the above-mentioned system on distribution of competences and all other relevant questions related to the implementation of the EIO in Spain was a key factor for the success of the meeting.

The Spanish EIO law modifies the existing landscape of competent executing authorities, a situation that brings about a number of questions that needed to be addressed. The objective of the meeting was thus two-fold:

- to analyse and evaluate the difficulties, problems and drawbacks identified in the initial period of implementation of the EIO in order to gain knowledge on how the system works in practice and to find ways for more efficient cooperation;
- to tackle all aspects related to the distribution of competences between prosecutors and judges as executing authorities.

### ***EJM Regional meeting in Valbandon, Croatia (11-12 October)***

The main goal of the regional meeting was the exchange of practical knowledge between EJM Contact Points from Austria, Italy, Slovenia and Croatia and EJM contact points of the Western Balkan Countries, in the field of judicial cooperation during the pre-trial phase of the proceedings. This meeting was a follow-up to the previous regional meetings for EJM contact points organised in 2016 and 2017 by Slovenia in Ljubljana and Novi Sad respectively.

The EJM Contact Points adopted the following conclusions:

- ▶ International police cooperation in the early phase of the proceedings is very important, as well as cooperation between Asset Recovery Offices (ARO). When all the relevant information has been gathered through these types of cooperation, EIO or MLA requests should be issued for the purpose of obtaining evidence.
- ▶ Effective judicial cooperation regarding the freezing of proceeds of crime is possible if the executing and requested authorities cooperate closely, especially in the phase of extending the freezing measures. Problems due to different national rules on statute of limitations can be solved only by direct contact between the requesting and requested authorities.

- ▶ Considering the positive experience with JITs in Bosnia and Herzegovina and in Serbia, other countries should consider the possibility of using this tool of judicial cooperation instead of parallel investigations.
- ▶ As for the taking over of proceedings from another country, it was concluded that most of the countries have not ratified the 1972 European convention on the transfer of proceedings. Instead, Article 21 of the 1959 European convention on mutual legal assistance in criminal matters is applied, which has both positive and negative sides. It is most important to establish direct communication between the competent authorities.

### ***EJN Regional meeting in Aix-en-Provence, France (15 October)***

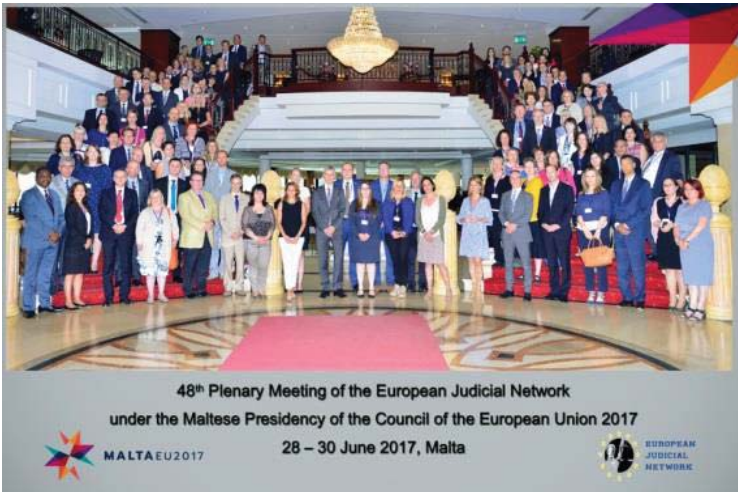
Eighty magistrates and investigators from Spain, Italy and France met at the Institute of Political Studies of Aix-en-Provence. The meeting was devoted to the fight against organised crime - drug trafficking - trafficking in human beings in the Mediterranean region and to judicial cooperation between the participating Member States.

The Mediterranean area has a concentration of large trafficking and criminal organisations and it attracts investments and money laundering. Participants pointed out port areas as a major challenge, the seaway being the most used by traffickers. The enhanced cooperation between the three countries involves defining a common strategy to reach those involved in trafficking of drugs or in human beings. Mediterranean judicial cooperation could go as far as defining the country best placed to conduct a cross-border investigation, including organising a single trial with defendants of different nationalities.

## III MANAGEMENT OF THE EJM

### 3.1. EJM Presidencies 2017-2018

#### 3.1.1. Maltese Presidency 1<sup>st</sup> semester 2017



Priorities of the Maltese Presidency included the EIO Directive, the gathering of e-evidence and the 4<sup>th</sup> EU Directive on anti-money laundering. The EIO and the EAW were the topics of workshops at the 48<sup>th</sup> Plenary meeting in Valletta, in June 2017.

Under the Maltese Presidency, the 37<sup>th</sup> Regular meeting and the 16<sup>th</sup> Tools Correspondents meeting also took place in The Hague.

### 3.1.2. Estonian Presidency 2<sup>nd</sup> semester 2017

During the Estonian Presidency discussions on the EAW and EIO continued, including in workshops at the 49<sup>th</sup> Plenary meeting in Tallinn in November 2018.

