EUROJUST

European Union Agency for Criminal Justice Cooperation

Eurojust Report on Money Laundering

October 2022

Criminal justice across borders

Contents

Executive summary

The aim of the *Eurojust Report on Money Laundering* is to support national authorities investigating and prosecuting cross-border money laundering cases by providing a structured overview of the legal and practical issues to be expected and possible solutions, including using the European Union Agency for Criminal Justice Cooperation's (Eurojust) tools to enhance judicial cooperation.

The report is based on an analysis of cases registered at Eurojust from 1 January 2016 to 31 December 2021. During this period, Eurojust registered 2 870 cases in its case management system, with a steady increase over the years. Given this large number of cases, the report focuses on certain selected topics: (i) predicate offence; (ii) complex money laundering schemes; (iii) financial and banking information; (iv) asset recovery; (v) cooperation with third countries; (vi) cooperation with the European Public Prosecutor's Office; (vii) potential conflicts of jurisdiction and *ne bis in idem* issues; and (viii) spontaneous exchange of information.

Based on Eurojust's casework, legal and practical challenges in money laundering cases are identified, but the report also proposes solutions and best practices that practitioners should be aware of.

The 10 most relevant legal and practical challenges identified in the report are as follows.

1. Differences in national law in relation to the requirements for identifying the predicate offence for the conviction for money laundering. In order to investigate money laundering, some countries have to investigate the predicate offence as well.
2. The relevance of dual criminality and the money laundering predicate offence, i.e. (i) lack of substantive harmonisation concerning whether money laundering would constitute an offence in any Member State irrespective of the jurisdiction where the predicate offence was committed or (ii) when under national law or national case-law dual criminality is indispensable for international charges and the predicate offence in question does not constitute a crime in that country but merely an administrative offence.
3. The lack of harmonisation concerning what constitutes a predicate offence for money laundering and criminalisation of self-laundering may cause difficulties in prosecuting and in judicial cooperation in situations where money is laundered through several jurisdictions.
4. Difficulties arising from the use of cryptocurrencies. The use of this type of digital currency makes it difficult to keep track of the assets held by those under investigation. It is essential to know the activity and mechanisms used to monetise or convert cryptocurrency into legal tender.
5. Financial expertise and resources that are required to analyse data relating to large amounts of cryptocurrency that are used to launder money, and to ascertain whether they are relevant to the investigations in the other countries involved.
6. Identification of the beneficial owner of the criminal assets, which is made difficult by the existence and use of shell companies or letterbox companies, by the identification of extraneous elements in the companies' structures or by the fact that suspects usually do not act under their own name to hide the financial trail that would show the illicit origin of the money. Moreover, the difficulties in and importance of establishing beneficial ownership in third-party confiscation. This shows that clarity in the rules on beneficial ownership is of the utmost importance in money laundering and other cases.

7. Practitioners are still not sufficiently familiar with the Regulation on the mutual recognition of freezing orders and confiscation orders.
8. Issues relating to determining who is considered a victim in a given country, who can apply for compensation and how to ensure proportionate compensation of all victims when the amount frozen is not enough to be restituted to all victims.
9. Some cases show that the tracing of money transfers within the European Union is reasonably manageable, but when cooperation is required from outside the EU it becomes difficult, and sometimes authorities discontinue the pursuit of such cooperation.
10. Conflicts of jurisdiction arising from the essentially different qualification of one criminal activity covering two jurisdictions: for example, in one jurisdiction the actions qualify as VAT fraud, while in the other they qualify as money laundering.

The 10 most relevant best practices identified in the report are as follows.

1. Issuing a European Investigation Order or letter of request to request certain investigative measures, but also to trigger consideration of whether to launch a criminal investigation into the predicate offence.
2. The use of highly skilled experts to perform house searches with a focus on digital devices and to take copies of relevant electronic evidence, with the aim of obtaining access to crypto wallets belonging to the main suspect.
3. The use of asset recovery offices, even in the apparent absence of a criminal investigation, for the purpose of identifying assets from suspects in other countries.
4. The benefits of including the consideration of asset recovery precautionary measures within the framework of a joint investigation team.
5. Establishing a joint investigation team solely for the purpose of conducting a financial investigation, if such is possible under the law of the countries involved.
6. Cooperation between public prosecutor's offices and financial intelligence units is essential for an efficient system for tackling money laundering.
7. Where possible, and in accordance with the legal principles of each Member State, the adoption of an interpretation of a Member State's criminal code to allow a civil recovery order to be recognised with an undertaking by the given Member State's judiciary to cooperate internationally in criminal matters. In another case, the legal basis chosen was the spontaneous exchange of information under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States of the European Union.
8. The benefits of clarifying, via Eurojust, where appropriate, the valid legal basis to freeze funds for restitution to the victims.
9. When, in some countries, the violation of due diligence measures is not a criminal offence and there is no corporate liability, consideration could be given to agreeing on international recommendations and standards.
10. The increase in the number of Contact Points for Eurojust and Liaison Prosecutors posted at Eurojust has proved very useful in cooperation with third countries.

1. Introduction

1.1. Background

The fight against money laundering is essential to combating criminal activities with a view to depriving criminals of their incentive to commit crimes, identifying them and bringing them to justice. Money laundering also poses a serious threat to the integrity of the European Union's economy and financial system and the security of its citizens. It is mostly a transnational offence that requires a coordinated response across multiple jurisdictions.

Over the years, the European Union Agency for Criminal Justice Cooperation (Eurojust) has developed practical knowledge of the issues, solutions and best practices that can contribute to effective judicial cooperation in cross-border money laundering cases. This knowledge is summarised in this report with the aim of supporting national authorities investigating and prosecuting cross-border money laundering cases by providing a structured overview of the legal and practical issues ([1]) to be expected and possible solutions, including using Eurojust's tools to enhance judicial cooperation.

Moreover, a number of EU legislative proposals have been presented or adopted in recent years that directly or indirectly address the fight against money laundering. These include the Directive on countering money laundering by criminal law ([2]), which includes the need to involve Eurojust (in issues of potential conflicts of jurisdiction), the Regulation on the mutual recognition of freezing orders and confiscation orders ([3]) and the Directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences ([4]).

On 20 July 2021, the European Commission launched a package of legislative proposals to strengthen the EU's rules on anti-money laundering and countering the financing of terrorism ([5]). The package also includes a proposal for the revision of the 2015 Regulation on transfers of funds ([6]) that will make it possible to trace crypto-asset transfers. The aim is to improve the detection of suspicious transactions and activities and close loopholes used by criminals to launder illicit proceeds or finance terrorist activities through the financial system. The proposal for a Directive on asset recovery and confiscation, published on 25 May 2022 ([7]), is also of relevance.

Against this background, Eurojust's first report on money laundering is more than timely.

([1]) The legal and practical issues identified in the report do not always necessarily constitute difficulties. In some cases, they are more of a descriptive nature and, in that sense, may be considered informative.

([2]) Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

([3]) Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1).

([4]) Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

([5]) https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en.

([6]) Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (recast) (COM/2021/422 final).

([7]) Proposal for a directive of the European Parliament and of the Council on asset recovery and confiscation (COM(2022) 245).

1.2. Scope and purpose of the report

The report is based on an analysis of cases registered at Eurojust from 1 January 2016 to 31 December 2021. During this period, Eurojust registered 2 869 cases in its case management system. Given this large number of cases, the National Desks at Eurojust were invited to focus on specific topics identified by the Money Laundering project team of the Economic Crimes Working Group at Eurojust as the most problematic, and to provide information on the major issues, practical difficulties and best practices arising from them. These topics are as follows.

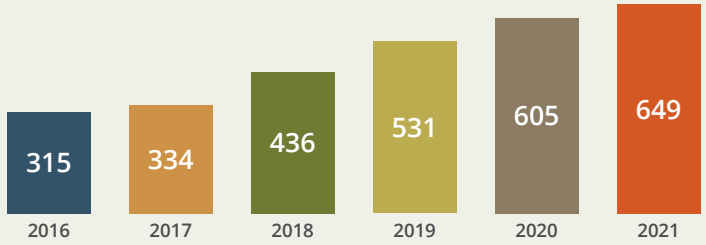
- Predicate offence, for example identifying and obtaining evidence concerning the predicate offence.
- Complex money laundering schemes, for example difficulties in tracing and proving the involvement of natural and legal persons.
- Financial and banking information, for example difficulties in obtaining such information associated with the absence of a national bank register or differences in the information required by each Member State to provide such information; the role of financial intelligence units (FIUs).
- Asset recovery, for example difficulties in tracing the proceeds of crime in complex money laundering schemes, freezing of assets, confiscation and compensation of victims.
- Cooperation with third countries, for example difficulties relating to asset recovery.
- Potential conflicts of jurisdiction and *ne bis in idem* issues, for example extraterritorial jurisdiction regarding money laundering offences, and dual-criminality issues.
- Spontaneous exchange of information, for example as a way to facilitate the opening of a money laundering investigation or the issuing of a letter of request (LoR) or European Investigation Order (EIO) seeking evidence of the predicate offence.

The extent of the concrete case description will depend on the practical value of the experience obtained, but also on the current status of the investigation. In order to give an overview of the assistance that Eurojust provides, the selection of cases also describes how Eurojust supported them.

Money laundering casework at Eurojust (2016–2021)

Increase in money laundering cases

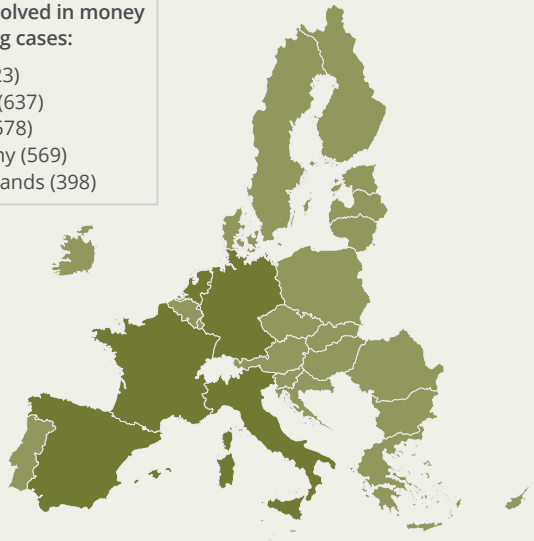
The number of money laundering cases registered at Eurojust has steadily increased since 2016, representing **12–14 % of all registered cases**.