Under the Estonian Presidency, the 9<sup>th</sup> National Correspondents meeting also took place in The Hague.

The Estonian Presidency supported the awareness about the EJM. Cooperation with the European Judicial Cybercrime Network was also among the priorities of the Presidency.

### 3.1.3. Bulgarian Presidency 1<sup>st</sup> semester 2018

At the Plenary meeting in Sofia in June 2018,



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to reflect over the past 20 years since its creation and on the way forward to continue to develop in its role of facilitating judicial cooperation within the EU and beyond. More than 100 EJM Contact

Points responded to the questionnaire sent out in advance of the meeting in order to prepare for the discussions.

The EJM Contact Points, together with representatives of the European Commission and the General Secretariat of the Council, analysed the means to continue adapting to current and future needs. The main conclusions of the discussions were that the EJM is essential for facilitating judicial cooperation in criminal matters and has contributed substantially in consolidating a European Judicial Culture and in building mutual trust. The full Conclusions were published as [Council Doc 14753/18](#) and presented by the EJM Secretary at the COPEN meeting in Brussels on 12 December 2018.

Under the Bulgarian Presidency, the 38<sup>th</sup> Regular meeting and the 17<sup>th</sup> Tools Correspondents meeting also took place in The Hague.



#### **3.1.4. Austrian Presidency 2<sup>nd</sup> semester 2018**

At the 51<sup>st</sup> Plenary meeting in November 2018 in Vienna, the main topic was the practical application of some of the less examined mutual Recognition Instruments, see above under 1.1.4.

During the Austrian Presidency, the guidelines for selecting EJM Contact Points were revised<sup>42</sup>. The revised document “*Guidelines for the role, tasks and for appointing the Contact Points of the EJM*” was adopted at the 51st Plenary meeting in Vienna. In a new section of the document there is a description of the role and tasks of the EJM Contact Points, which form the basis for the subsequent



revised principles for appointing the Contact Points of the EJM.

Under the Austrian Presidency, the 10<sup>th</sup> National Correspondents meeting also took place in The Hague.



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42 In 2007 the EJM adopted “Guidelines for the selection of Contact Points of the European Judicial Network”. This document has since been giving guidance on the profile required of EJM Contact Points.

#### Article 5 Purposes and venues of the plenary meetings of contact points

1. The purposes of the plenary meetings of the European Judicial Network, to which at least three contact points per Member State shall be invited, shall be as follows:

- a) to allow the contact points to get to know each other and exchange experience, particularly concerning the operation of the Network;
- b) to provide a forum for discussion of practical and legal problems encountered by the Member States in the context of judicial cooperation, in particular with regard to the implementation of measures adopted by the European Union.

2. The relevant experience acquired within the European Judicial Network shall be passed on to the Council and the Commission to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation.

3. Meetings referred to in paragraph 1 shall be organised regularly and at least three times a year. Once a year, the meeting may be held on the premises of the Council in Brussels or on the premises of Eurojust in The Hague. Two contact points per Member States shall be invited to meetings organised on the premises of the Council and at Eurojust.

Other meetings may be held in the Member States, to enable the contact points of all the Member States to meet authorities of the host Member State other than its contact points and visit specific bodies in that Member State with responsibilities in the context of international judicial cooperation or of combating certain forms of serious crime. The

### 3.2. EJN Secretariat

The EJN Secretariat is responsible for the administration of the European Judicial Network<sup>43</sup>. The Secretariat forms part of the Eurojust staff, but functions as a separate unit<sup>44</sup>.

As the administrative body of the European Judicial Network, in practical terms the EJN Secretariat tasks include:

- ▶ ensuring the proper administration of the EJN, with a view to enabling the EJN Contact Points to fulfil their tasks;
- ▶ setting up, maintaining and improving the EJN website;
- ▶ drafting documents on the activities of the EJN;
- ▶ keeping a record of projects and decisions taken within the EJN;
- ▶ providing support to the Member State holding the Presidency of the Council, in particular regarding the organisation of the EJN meetings;
- ▶ sharing of information on the challenges, achievements, difficulties and any other issue of general interest for the EJN with the EJN Contact Points on a permanent consultation basis (e.g. through a newsletter);

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43 Article 2 (8) of the EJN Decision

44 Article 25a (b) 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 2003/659/JHA of 18 June 2003 and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust.



- ▶ preparing Action plans for new and ongoing EJM projects after consultation with the EJM National Correspondents;
- ▶ establishing and maintaining relations with other bodies and structures in the field of judicial cooperation in criminal matters, within and outside the EU; and
- ▶ promoting the EJM, including by presentation of the EJM in meetings, conferences or other events organised both within the EU or outside by partners in third countries or international organisations.

During 2017/2018 the Secretariat was composed of 7 Staff Members: Secretary to the EJM, EJM Secretariat Coordinator, 2 Legal Specialists, 1 Seconded National expert<sup>45</sup>, Webmaster, Administrative Assistant/Legal Assistant<sup>46</sup>.



### 3.3. EJM Budget 2017-2018

The EJM decides on its activities in the annual Work Programme of the EJM. The activities in the Work Programme are based on the EJM Decision and the experience obtained by the network over

<sup>45</sup> The Seconded National Expert was replaced by a Legal Specialist at the end of 2017

<sup>46</sup> The Administrative Assistant was replaced by a Legal Assistant in October 2018

the past 20 years on what is needed for the EJM to be able to fulfil its tasks as facilitator of judicial cooperation in criminal matters.

Provisions in the Eurojust Council Decision<sup>47</sup> (as well as in the new Regulation<sup>48</sup>) and in the EJM Decision require that resources to the EJM Secretariat is provided via Eurojust and its budget, in order for the EJM to be able to carry out its tasks. In 2017 the budget for the EJM was reduced from initially 460,000 EUR to 416,000 EUR. As a consequence, planned development activities of the EJM website had to be postponed. The budget for 2018 was maintained at 460,000 EUR. For the budget allocations, *see Annex*.

During 2017/2018 the Secretariat was composed of 7 Staff Members: Secretary to the EJM, EJM Secretariat Coordinator, 2 Legal Specialists, 1 Seconded National expert<sup>49</sup>, Webmaster, Administrative Assistant/Legal Assistant<sup>50</sup>.

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<sup>47</sup> Art 25(a) Eurojust Decision

<sup>48</sup> Art 48 Eurojust Regulation

<sup>49</sup> The Seconded National Expert was replaced by a Legal Specialist in the end of 2017

<sup>50</sup> The Administrative Assistant was replaced by a Legal Assistant in October 2018

WORK PROGRAMME FOR 2017		BUDGET
OBJECTIVES & ASSOCIATED ACTIVITIES		
<b>Objective 1: Organisation of EJN meetings</b>		
1.1	Organisation of the 48 <sup>th</sup> and 49 <sup>th</sup> Plenary meetings	100,000
1.2	Organisation of the 38 <sup>th</sup> Regular meeting	30,000
1.3	Organisation of the 9 <sup>th</sup> National Correspondents meeting	17,000
1.4	Organisation of the 16 <sup>th</sup> Tool Correspondents meeting	17,000
1.5	Organisation of Trio meetings and EJN Working Group meetings	12,000
<b>Objective 2: Functioning of the EJN website</b>		
2.1	Maintenance, minor improvements and updates of the EJN website	100,000
<b>Objective 3: Development of the EJN website</b>		
3.1	Enhancement of the EJN website tools	24,000
<b>Objective 4: Functioning of the EJN contact points</b>		
4.1	Language training for the EJN Contact Points	20,000
4.2	see Activity 5.2	
4.3	4 <sup>th</sup> Report on the operation of the EJN: 2015/2016	8,000
<b>Objective 5: Increasing awareness of the EJN</b>		
5.1	Activities to increase awareness of the EJN among practitioners and training of TCs	8,000
5.2 & 4.2	Providing support for the organisation of EJN meetings in the MS's (Regional and National meetings)	50,000

5.3 see Activity 6.1	
5.4 see Activity 6.2	
<b>Objective 6: Fostering a more effective collaboration with other actors in the field of judicial cooperation</b>	
6.1 & 5.4 Missions	20,000
6.2 & 5.5 Organisation of meetings with partners and actors of judicial co-operation	5,000
<b>Objective 7: Ensuring the proper administration</b>	
7.1 Various administrative costs	5,000
<b>GRAND TOTAL</b>	<b>416,000</b>

<b>WORK PROGRAMME FOR 2018</b>	
OBJECTIVES & ASSOCIATED ACTIVITIES	<b>BUDGET</b>
<b>Objective 1: EJN meetings</b>	
1.1 Organisation of the 50th and 51st Plenary meetings	100,000
1.2 Organisation of the 39th Regular meeting	31,000
1.3 Organisation of the 10th National Correspondents meeting	17,000
1.4 Organisation of the 17th Tool Correspondents meeting	17,000
1.5 Organisation of Presidency board meetings and EJN Working Group meetings	12,000
<b>Objective 3: Functioning of the EJN contact points</b>	
3.2 Providing support for the organisation of EJN Meetings in the Member States (Regional and National meetings)	30,000
3.3 Language training for the EJN Contact Points	35,000
3.4 Report on the EJN activities	8,000
<b>Objective 4: Administration and enhancement of the EJN website</b>	
4.1 Maintenance and enhancements and updates of the EJN website	172,000
4.4. Provide direct and regular support to the EJN Tools Correspondents	5,000
<b>Objective 5: Increasing awareness of the EJN</b>	
5.1 Activities to increase awareness of the EJN	3,000
<b>Objective 6: Cooperation with other actors in the field of judicial cooperation</b>	
Ensuring the proper administration of the EJN	25,000
Various administrative costs	5,000
<b>GRAND TOTAL</b>	<b>460,000</b>