EU Member State involvement in money laundering cases (2016–2021)

Top-five EU Member States involved in money laundering cases:

- Italy (723)
- France (637)
- Spain (578)
- Germany (569)
- Netherlands (398)



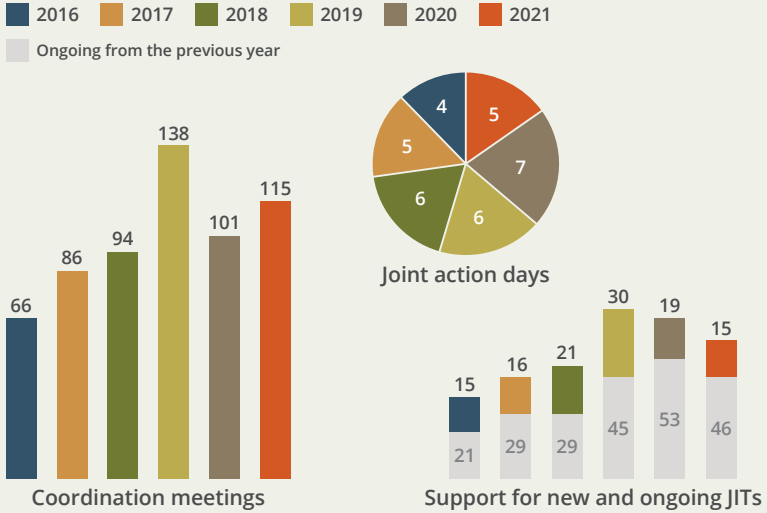
BE	60	219	279
BG	87	185	272
CZ	90	116	206
DK	20	70	90
DE	133	436	569
EE	37	68	105
IE	13	78	91
EL	133	73	206
ES	167	411	578
FR	267	370	637
HR	24	88	112
IT	380	343	723
CY	59	155	214
LV	147	105	252

LT	31	103	134
LU	22	145	167
HU	113	172	285
MT	16	110	126
NL	154	244	398
AT	47	160	207
PL	70	217	287
PT	107	120	227
RO	128	202	330
SI	96	72	168
SK	74	110	184
FI	49	49	98
SE	92	80	172

As owner | As requested participant | Total

Use of judicial cooperation tools

Eurojust organised **600 coordination meetings** between involved national authorities, and supported **33 action days** and the establishment of **116 new joint investigation teams (JITs)** to address money laundering crimes in 2016–2021.



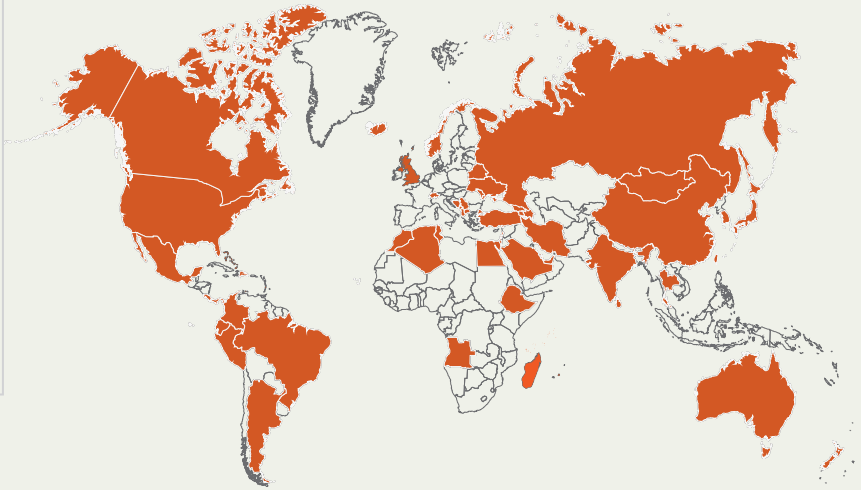
Third country involvement in money laundering cases (2016–2021)

Over 60 third countries were involved in Eurojust money laundering cases between 2016 and 2021, highlighting the importance and added value of having a global network of Contact Points and Liaison Prosecutors stationed at Eurojust.

Top-10 non-EU States involved in money laundering cases:

- Switzerland (265)
- United Kingdom (137) (*)
- United States (70)
- Ukraine (57)
- Serbia (37)
- Liechtenstein (35)
- Norway (31)
- Moldova (20)
- Israel (17)
- Monaco (16)

(*) UK data refers to cases registered at Eurojust from 1 February 2020

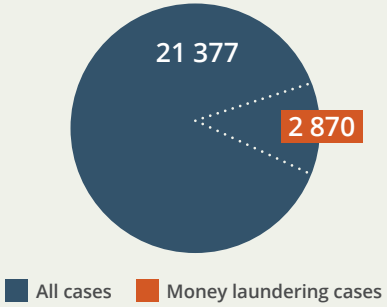


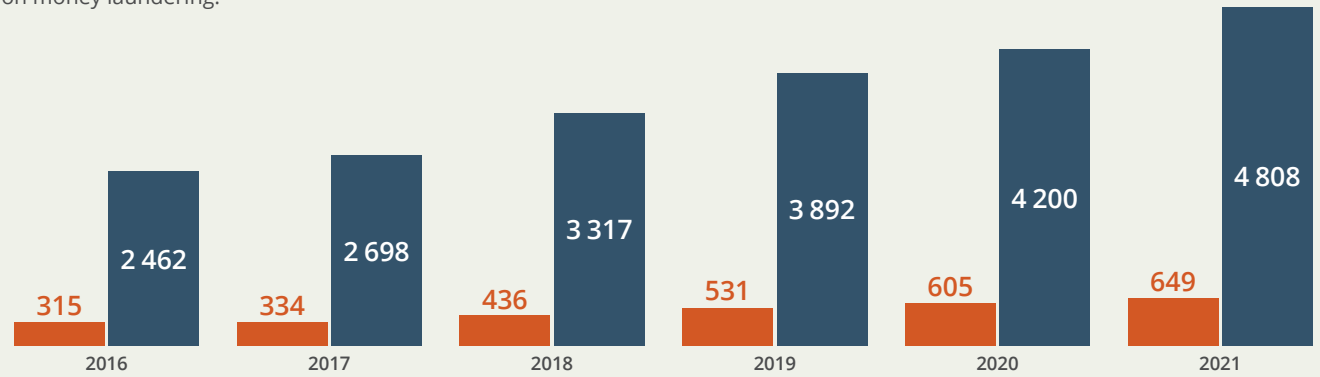
A concerted response to fighting money laundering in organised cross-border crime

Money laundering casework, related coordination meetings, action days and joint investigation teams accounted for a significant share of Eurojust's operational support to national authorities in the period 2016 to 2021.

Money laundering cases as a proportion of all cases

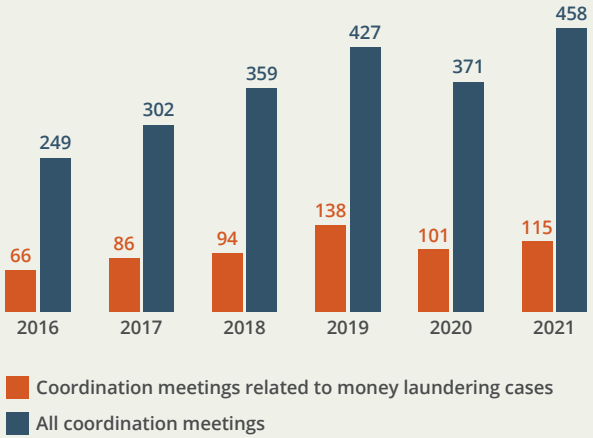
12-14% of all cases registered at Eurojust in 2016-2021 focused on money laundering.





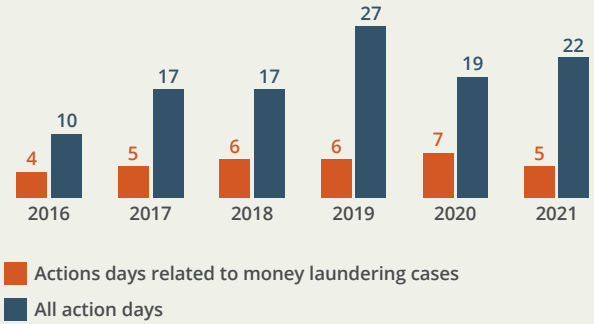
Coordination meetings

25-32% of all coordination meetings held at Eurojust in 2016-2021 were related to money laundering cases.



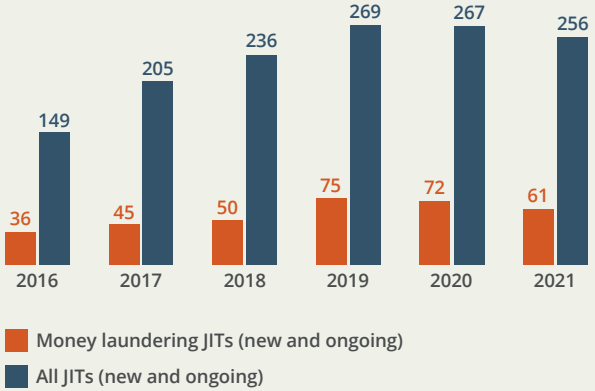
Joint action days

On average, **30%** of the action days coordinated through Eurojust between 2016 and 2021 directly targeted criminal organisations involved in money laundering.



Joint investigation teams (JITs)

JITs related to money laundering investigations accounted for **21-28%** of all JITs supported by Eurojust in 2016-2021.



3. Predicate offence

A predicate offence is considered to be any offence as a result of which proceeds have been generated that may become the subject of an offence, as defined in several international conventions ([8]). Even if international standards do not require the establishment of the precise predicate offence for a conviction for money laundering, Eurojust casework has shown difficulties with the **identification of the predicate offence**, i.e. the illicit origin of the money.

Eurojust's casework shows that in some countries, although theoretically the precise identification of the predicate offence to prosecute money laundering is not required, and the fact that the money derives from criminal activities should suffice, supreme courts have nevertheless set high standards for prosecutors to demonstrate the criminal origin of the money. In practice, prosecutors have to be able to identify the predicate offence as well. They also face a lack of clarity as to the standard of proof that is required to demonstrate that the money is of criminal origin. This has an impact on international cooperation, as prosecutors from these countries are more reluctant to start money laundering investigations.

Issues have arisen in cases where authorities in a given Member State required the identification of a predicate offence to prosecute money laundering offences. Despite vast sums of money being moved through bank accounts in their Member State, prosecutors would not support an investigation/prosecution without a predicate offence. In other cases, in order to keep money seized in the bank accounts, it was required to have sufficient evidence that the money originated from a predicate criminal activity and that the money most probably resulted from criminal assets that were being laundered via the bank accounts.

In other countries, there are fewer issues relating to the predicate offence, as it is only necessary for the origin of the money to be criminal. While this might still be problematic, there is no need to prove the exact nature of the predicate offence.

In some cases, the issue of a **lack of substantive harmonisation** has arisen, i.e. whether or not offences that are committed abroad are relevant predicate crimes if laundering acts are committed within the jurisdiction where the money has been laundered. That is, whether money laundering would constitute an offence in any Member State irrespective of the jurisdiction in which the predicate offence was committed. This is a matter of the **relevance of double criminality and money laundering predicate offence.**

One case concerned an organised crime group (OCG) committing a complex scheme of tax fraud relating to the importation of goods from a third country and their resale in the EU, resulting in large-scale evasion of VAT and customs duties, and subsequently the laundering of the proceeds of those criminal activities. Linked investigations were ongoing in Member State A, Member State B, Member State C and Member State D, and a joint investigation team (JIT) was set up with the participation of Eurojust, the European Union Agency for Law Enforcement Cooperation (Europol) and the European Anti-Fraud Office. The main suspect in Member State A was being investigated for money laundering and participation in an OCG. The cash resulting from VAT and customs fraud offences committed in Member

([8]) United Nations Convention against Transnational Organised Crime, Palermo, Italy, 12 December 2000, Annex I, Article 2(h); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, France, 8 November 1990, Article 1(e); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, Poland, 16 May 2005, Article 1(e).

State A was collected there and transported to Member State C, passing through Member State B. The transportation of cash in Member State C could constitute money laundering if it could be proved that it was the result of a criminal activity. If there were insufficient elements to establish the predicate offence of VAT / customs duties fraud committed in Member State A, another possibility could be to consider, as a predicate offence, the self-laundering committed in Member State B when the cash was transported there. However, while self-laundering was a criminal offence in Member State B, this was not the case under Member State C's national law.

In this case, questions arose as to whether EU law allows an activity that constitutes a crime only in the Member State where it was committed, but not in the Member State with jurisdiction over money laundering, to be considered a predicate offence for money laundering. In other words, whether Directive (EU) 2018/1673 ([9]) requires double criminality as to the predicate offence committed abroad and, more generally, whether that Directive allows predicate offences to be identified in a broader way than the Palermo Convention on transnational organised crime and the Warsaw Convention on money laundering.

In this case, Eurojust's Operations Department prepared a legal note on the matter at the request of one of the National Desks involved in the case. In this case, the view was that Article 3(3)(c) ([10]) of Directive (EU) 2018/1673, which is the most recent EU legal instrument governing the criminal law aspects of money laundering, explicitly requires the nature of that activity to be criminal according to the law of the Member State where the money laundering occurs. Therefore, the first reply to the questions posed was that according to EU law, and in particular Directive (EU) 2018/1673, the activity that generated the funds must be a criminal offence in the Member State where the property is laundered, even if the activity is carried out in a different Member State ([11]).

Secondly, compared to the Palermo Convention and the Warsaw Convention, EU law – and in particular Directive (EU) 2018/1673 – extends the situations in which an activity generating property committed abroad can be regarded as a predicate offence for the purposes of money laundering. More specifically, Directive (EU) 2018/1673 – unlike the Palermo Convention ([12]) but like the Warsaw Convention ([13]) – does not necessarily impose double criminality of the predicate offence committed abroad in both the Member State where the predicate offence is committed and the Member State where the money laundering is committed (Article 3(3)(c) Directive (EU) 2018/1673). Going beyond the Warsaw Convention, it also provides that double criminality is not the rule but rather the exception, because for

([9]) Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

([10]) "*Member States shall take the necessary measures to ensure that the offences referred to in paragraphs 1 and 2 extend to property derived from conduct that occurred on the territory of another Member State or of a third country, where that conduct would constitute a criminal activity had it occurred domestically*".

([11]) It should be noted that the offences listed under Article 2(1) of the Directive (EU) 2018/1673 are always considered as criminal activity, meaning they are to be considered predicate offences in all Member States (*see* Recital 5).

([12]) *See* Article 6(2)(c)): "*For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there*".

([13]) *See* Article 9(7): "*Each Party shall ensure that the predicate offences for money laundering extend to conduct that occurred in another State, which constitutes an offence in that State, and which would have constituted a predicate offence had it occurred domestically. Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically*".

certain specifically listed criminal activities, double criminality cannot be a requirement under national law ([14]).

Therefore, in the case at hand, the view expressed in the legal note was that EU law did not allow an activity that constitutes a crime only in the Member State where it is committed, and not in the Member State where the property is laundered, to be considered a predicate offence. However, in relation to the alternative option of considering VAT and customs duties fraud committed in other Member States as a predicate offence, it was recalled that EU law – in particular Directive (EU) 2018/1673 – requires Member States to consider the predicate offence as established even if not all of the factual elements or all of the circumstances relating to that criminal activity, including the identity of the perpetrator, are established.

It is worth noting that FIUs can play a role in the identification of the predicate offence, and are encouraged to rapidly ensure the widest possible range of international cooperation, including with FIUs from third countries, in relation to money laundering and associated predicate offences in accordance with the Financial Action Task Force (FATF) recommendations ([15]) and the Egmont ([16]) principles for information exchange between FIUs ([17]) ([18]).

([14]) Article 3(4): "*In the case of point (c) of paragraph 3 of this Article, Member States may further require that the relevant conduct constitutes a criminal offence under the national law of the other Member State or of the third country where that conduct was committed, except where that conduct constitutes one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2 and as defined in the applicable Union law*".

([15]) FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, 2022 (the FATF recommendations). This document sets out a comprehensive and consistent framework of measures that countries should implement in order to combat money laundering and terrorist financing, along with the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. The FATF recommendations therefore set an international standard that countries should implement through measures adapted to their particular circumstances. The FATF standards comprise the recommendations themselves and their interpretive notes, together with the applicable definitions in the glossary.

([16]) https://egmontgroup.org/.

([17]) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

([18]) See Section 5.2 'Financial intelligence units'.

4. Complex money laundering schemes

At Eurojust, cases involving the following money laundering schemes have been identified: (i) misuse of legal business structures; (ii) misuse of cryptocurrencies; (iii) attempts to abuse international treaties and instruments on the mutual recognition of judgments; (iv) laundromats; (v) money laundering through high-value products; (vi) money laundering through a pension scheme; (vii) misuse of cultural goods; (viii) false-investment money laundering; (viii) intermingling used by criminals to hide the criminal origin of the money.

4.1. Misuse of legal business structures

Eurojust casework shows that legal business structures, such as banks and law firms, are used to launder criminal proceeds and to reintroduce them into the financial system.

Case 1. In one case involving several countries, different approaches were adopted to the investigation on the basis of their legal systems. Moreover, the outcome of the case in each country depended on the outcome of the investigations in the other countries. In one of the countries involved, the money laundering took place in the bank itself, i.e. in the organisation that has the obligation to conduct the due diligence measures laid down by the national money laundering and terrorism financing prevention act. In this case, the investigation started on the basis of an FIU report of large-scale money laundering committed by employees of a bank. The judicial authorities established that the very-large-scale performance of suspicious transactions in the bank accounts of hundreds of different customers over a very prolonged period of time was only possible if the employees of the bank had knowingly and deliberately breached the provisions of the abovementioned national legislation and the internal regulations of the bank for the prevention of laundering and terrorism financing. The absence of prevention of such suspicious transactions by the employees of the bank clearly indicated unusual activity in certain bank accounts. This led the judicial authorities to conclude that the employees should at least have admitted that, by means of such activities, they might, inter alia, knowingly and deliberately, have helped to conceal the true source and the beneficial owner of criminal money. In this case, the employees of the bank were suspected of money laundering / aiding and abetting money laundering. The approach adopted by another of the countries involved was different. The approach was not to charge the bank employees with money laundering, but rather to charge the bank with failing to carry out its due diligence. The authorities took aim at the failure of the bank (not the employees) to comply with anti-money laundering measures (corporate liability). The main legal and practical issues that arose in this case were as follows.

- It was very **difficult to identify the predicate offences that had taken place in other countries**.
- Therefore, it was **also difficult to prove the mental element of the bank employees**, as there were no indications that they knew the nature of predicate crimes.
- The judicial authorities expressed the view that it **would have been much easier to handle the case if violation of due diligence measures were also a criminal offence in their country**. The third country's authorities suggested that when violation of due diligence measures is not a criminal offence in some countries, consideration could be given to treating it as such on the basis of international recommendations and standards.
- In this case, the importance of having provisions to prosecute **corporate liability** was also noted.

- Difficulties in **proving negligence when the investigation concerns corporate liability** in connection with failure to comply with anti-money laundering obligations.
- **The definition of money laundering changed** during the period when the crimes were committed**,** which could complicate investigations as new requirements **may** apply.
- Moreover, in such complex money laundering cases that, inter alia, involve a high number of suspects, it is common for **investigations to be very lengthy**, which may have an **impact on the trial and the final outcome of the case**.
- In this case, as in all cases where **banks are involved in money laundering schemes, the states' financial systems may be influenced or affected** because the sanctions and legal actions raised against the banks may impact the country's financial system.
- Finally, due to the complexity of the case and the number of countries involved, there was an inevitable **need to coordinate the investigations in order to avoid possible *ne bis in idem* issues**.

In this case, **Eurojust** supported the national authorities very swiftly. Several coordination meetings ([19]) took place to discuss the legal and practical issues, exchange information and agree on the next steps in terms of judicial cooperation, for example the issuing of LoRs and EIOs and the coordination of investigations, notably to avoid possible *ne bis in idem* issues.

Case 2. In a separate case, there was an investigation into money laundering in Member State A, where bank employees were suspected of participation in money laundering activities by having received **personal compensation for their illegal activities**. In this case, other issues arose. Under the law of Member State B, the bank employees were considered **personally liable**, which differed from the **corporate liability** of the bank itself. The view of the authorities of Member State B was that these circumstances, together with the fact that evidence of the predicate offence that had most likely occurred in Member State A was needed and was not easily available, prevented the establishment of a JIT and led to the continuation of the cooperation on the basis of **spontaneous exchange of information** and the **issuing of new EIOs and freezing orders**. Member State B **froze EUR 6.5 million** in execution of a freezing order from Member State A. At a later stage, Member State B started its own investigation into money laundering against the bank employees, and in turn issued EIOs to Member State A seeking interviews with Member State A nationals. In this case, Eurojust facilitated the cooperation between the authorities and organised coordination meetings during which spontaneous exchange of information took place, notably on the activities of the bank employees and on the frozen assets, along with discussions on the possibility of setting up a JIT.

([19]) A coordination meeting is one of the tools Eurojust uses to carry out its mission. The purpose of a coordination meeting is to stimulate discussion / the exchange of information and reach agreement between national authorities on their cooperation and/or the coordination of investigations and prosecutions at the national level. These meetings are attended by the national judicial and law enforcement authorities from the Member States. In addition, representatives from third states may be invited, along with officials from cooperation partners such as Europol and the European Anti-Fraud Office and from international organisations such as Interpol. Coordination meetings are used to facilitate the exchange of information; to identify and implement means and methods to support the execution of mutual legal assistance requests, EIOs or coercive measures (i.e. search warrants and arrest warrants); to facilitate the possible setting-up and functioning of a JIT; to coordinate ongoing investigations and prosecutions; and to detect, prevent or solve conflicts of jurisdiction, *ne bis in idem*-related issues or other legal or evidential problems. One crucial service provided during coordination meetings is simultaneous interpretation, which allows the participants to communicate directly with their counterparts and to present the issues of judicial coordination arising from criminal investigations or prosecutions in their own languages, allowing a more comprehensive understanding of their respective legal regimes.

In several other cases, investment fraud schemes ([20]) that affected people all around the world were investigated.

Case 3. In one such case, a savings bank, which in the meantime had been taken over by the state, was used by a company to move large sums of money through various accounts. The bank **went bankrupt** because of the money laundering scandal. The difficulty was that, since the bank had ceased to exist, it was not possible to charge anyone. An alternative could be for the authorities of the country leading the investigation to forward information on the activities by way of spontaneous exchange of information, as the other country involved might wish to consider opening an investigation. In this case, it would be doubtful whether the managers of the bank could still be prosecuted for money laundering, and if so perhaps only for violation of anti-money laundering measures. However, the structure of the bank was very unclear.

Case 4. In other cases, **lawyers** are involved in the money laundering or are themselves the heads of an OCG dedicated to money laundering. In one very complex money laundering case involving 28 Member States and five third countries, with multiple investigations, the main suspect was a law firm that was suspected of laundering billions of euro through thousands of offshore companies. Several countries involved targeted the criminal activities of the **same law firm and investigated money laundering based on various predicate offences in their countries**.

The main legal and practical issues in this case were as follows.

- **Dual criminality.** The supreme court of the country where the law firm was registered and had committed the offences had ruled that **dual criminality was indispensable for international charges**. **The predicate offence in question did not constitute a crime in that country (only an administrative offence).** Therefore, consideration needed to be given to whether there was an offence that would also constitute an offence in that country. Against this background, this country's authorities underlined the need to assess, on the basis of the description in the LoR, whether the description of the criminal offence would constitute an offence in accordance with that country's criminal code, so that the dual criminality requirement would be fulfilled.
- **Illicit origin of the evidence.** The question arose as to whether there was evidence for the defendants' claim that the information was stolen or obtained in an illicit manner. This was dismissed as the information was obtained through house searches, particularly information on servers. The defence claimed before the court that the information had been obtained illegally, but their claim was rejected by several courts. In light of these court rulings, there were reasons to believe that the constitutional court would confirm these rulings and allow the investigation to continue.
- **Legal privilege.** Since the main suspects were lawyers, the issue also arose as to what extent there was legal privilege in relation to the seized material. This was clarified as, under the civil and commercial law of the country where the law firm committed the offences, there were restrictions upon access to information subject to lawyer–client privilege. However, these did not apply in criminal proceedings.
- **Spontaneous exchange of information.** The possibility for national authorities to spontaneously exchange information via email on names of people and/or law firms that have links with the law firm in question was encouraged. On the basis of that information, the

([20]) See Eurojust, *Eurojust Guidelines on How to Prosecute Investment Fraud*, Publications Office of the European Union, Luxembourg, 2021.

authorities of the country where the law firm was registered, and where the offences had been committed, conducted a preliminary check with a view to identifying any relevant information.

- **Guarantee of confidentiality.** The authorities of the country where the law firm was registered, and where the offences had been committed, confirmed that the duty of confidentiality is explicitly provided for in their domestic legislation on international assistance.

Eurojust supported this case by organising several coordination meetings, cross-checked whether there were ongoing proceedings in other countries and facilitated the exchange of information on linked proceedings/investigations and the execution of mutual legal assistance (MLA) requests and EIOs.

Case 5. The 'MF Papers' case

Add QR code leading to PR: https://www.eurojust.europa.eu/mf-files-two-day-coordination-meeting-eurojust

Countries involved: Andorra, Belgium, Bulgaria, Czechia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Slovenia, Switzerland, the United Kingdom and the United States.

Crime. Investigations were launched into alleged criminal activities connected to the law firm Mossack Fonseca. Known as the 'MF Papers' case, this ongoing case represents international money laundering on an unprecedentedly large scale.

Action. Three coordination meetings facilitated by Eurojust took place in September 2016, April 2017 and February 2019. In addition to the Panamanian delegation, the second coordination meeting included 14 Member States and Norway, while the third coordination meeting was attended by 18 Member States together with Andorra, Norway, Switzerland, the United Kingdom and United States, along with Europol.

Legal issues addressed. The Panamanian Supreme Court held that double criminality is an absolute condition for international cooperation. Since tax evasion is not a crime in Panama it could not serve as a predicate offence for money laundering. During the second coordination meeting, in April 2017, participants explored alternate crimes that could serve as predicate offences for money laundering and satisfy the dual-criminality requirement. During the third coordination meeting, the Panamanian authorities informed participants of their new legislation on tax evasion, which entered into force in March 2019 and has since simplified judicial cooperation with foreign jurisdictions.

Eurojust's role. Eurojust played a pivotal role in bringing together all the competent Member State and third country authorities to facilitate the exchange of information and coordinate the investigations. This case clearly demonstrates both the complex legal issues Eurojust is presented with, involving a large number of countries, and the added value of coordination meetings, which foster mutual understanding, build trust and are essential for continued cooperation.

4.2. Misuse of cryptocurrencies

Eurojust's casework shows that cryptocurrencies ([21]) are increasingly misused by criminals to launder their criminal profits.

Case 1. In one case, a cybercrime and money laundering investigation involving four Member States and nine third countries, Member State A's investigation was focused on a hacker group devoted to synchronised automated teller machine (ATM) attacks across Europe and beyond. The criminal operation struck at banks and financial entities in more than 40 countries, which suffered **cyberattacks** resulted in cumulative losses of over EUR 1 billion for the financial industry. In all these attacks, a similar modus operandi was used: malicious software was sent to bank employees via emails impersonating legitimate companies (spear phishing); once downloaded, the malicious software allowed the criminals to remotely control the victims' infected machines, giving them access to the internal banking network and infecting the servers controlling the ATMs. The money was then cashed out by one of the following means.

- **ATMs were instructed remotely** to dispense cash at a predetermined time, with the money being collected by OCGs supporting the main crime syndicate (**'mules'**).
- **Databases with accounts' information were modified in order to inflate the balance of some bank accounts. Mules** would then be used to withdraw the money using the bank cards linked to the previously manipulated accounts.
- In addition to these methods, profits were also obtained **via e-payments.** For example, the **SWIFT** ([22]) **network was used to transfer money out of the financial institutions and into cryptocurrency accounts**. Evidence suggested that the criminal profits were **laundered via cryptocurrencies**, **by means of prepaid cards linked to cryptocurrency wallets** used to buy luxury goods.

The OCG had been established a decade ago, and evolved by adapting to software evolution and by developing technological requirements. On some occasions, the OCG ordered the necessary tool from the external software developers. In terms of outcome, the leader of the OCG behind the malware attacks targeting over 100 financial institutions worldwide was arrested in Member State A, after a complex investigation conducted by Member State A's authorities.

The main legal and practical issues in this case were as follows.

- **Tracing the proceeds of crime / trying to hide the money.** With regard to the participation of a given suspect in the offence of **money laundering**, Member State A's investigation highlighted that he had not had any work activity since he started residing in Member State A and that he was the holder of a single bank account with a very modest balance. Nevertheless, it was established that **he had a large amount of assets in cryptocurrencies** deposited in companies in several countries dedicated to managing and investing this type of currency.

([21]) Crypto-assets, including cryptocurrencies, are neither issued nor guaranteed by a central bank or a public authority. They are, at the time of writing, outside the scope of EU legislation, which creates risks for consumer protection and financial stability and could lead to market manipulation and financial crime. There is a draft proposal for a Regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive (EU) 2019/1937 (COM(2020) 593). Article 3(1)(2) of the proposal defines crypto-assets as a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology.

([22]) Society for Worldwide Interbank Financial Telecommunications.

- **Use of cryptocurrencies.** The use of this type of **digital currency** makes it difficult to keep track of the assets held by those under investigation ([23]). It is essential to know the activity and mechanisms used to monetise or convert cryptocurrency into legal tender.

In this case, Eurojust facilitated the issuing and execution of LoRs and EIOs, provided advice on the legal basis for mutual legal assistance – notably facilitating the obtaining of assurances of the principle of reciprocity – and organised a coordination meeting to discuss the legal and practical issues, exchange information and agree on the next steps regarding judicial cooperation.

Case 2. In another case, Member State A was investigating money laundering allegedly committed by two nationals of Member State B, one residing in Member State A and the other in Member State B. The **money was laundered via cryptocurrencies to plastic credit cards (anonymous credit cards linked to a bitcoin wallet)** and amounted to **EUR 1.2 million**. The source of the money was unknown. The money laundering activities took place in both Member State A and Member State B. Member State B had a linked investigation into counterfeiting and smuggling of medical products involving the same individuals**.**

The main issues that arose were as follows.

- **Use of cryptocurrencies to launder money.** Analysis of the data relating to large amounts of cryptocurrencies. There was a need to provide the analysis of the cryptocurrency data from Member State A to better analyse the data from electronic devices seized in Member State B.
- **Linked investigations.** Member State A's authorities sought to link the criminal activity of the suspects in Member State B with the money laundering in Member State A.
- **Financial investigation.**
    - **Use of Asset Recovery Offices (AROs)**: Even in the apparent absence of a criminal investigation in Member State B, Eurojust suggested that Member State A's ARO contact Member State B's ARO for the purpose of identifying assets from suspects in Member State B. This was done, and information was received.
    - In order to be able to **identify money flows** from Member State B to Member State A **that could provide proof of money laundering**, it was necessary to put together and compare Member State A's and Member State B's transactions.

In this case, **Eurojust** supported national authorities by organising coordination meetings and facilitating the exchange of information. It also supported action days in Member State A and Member State B, the main purpose of which was to conduct searches and freeze assets. Eurojust continued to support national authorities after the joint action day by organising a further coordination meeting to discuss the results of the action days, further cooperation requirements and the way forward in relation to the suspects.

Case 3. In a separate money laundering case, Member State A was conducting a very-large-scale money laundering investigation in which the suspect was a national of Member State B. Member State B was also conducting a money laundering investigation on the basis of EIOs from Member State A. The predicate offence – illegal withdrawal of money from bank accounts – had been committed in Member State B. In this case, the laundered money was converted into **cryptocurrencies**, which accumulated in **crypto wallets** belonging to the main suspect. In this case, the national authorities of one of the

([23]) See Europol, *Cryptocurrencies: Tracing the evolution of criminal finances*, *Europol Spotlight Report* series, Publications Office of the European Union, Luxembourg, 2021.

countries involved used highly skilled **experts** to perform house searches **with a focus on digital devices** and to take copies of relevant electronic evidence, with the aim of obtaining access to crypto wallets belonging to the main suspect. With such access, Member State A was legally in a position to transfer the cryptocurrencies to the wallet of its state agency, to store the cryptocurrencies until a judicial decision with regard thereto was taken. Member State A's authorities considered that **an EIO would be a sufficient legal basis to obtain access to crypto wallets** during the house searches, because the crypto wallets constituted **evidence** within Member State A's proceedings. As a follow-up to the outcome of the house searches, if access to the crypto wallets was obtained, Member State A's judicial authorities would assess the need to issue, in addition, **decisions to seize and confiscate the cryptocurrencies**.

In this case, Eurojust facilitated the drafting of an EIO and a European Arrest Warrant (EAW) and organised a coordination meeting to exchange information of the status of the investigations and plan the necessary measures to be taken on the action day. One of the aims of the action day was to **obtain access to the crypto wallets** of the main suspect and to **seize assets worth EUR 364 000**.

It is worth noting that, up to this point, transfers of virtual assets have remained outside the scope of EU legislation on financial services. This exposes the holders of crypto-assets to risks relating to money laundering and financing of terrorism, as illicit money can flow through crypto-asset transfers, damaging the integrity, stability and reputation of the financial sector and threatening both the internal market of the EU and the international development of such transfers. Against this background, as noted under Section 1.1., one of the legislative proposals of the Commission's package presented on 20 July 2021 to strengthen the EU's rules on anti-money laundering and countering the financing of terrorism is a revision of the 2015 Regulation on transfers of funds ([24]), which will make it possible to **trace transfers of crypto-assets.** This means that **crypto-asset service providers** will be obliged to provide information on the sender and beneficiary with all transfers of virtual assets, so that the identity of persons who carry out business with crypto-assets and suspicious transactions in this sector can be identified for the purposes of anti-money laundering and countering the financing of terrorism.

4.3. Misuse of international treaties and instruments on the mutual recognition of judgments

A case involving two Member States and a third country reflected an innovative method of money laundering whereby a company first obtained a legal title through a criminal offence in a third country and then intended to obtain the execution of that title in Member State A, counting on the marginal appreciation of **foreign judgments on the basis of EU and international treaties**.

The victim was in Member State B, but had assets in Member State A. At first sight, the case had a clear **civil law component (recognition and execution of a civil law judgment)**, but as there were compelling indications that the civil law judgment – which constituted a property right – **originated from a criminal offence** (e.g. corruption or forgery), the case also had an important cross-border criminal law component (corruption and/or forgery and **money laundering**). In this case, the suspect in Member State A's criminal investigation had obtained a **judgment in the third country** ordering a Member State B company (victim) to pay the suspect an indemnity amounting to over **EUR 433 million**

([24]) Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (COM(2021) 422) (see explanatory memorandum).

for an alleged breach of contract. The victim lodged appeals in the third country against this ruling, but they were all dismissed.

There were strong indications that the suspect obtained the judgment in the third country through corruption. The suspect attempted to have the judgment enforced by launching enforcement procedures in several Member States, including Member State A. A civil court of appeal in Member State A **denied the recognition and execution of the third country judgment**, arguing *inter alia* that 'said judgment was arbitrary and manifestly unreasonable', that 'no reasonable court could have reached that decision' and that the decision was **'in conflict with Article 6 European Convention of Human Rights'**. However, according to Member State A's domestic law, a Member State A civil court must then reassess the content of the matter, meaning that both parties had the opportunity to plead their cases.

Member State A **launched a criminal investigation following a complaint lodged by the victim**. According to Member State A's authorities, the judgment of the third country gave serious rise to suspicion of bribery of the third country's judges involved in the delivery of the judgment in all instances. Since the third country's judgment was a property right and there was a strong suspicion that it was the result of the bribery, **the use of that property right** could be qualified in Member State A as **money laundering**.

From the perspective of Member State A's authorities, their criminal proceedings on money laundering would not be successful if there was no evidence that the legal title was obtained via a criminal offence in the third country. The reason for the cooperation with the **third country was to obtain information about the predicate offence**.

The issues that arose in this case were (i) the **issuing of an LoR by Member State A to the third country** to request certain investigative measures, but also to trigger the launch of a criminal investigation in the third country into bribery and/or forgery, and (ii) **consideration being given to setting up a JIT** when the third country had set up its own criminal investigation and Member State B had obtained sufficient new information and evidence to reopen its investigation.

Eurojust supported national authorities by organising coordination meetings to **exchange information** on the ongoing investigations in the Member States involved, to discuss the possibility and need to open a domestic criminal investigation in third country and to agree on an action plan for future judicial cooperation among the countries involved, including the possibility of setting up a JIT. In the end, no JIT was set up and the cooperation continued through LoRs and EIOs.

4.4. Laundromat

In Eurojust cases, examples of the **laundromat** scheme have also been identified.

In a particular case, authorities in Member State A were conducting an investigating regarding a company (company X) in Member State B that was involved in **laundering money** to the amount of **approximately EUR 210 million deriving from extensive tax fraud in a third state**. The company **was suspected of money laundering** in Member State A. This case involved several Member States and third countries.

Member State A's authorities identified a specific modus operandi for the money laundering scheme in which company X appeared to be involved, referred to as a **'laundromat'**. It entailed a **process whereby proceeds from tax fraud** were spread out **across the world** through **financial transactions**

by corporations, **using shell companies** or **letterbox companies** and **nominees**. In addition, **the profits from the fraud were mixed with other funds**. Furthermore, it was established that large sums of money were transferred from the bank accounts of the shell companies involved on one day, and that nearly the full amount that had been received was transferred to other corporations on the same day. This occurred more than once and in several layers. In addition to the laundromat in which company X appeared to be involved, **Member State A's authorities uncovered many similar schemes**, in which the same banks, addresses and service providers were used. These laundromats appeared to have a connection to several third states.

In this case, **EUR 210 million worth of tax fraud** was spread out globally via **various layers of corporations**.

The **main legal and practical** issues in this case were as follows.

- **Parallel investigations in the multiple countries involved.** There was a need to ascertain whether an investigation linked to the money laundering scheme had been initiated or might foreseeably be initiated in the future. On the basis of the information gathered, the countries involved assessed the **international judicial cooperation needed**, including **setting up a JIT**.
- **Predicate offence and relevant differences in domestic law.** In order to investigate money laundering, some countries **had to investigate the predicate offence as well**. For this they needed information from the third country where the predicate offence had taken place, which proved to be very time consuming. For Member State A, it sufficed to prove that the object of the money laundering derived from any serious offence, and that the person knew about the illegal origin of the money. In fact, **the aim of Member State A's authorities was to establish the closest cooperation possible to investigate the laundromat, not the predicate offence**.
- **Asset recovery.** Banks located in Member State C played a significant role in the money laundering scheme. **Large sums of money were transferred through bank accounts in Member State C to other bank accounts in destination countries.** Extensive judicial cooperation was necessary with Member State C's authorities with the aim of conducting the financial investigation (and the money laundering investigation).
- **Confidentiality of information contained in requests for freezing.** In the course of Member State A's money laundering investigation, the defence sought the **disclosure of requests from another involved third country to Member State A regarding the freezing of assets and the lifting of the seizure**. This was not possible due to the stage of the proceedings in that third country, and the requests had to **be kept confidential so as not to compromise the investigations**.
- **Spontaneous exchange of information.** There was a need for spontaneous exchange of information regarding the money laundering scheme, to allow a money laundering investigation to be initiated in an involved country.
- **Cooperation with third countries.** The assistance of a **Liaison Prosecutor** for a third country posted at Eurojust and a **Contact Point for Eurojust** in another third country proved to be very efficient. However, the main third country in question, where the tax evasion had allegedly been committed and which was pivotal to **establishing the origin of the laundered money, suspended the execution of the request** until the conclusion of its own investigation into the same actions.

- **Speciality rule for the use of evidence obtained through legal assistance**. Third country D had specific rules on this matter that had to be followed before the evidence could be transmitted to Member State A. They were linked with the fact that third country D's authorities had received, from foreign authorities, documents concerning the persons referred to by the requesting authority in its LoR. In order to be able to forward these documents to Member State A's authorities, third country D **had to inform these foreign authorities and receive their approval**, if a **speciality rule** so provided.

Eurojust supported national authorities by facilitating the exchange of information on the status of the investigations, or by means of other involvement in the various counties involved. This was done by way of a **matrix for information gathering** circulated before the coordination meeting. Eurojust also facilitated the **spontaneous exchange of information** regarding the money laundering scheme, and the dialogue regarding the legal requirements to prosecute money laundering in the countries involved. Eurojust prepared a **case note** to support several **bilateral and multilateral coordination meetings** it organised to define strategies and priorities and reach agreement in relation to future cooperation, notably the establishment of a JIT and the exchange of LoRs or EIOs.

4.5. Money laundering through high-value products

In one case, an OCG involved in **gold laundering** was active in three Member States. The modus operandi of the OCG was to steal gold items in Member State A, melt them down in a foundry and subsequently transform them into gold bars. The bars were then placed on the **official gold market** by a Member State B company, which issued fictitious sales invoices to a second Member State A enterprise. The fictitious invoices, estimated at approximately **EUR 300 000 per week**, were paid by **legitimate companies** via international bank transfers, with the cash then withdrawn in Member State B and returned to Member State A to pay the thieves. **Cash was concealed and transported across national borders.** During the period under investigation, the criminal network is estimated to have **laundered** approximately **750 kg of pure gold**, with a value of **EUR 25 million**. Within the framework of one complex cross-border investigation, the crimes from which the proceeds were derived, the nature and extent of the money laundering activities and the investment of the proceeds of crime were uncovered simultaneously.

Eurojust provided wide-ranging judicial support and played a proactive role in providing information to the national authorities in real time to progress the case, organising a coordination meeting and a subsequent coordination centre ([25]) during the action day. As a result of the joint operations, 10 individuals were arrested, and one suspect remained at large. Sixty house and company searches were carried out simultaneously in three Member States. The equivalent of **EUR 9 million was seized**,

([25]) Coordination centres are another Eurojust tool. When complex cases require real-time exchange of information and large-scale multilateral actions (e.g. the execution of several freezing orders, searches and arrest warrants in different countries), Eurojust may support the national authorities concerned by setting up a coordination centre at its premises. Coordination centres are designed to serve as a central hub for real-time exchange of information and for coordinating the joint execution of judicial and law enforcement measures in different countries (i.e. seizures, arrests, house/company searches, freezing orders and witness interviews). During coordination centres, participating authorities are linked to each other at all times via dedicated telephone lines and computers, and information is passed quickly from one authority to another via Eurojust. The joint execution of measures is constantly monitored and coordinated with a view to anticipating and resolving any operational or judicial obstacles that may impact the operation's success. In addition, prior to a coordination centre, Eurojust typically provides participating authorities with an overview of relevant information concerning all targets subject to the joint actions, including their telephone numbers, locations and bank accounts, if applicable.

including **20 kg of gold, EUR 200 000 in cash** from one of the arrested individuals and **high-value cars**. In addition, important evidence was found and seized, including evidence found in a safe and in the accounting books of the companies involved in the various countries.

4.6. Money laundering through a pension scheme

Eurojust's casework also shows instances where money is laundered through pension schemes.

One particular case concerned **aggravated money laundering and aggravated embezzlement** regarding **pension funds** paid into by taxpayers from Member State A. Member State A's **pensions system** enables its pension savers to decide how a certain share of their pension capital should be managed by stating into which fund the share should be placed. The pension savers can only choose funds from a fund list published by **Member State A's pension agency**. This pension agency then places the capital in the fund indicated.

The case involved 21 countries, including nine third countries. According to the investigation in Member State A, **EUR 125 million** had been embezzled. It concerned **advanced trade with financial instruments such as exchange trade funds** and **other securities**.

This case was a **very high-profile case in Member State A** considering the large amount of losses incurred – approximately EUR 125 million. There was also, inter alia, an investigation in Member State B with potential links to that in Member State A. Since this was a **very specialised area of investigation,** there was a need to ensure that cooperation occurred with the **involvement of the respective competent authority in both countries**. Cooperation was crucial with a view to **agreeing**, inter alia, on the **best instruments for judicial cooperation**, on **the sharing of evidence** and on **decisions on the jurisdiction best placed to prosecute**. **The fund company** was established in Member State B and was subject to supervision by **Member State B's financial services authority. EUR 260 million of Member State A's pension capital was placed in the fund company.** The fund company placed the capital in **liquid and illiquid assets**. The latter were so-called **exchange trade funds**. The fund company did not have the right to invest in exchange trade funds, according to the UCITS Directive ([26]). Due to a suspicion of misconduct, Member State A's pension agency removed the fund company from the fund list and requested that all assets be returned to Member State A's pension agency. The same request was made by Member State B's financial services authority. The injured party was **Member State A's pension agency**.

Various matters arose in this case. There were concerns about whether the **JIT agreement** would be signed in time before the action day. If not, LoRs and EIOs would have to be issued. The purpose of the JIT was to ensure effective cooperation and information exchange, solve **conflicts of jurisdiction and avoid *ne bis in idem* problems**. **Handing over of property** was another matter, as during the arrest in Member State C on the basis of an EAW issued by Member State A, the requested person was in possession of various items. On this basis, Member State C's authorities consulted Member State A's authorities to learn of their interest in making use of **Article 29 of the Framework Decision on the**

([26]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, Regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

EAW ([27]) as transposed into their domestic law, which concerned the **handing over of seized objects**, as this could be authorised by the executing authority upon a request of the issuing authority or *ex officio* for evidentiary purpose without prejudice to the interest of a *bona fide* third party. Another matter that came to light was that of the **rule of speciality**. Finally, the **financial investigation** required the further involvement of 10 third countries. This case demonstrated the following.

- **Excellent cooperation with third countries.**
  - **Eurojust Contact Point in third country X.** There was a conviction against an individual in third country X that contained very relevant evidence against the person standing trial in Member State A for **money laundering**. The Eurojust Contact Point was helpful, as prior to its involvement it had not been possible for Member State A's authorities to establish contact with the authorities in third country X. The cooperation facilitated the use of the third country X judgment in Member State A's trial.
  - **The assistance of the Liaison Prosecutor at Eurojust** was crucial**.**
- **Eurojust's support.** From the perspective of Member State A's authorities, cooperation with Member State B might not have yielded such good results overall had it not been for the support provided by **Eurojust**. For example, setting up two **coordination meetings**, one **coordination centre** and facilitating the **signing of the JIT agreement before the action day** helped make it a success.
- **Outcome.** A court in Member State A **convicted four people** of involvement in the fraud scheme and sentenced them to a total of 21 years and 3 months in prison for the offences of **gross infidelity** against the principal, **aggravated fraud**, **aggravated money laundering** and **aggravated bribery**. Furthermore, approximately **EUR 260 million was confiscated** from those convicted. Another charge was brought and a judgment by the court of appeal was passed in early 2021.

4.7. Misuse of cultural goods

In several cases, cultural goods have been used to launder money. In one case of corruption and **money laundering**, the suspect was an alleged art collector. However, the **goods that comprised his collection were of almost no value**. He would hire an **auction house to prepare a fictitious dossier about the goods**. Subsequently, the buyer of the cultural goods would act on behalf of the suspect. **The money was deceitfully used in the auction to buy the goods, which in fact had no value.** The suspect took advantage of people of low social status or people with mental health conditions to open bank accounts or buy property. The main difficulties in this case were linked to the following.

- **Deficit of cultural experts.** The country where the investigation was being conducted had a deficit of cultural experts. The authorities needed to hire such experts to evaluate approximately 5 000 goods but learnt that most were working abroad or working for the suspect. The authorities had to reach out to other countries for such experts.

([27]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states (OJ L 190, 18.7.2002, p. 1), as amended by Council Framework Decision 2009/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27).

- **Proving money laundering.** The suspect used many countries to launder the money and it was difficult to identify the assets and detect the money laundering because of the involvement of a very large number of people and companies.
- **Beneficial ownership.** Proving that money or property belonged to the suspect.
- **Cooperation with third countries.** Disclosure of banking information from a third country.

4.8. False-investment money laundering

Another complex money laundering scheme found in Eurojust's cases involves, among other aspects, the use of **false investment**.

Case 1. One case concerned an investigation in Member State A into **fraud and large-scale money laundering** activities carried out by an OCG. Complex international financial operations led to the introduction into the territory of Member State A of large sums of money, subsequently used to carry out a variety of investments through a company set up for this purpose in Member State A. The investigation established links to persons and companies in a number of countries, both in Member States and in third countries from which Member State A had sought both formal and informal judicial cooperation. The **money laundering** was carried out through the **use of false documents** and by **faking**, **by way of financing of shareholders with two different loans**, **actual donations** from two **companies registered in tax havens**. The companies that committed the predicate offence **were shell companies registered mainly in offshore jurisdictions**. The profits of their tax fraud were transferred to the Member State A company using **shell companies** and bank accounts located in third countries **under the guise of loan agreements that were never complied with**, and **there was no trace of the restitution of the money** or **payment of interest**. **The companies were traceable to the main suspect.** Moreover, several other fictitious contracts were concluded. These contracts were fictitious because they concerned financial and commercial relations that pertained to a period of years prior to the signing of the contracts. The use of these contracts distorted reality as it resulted in a forged budget and false declared revenue for those companies. The main legal and practical issues in this case were as follows.

- **Proving the predicate offence.** The authorities in Member State A believed that the predicate offence had been committed in Member State B. However, Member State B was of the view that it had insufficient evidence of the predicate offence to start an investigation. Member State A forwarded information to Member State B with a request to start an investigation, and Member State B required more information. The matter of the **statute of limitations** in Member State B had no bearing on Member State A's investigation. Member State A's authorities even engaged **an accountant to prepare a report on the occurrence (or not) of the predicate offence** in the assessed activities, in accordance with the law of Member State B. According to Member State A's supreme court, in the case of **money laundering and self-laundering,** it was not necessary for the existence of the predicate offence to have been established by a final conviction. It was sufficient that the fact constituting the offence had not been judicially excluded and that the judge proceeding with the money laundering or self-laundering case had incidentally considered its existence. On the other hand, the person accused of money laundering must be acquitted in the event that the outcome of a foreign trial on the alleged offence is an acquittal. In this case, the authorities involved, together with **Eurojust**, discussed the possibility of Eurojust issuing a **Eurojust joint recommendation** for the authorities in

Member State B to open an investigation. The actual issuing of this recommendation **had to be carefully assessed**, as a dismissal or acquittal in Member State B's proceedings could have an **impact on the outcome of Member State A's investigation, in accordance with Member State A's domestic case-law**.

- **Cooperation with third countries.** Cooperation with one third country was very complex. Member State A issued three LoRs requesting information on company structures, financial and bank transactions and hearing of witnesses with the participation of Member State A's authorities. Despite the intervention of **Eurojust, which dedicated a specific coordination meeting to discuss the LoRs issued to this third country** with the aim of making cooperation smoother, Member State A's authorities did not receive any support or information on the **predicate offence**.
- **Spontaneous exchange of information.** This took place on the basis of independent initiatives from Member State A's authorities or following an invitation by Eurojust. It was found useful to offer the judicial authorities involved a complete overview of the investigation. This exchange was helpful in speeding up the execution of several LoRs and allowing autonomous proceedings to be opened in other countries.

Case 2. In a separate large-scale case involving at least 10 Member States and 12 third countries, there were parallel investigations into money laundering, embezzlement and corruption. In one of the countries, the investigation revealed an international conspiracy to launder company funds through that country and **several large-scale international third-party money laundering organisations** through the use of real estate and **sophisticated false-investment schemes**.

The false-investment money laundering scheme used consisted of the following steps. False **loan contracts** were created by two conspiring entities and provided to the bank as justification for the transfer of the funds. Once the funds were transferred, neither the loan repayment nor interest payments were ever carried out. Then, through complicit financial institutions and brokerage firms, conspirators subscribed to **fake bonds** that diminished in value over time. Meanwhile, omnibus accounts ([28]) were used to transfer the funds out of the fake bond account and into other accounts. Using the latter two methods, funds were transferred to shell companies that were then used to **purchase high-end real estate** all over the world. The true beneficial owners were not disclosed.

The main issues in this case related to identifying and obtaining evidence on the **predicate offence** (corruption and embezzlement) and to **establishing the beneficial ownership**. With regard to the latter it is worth noting one other legislative proposal that is part of the Commission's anti-money laundering package ([29]) – the new proposal for a Regulation on anti-money laundering and countering the financing of terrorism. One of its main novelties is **that beneficial ownership requirements** are streamlined to ensure an adequate level of transparency across the EU, and new requirements are introduced in relation to nominees and foreign entities to mitigate the risk that criminals may hide behind intermediate levels, notably that the powers of the registers of beneficial ownership are clarified to make sure that they can obtain up-to-date, adequate and accurate information.

[28] 'When an intermediary's name is recorded in the investment fund's share/unit register but it is holding units for its underlying customers, the arrangement is often referred to as an "omnibus account",' in Documents - Financial Action Task Force (FATF) (fatf-gafi.org)

([29]) See reference in Section 1.1, fourth paragraph.

There were also delays stemming from the **extremely large amounts of data, including digital data**, to be analysed so as to ascertain whether it was relevant for the investigation in the other countries involved. Another issue related to the fact that the investigations in the various countries involved were **at different stages** – for example, an indictment in one could give rise **to *ne bis in idem*** in two others.

Eurojust assisted, *inter alia*, by (i) organising several coordination meetings, (ii) facilitating the exchange of information about the status of the investigations and on the legal requirements in each country to prosecute money laundering, (iii) assisting in financial investigations **(EUR 46 million seized**, and **EUR 100 million in assets subject to seizure identified in one country alone)**, (iv) facilitating access to evidence obtained in the proceedings of other countries involved and (v) discussions on a common strategy to avoid *ne bis in idem*.

4.9. Intermingling

Intermingling is where money launderers attempt to conceal the origin of the proceeds of crime (usually cash) by mixing them with legitimately generated revenue using a lawful business. Eurojust's casework has revealed this modus operandi in various cases.

Case 1. One case started with suspicious transactions reported by a bank. In terms of the **money laundering scheme**, this was a case of **money laundering involving relocation services**. The modus operandi involved the **intermingling of a legitimate business with illegitimate business**. Third-country nationals opened bank accounts in Member State A to transfer money originating from investment fraud from the third country to Member State A. The accounts were owned by companies set up by the third-country nationals dedicated to relocation services. The third-country nationals were **mere straw men** used by the OCG behind the investment fraud **for the purpose of laundering the money in Member State A**. Moreover, **a bank employee was also involved** in the criminal activity as he **failed to carry out his due diligence**. This raised the issue of the **criminal liability of the employees of the bank**. In Member State A, **the legal basis** on which the person was prosecuted was **aiding the commission of money laundering**.

Case 2. In many cases where the predicate offence is investment fraud, call centres are used to persuade the victims to make investments. In one such case, the OCG moved the call centres very easily from city to city. In terms of the money laundering scheme, the OCG created **legal companies for trade activities that were a mere façade alongside their illegal activities**. These companies were designed to operate in such a manner as not to raise suspicions by the banks, and at the same time to defraud and to launder the money resulting therefrom. In this case there was a JIT, the main purpose of which was **asset recovery**. The OGC used several banks to make several transactions per day in numerous countries all over the world, and the money ended up in tax havens.

EUROJUST

Coordinated action against massive VAT fraud

28 April 2021. A **joint operation** involving law enforcement and judicial authorities from Spain, Slovakia, Belgium and the Netherlands is organised through a coordination centre at Eurojust, with Europol providing analysis and cross-checking support. **22 suspects are arrested**, **13 properties and 16 vehicles are seized** and **dozens of bank accounts are frozen**.

22 April 2021. A **coordination meeting** is held at Eurojust to facilitate exchanges of information among all parties concerned and prepare for the swift establishment of a coordination centre on 28 April. Several **European Investigation Orders** and **freezing orders** are issued over the following days.

13 April 2021. The **Spanish Desk at Eurojust** opens a case involving **Belgium**, **the Netherlands**, **Romania** and **Slovakia**, along with **Europol** within the framework of its *Analysis Project Sustrans,* which supports anti-money laundering investigations.

Late 2019. Spanish authorities launch an investigation into a VAT evasion and money laundering scheme, involving large-scale forgery of documents, that will ultimately cost the country **EUR 26 million in lost revenue**.

To avoid paying VAT within the internal market, the scammers have set up a series of **shell companies in Spain**, **Slovakia**, **Romania**, **Belgium** and **the Netherlands** to fraudulently claim that goods are being traded internationally, when in fact they are never sent abroad and are therefore subject to VAT.

5. Financial and banking information

5.1. National bank register

Eurojust's money laundering cases also show the importance of **national bank registers**. In those countries in which **central bank registers** exist, information on bank accounts related to a suspect can be made available more swiftly, thus allowing for the quicker execution of freezing certificates or LoRs seeking the freezing of accounts, or EIOs or LoRs seeking banking information. The cases also show that some countries that do not have such registers allege that this absence can be circumvented by pursuing the FIU channels.

On 10 July 2020 ([30]), **an operational topic** ([31]) **was opened at Eurojust on the matter of centralised bank account registries**. The questions addressed the following issues: (i) the existence of centralised or decentralised bank account registries; (ii) channels for the transmission of an EIO seeking information on bank and other financial accounts (Article 26 of the EIO Directive) ([32]) or information on banking and other financial institutions (Article 27 of the EIO Directive), or an LoR for the same purposes; (iii) the competent authority to execute such EIOs or LoRs; (iv) the minimum information that is required to execute such EIOs or LoRs. The main outcomes of the operational topic can be summarised as follows:

- Most countries (22) **have a centralised bank account register**. However, 11 countries replied that they do not. In 11 out of the 22 countries that have such a centralised registry, the registry operates under the national central bank or a subsidiary thereof; in five it operates under the ministry of finance or authorities falling under it; in four it operates under the national tax agency; one under the national customs authority; in one it operates under an agency for public records and related services; and in one it operates under both the ministry of finance and the national central bank.
- In terms of the **specific bank account information** that can be obtained from the centralised bank register, the vast majority of countries that have such a centralised registry maintain, at a minimum, the following information for a natural person: the bank account number; the name of the bank; the day the account was opened; and the holder's name, tax number, date of birth, address and state of residence.
- In terms of **how and on what grounds the information can be obtained** from the centralised register **for the purpose of a criminal or financial investigation**, in most countries that have it, this information is accessible to prosecutors and investigative bodies.
- None of the countries that replied have a specific type of system of decentralised bank registries for bank accounts. Essentially, and some countries said so expressly, each bank in the country keeps account/transactional information for all accounts held by that particular bank.
- For most countries, the **EIO/LoR could be sent** directly to the executing authority. Some countries replied that they should be sent to or also to the central authority, which in some cases

([30]) Information updated in September 2022.
([31]) An operational topic is a request Eurojust receives from an appropriate national authority or from a national member to gather background information or advice from all Member States that may be relevant or may have implications in operational matters.
([32]) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

was the prosecutor general's office or the ministry of justice. Most countries indicated that the requests, especially if urgent, could be sent through **Eurojust**. Some countries also referred to the European Judicial Network.

- In the majority of countries, the **national competent authority** for executing an EIO seeking information on Articles 26 and 27 of the EIO Directive, or an LoR for the same purpose, is the public prosecutor. Some countries specifically indicated that, if known, it would be the public prosecutor's office (PPO) of the residence of the suspect, and if unknown it would be the central PPO. Others replied that it would be the PPO with jurisdiction over the territory where the account is held, or the prosecutor of the court of appeals. Some countries indicated that the executing authority is a law enforcement agency.
- For some countries, the **minimum information they require to execute** an EIO seeking Article 26/27 information or an LoR for the same purpose is the bank account number or, if possible, the IBAN. Some countries replied that they require a description of the criminal conduct. Some countries specifically indicated that they require information on the link between the crime and the requested data, and some require information on the reasons why the information being sought is considered relevant.

It should be noted that the sixth Directive on anti-money laundering countering the financing of terrorism is also one of the legislative proposals that forms part of the Commission's anti-money laundering package, referred to in Section 1.1. One of the innovations provided for in this proposal is the **interconnection of bank account registers**.

5.2. Financial Intelligence Units

FIUs ([33]) are central players in fighting money laundering. In their key position between the private sector and law enforcement, FIUs steer the work of economic operators to detect transactions suspected of links to money laundering and terrorist financing. FIUs' key sources of information are (i) suspicious transaction reports received from credit and financial institutions and other obliged entities, along with additional information from obliged entities, and (ii) other sources of information such as beneficial ownership registers.

It is worth noting that FIUs can play a role in the identification of the predicate offence, and are encouraged to rapidly ensure the widest range of international cooperation, including with FIUs from third countries, in relation to money laundering and associated predicate offences in accordance with the FATF recommendations and the Egmont principles for information exchange between FIUs.

In several Eurojust cases, the cooperation with FIUs has proved very beneficial. This suggests that such cooperation can be useful when quick and direct access to information is needed. FIUs do not conduct criminal investigations, and the information they gather cannot be used as evidence in court unless the FIU that provides the information allows it to be used. The use of this information by prosecutors will differ from Member State to Member State. Cooperation between PPOs and FIUs is essential to an efficient system for tackling money laundering.

In one money **laundering investigation** in Member State A, company A was established to provide financial services mainly to non-residents, amounting to 50 % of the market. Six years after its establishment, further to the dissemination of information about suspected money laundering,

([33]) See reference in Section 3 and Sections 4.1 and 5.1.

predicate offence or terrorism financing by the **FIU** to the PPO, the financial supervision authority of Member State A revoked its activity licence. The **predicate offence** was the theft of a superyacht worth **EUR 2 88 million**, and was being investigated in Member State B. The yacht's owner, company C, was registered in a third country. Counterfeit documents revealed that the captain of the yacht, representing company C, sold the yacht to company D for **EUR 3.2 million.** A few months later, the suspect travelled to Member State A and opened an account with company A. The client manager agreed to open the account and the **requirements of legislation on anti-money laundering and combating of financing of terrorism were not followed**. Soon after, a document signed by the suspect showed that the yacht had been sold to company C and that EUR 2.88 million had been transferred to company C's account, and subsequently to various companies in third countries.

The cooperation between the FIU and the investigative authorities in this case consisted in (i) the FIU disseminating information about suspected money laundering, predicate offence or terrorism financing to the PPO, (ii) the FIU swiftly providing information from other countries throughout the investigation and (iii) the swift cooperation between the FIUs of Member State A and B, which enabled the freezing of the money in Member State B.

Eurojust facilitated and sped up the **execution of EIOs** and the exchange of information about the **predicate offence**. In this case, three members of the board and the client manager were accused in Member State A of **large-scale money laundering committed in a criminal group**.

It is worth noting that further changes provided for in the proposal for the sixth Directive on anti-money laundering and countering the financing of terrorism ([34]) include the following:

- the **powers and tasks of FIUs are clarified**, a minimum set of information to which FIUs should have access is defined, and deadlines for replies by FIUs to requests from other FIUs are provided;
- a **framework for joint analyses of FIUs** is laid down and a legal basis for the FIU.net system is provided;
- **clearer rules on feedback** from FIUs to obliged entities and from competent authorities to FIUs are proposed.

The Commission's package ([35]) proposes the setting up of a support and coordination mechanism for FIUs as part of a future authority, the EU Anti-Money Laundering Authority, that would combine the functions of an EU anti-money laundering supervisor and an FIU support and coordination mechanism.

5.3. Confidentiality of banking information

Another issue that arose in money laundering cases relates to **the notification of the owners of bank accounts and related procedural rights** stemming from **differences in national legislation**. According to the legislation of one requested third country, after its authorities, in executing an LoR, identify the owners of the bank accounts, they are obliged to give them the opportunity to challenge the transmission of the identified banking information to the requesting state. Only after all appeals have been refused (in the event that any appeals have been lodged) can the authorities of the requested state transmit the requested banking information. The difficulties are further compounded when this regime

([34]) See reference in Section 1.1, fourth paragraph.
([35]) See reference in Section 1.1, fourth paragraph.

differs from that which operates in the EU ([36]) under the EIO Directive (Articles 26(2) and 27(2)). This provision aims at ensuring that Member States take the necessary steps to ensure that banks do not disclose, to the bank customer concerned or to other third parties, information on bank and other financial accounts or information on banking and other financial operations, or that an investigation is being carried out.

([36]) Except in Denmark and Ireland.

6. Asset recovery

On a general level, Eurojust facilitates the asset recovery process by providing legal and practical support to judicial authorities throughout the asset recovery life cycle by facilitating effective cooperation and communication between the involved states. A relevant document is the Report on Eurojust Casework in Asset Recovery ([37]).

Eurojust cases show that **asset recovery** issues are among the most recurrent in money laundering cases. Conducting a **financial investigation** to allow the identification, freezing, confiscation and, ultimately, disposal of the criminal assets is at the core of a money laundering investigation. Those identified varied in nature. Some have already been addressed in other parts of report in the context of legal matters in this field in different complex money laundering schemes. Below are some cases that illustrate selected asset recovery issues.

In general, in some cases where asset recovery issues were identified, problems arose with **freezing certificates** and **confiscation certificates** where insufficient information was provided by the issuing authority, the certificate was not duly signed or the translations of the certificate or the freezing order were poor or incomplete. In other instances, the matters at hand related to **asset management**, the time taken by the investigation and, finally, the difficulty in obtaining a **final decision on a confiscation order**.

6.1. Regulation on mutual recognition of freezing orders and confiscation orders

Eurojust cases show that frequently, as a first step, a freezing order was issued under the 2003 Framework Decision on freezing orders ([38]), but the executing authority subsequently required that a new freezing order be issued in accordance with Article 29 of the **Regulation on the mutual recognition of freezing and confiscation orders** (the Regulation). This shows that practitioners are still not sufficiently informed about this 'new' legal instrument and that training is needed.

An issue concerning the **Regulation** that has **recurred** in **money laundering cases** concerns situations where there is **a** money laundering investigation in one country, with a bank account subject to a **freezing measure**, and a **freezing order with a request for restitution** is issued by the authorities of another country where there is an investigation for swindling. It is often the case that, even if the authorities in charge of the money laundering investigation are willing to enforce the restitution, there can be issues when it is apparent that other victims have transferred money to the same bank account, **but the amount frozen is not enough to be restituted to all victims**. This is due to subsequent debit movements, namely to other jurisdictions, albeit there are not yet other pending requests for restitution. This raises several questions, as follows.

- Whether the restitution should be paid out without giving the opportunity to the other victims to make their claim in other jurisdictions.

([37]) Eurojust, *Report on Eurojust's Casework in Asset Recovery*, 2019.
([38]) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

EUROJUST

Nearly 50 properties seized in action against money laundering in Italy and Spain

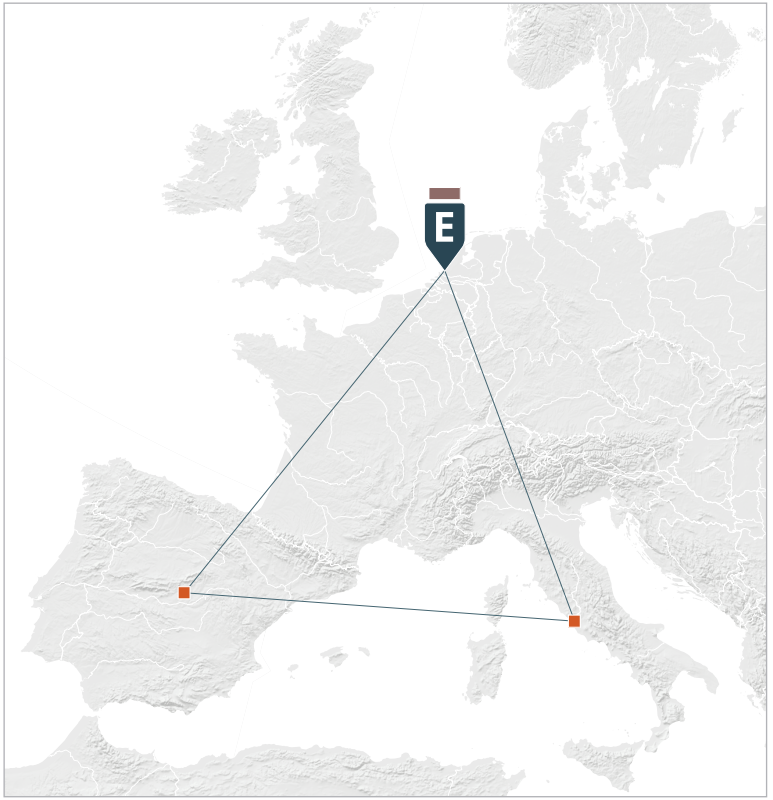
JOINT INVESTIGATION TEAM ★ FUNDED BY EUROJUST ★

Crime: An Italian suspect, already convicted of various crimes in Italy and Spain, supposedly committed large-scale money laundering of millions of euros resulting from illegal activities in Spain. Between 2006 and 2016, approximately EUR 12 million was transferred from Spanish bank accounts in the name of the suspect and his daughter to Switzerland and back to Spain to conceal the criminal dealings.

Action: A series of joint actions were executed during 2020 and 2021 against money laundering, tax evasion and corruption in the province of Cuneo in Italy and the province of Malaga in Spain.

Result: Thirteen provisional arrests were made. A luxurious real estate property and 52 plots of land were seized in Cuneo, with an estimated value of EUR 5 million, while in Malaga 47 properties were seized and over 100 bank accounts were frozen by the Spanish judicial authorities. Three luxury cars, cash, jewellery, valuable watches and artworks were also seized, with an estimated value of over EUR 1.5 million.

Eurojust's role: Eurojust set up a JIT in 2020 and a coordination centre in March 2020 to prepare the joint actions, and organised coordination meetings during 2020 and 2021 between the Italian and Spanish authorities to facilitate the case's coordination.



- Whether to inform the national authorities of other countries, via **spontaneous exchange of information**, of the existence of the frozen bank account and of the possible existence of other victims in their jurisdiction.
- Whether the victims can be considered **affected persons** in the sense of the provisions under **Article 2(10)** of the **Regulation** if the enforcement of a **restitution order in total to one victim can impair the possibility of other victims to receive restitution**, at least in part.

Another issue concerns **different interpretations of Article 29(2) of the Regulation**, which deals with the restitution of frozen property to the victim. In one case, the executing authority was of the view that, according to the law of the executing state, it was not possible to return the money to the victim in the issuing state before a final decision on conviction-based or non-conviction-based confiscation proceedings was issued. This would only not be necessary under certain circumstances for movable property, but not for monetary claims. The legal interpretation and practice in the issuing state was quite different. For the executing state, where there are clear circumstances such as those in the case where the victim had suffered damage as a result of a criminal act committed against them, the money is usually returned to them at the pre-trial stage. In this case, there was no justification (the suspect was not abroad and the investigation did not have to continue for a long period of time) not to return the money to the victim. Moreover, there were no claims made by other persons and, to this end, the prosecutor made the decision to return the money to the victim.

6.2. Restitution and compensation of victims

In several **legal systems**, there are difficulties with **victims** being **compensated** or **given restitution** in cases where the money is found in a bank account of another person but there is no evidence linking that person and the criminal activity and that person simply refuses to return the money in the absence of a court order. However, it is not possible to obtain said court order because there is no evidence that the person has committed a crime. In these cases, for example, money that has been **laundered** through multiple bank accounts cannot be restituted to victims of fraud.

Some countries encounter difficulties in returning the money to the victim. The problem lies with the **national legislation** regarding **restitution or compensation of victims** in **money laundering** cases. In such countries, difficulties arise when only the person who allegedly committed the money laundering (or aided the money laundering) is identified, but they were not involved in the predicate offence. The reason is because the crime of money laundering itself is considered not to have a victim, because with money laundering one does not take money from a victim. Thus, in such cases, it may be difficult to find legal solutions to return money to the victim. However, in other money laundering cases, authorities have allowed restitution to victims where it is sufficiently established that there is a victim in the predicate offence.

Case 1. In one case, Member State A was investigating a money laundering crime whereby large amounts of money were transferred to two bank accounts in that Member State, originating from **several victims** from Member State B. At first, Member State A's authorities sought information about whether there was any complaint in Member State B regarding one specific victim. As Member State A's investigation unfolded, information regarding **other victims** emerged, and Member State B was asked to identify other cases of complaints by such victims. In Member State B there were several complaints in several PPOs, and the question arose as to whether **investigations** in Member State B could be **concentrated**, **considering the same bank accounts in Member State A had been used to launder**

the proceeds. Member State B's authorities considered that the information was not enough to concentrate both investigations, because the accounts in Member State A could be used by different OCGs. Also for this reason, Member State B would not consider it feasible to accept the **transfer of proceedings** from Member State A. Within the framework of Member State A's investigation, **funds were frozen**, and the possibility of **restitution to the victims** was raised. However, because the money frozen would not be sufficient to satisfy the claims of all victims for restitution, Member State A's authorities considered that the restitution should take place on a pro rata basis, which could **only take place at the trial stage**, by order of the judge.

Case 2. In a separate case there were various issues relating to the **compensation of victims in parallel investigations**. In this case, four related criminal proceedings were being conducted in **Member State A** into the criminal offence of laundering the proceeds from crime. Most of the **injured parties** were nationals of Member State B. In parallel, the authorities of Member State B carried out their **own** investigation into fraud by the OCG involved. Cooperation between the authorities of Member State A and Member State B showed a willingness on the part of Member State B's authorities to **take over the secured funds and ensure their return to the injured parties in their criminal proceedings**. However, there were two freezing decisions regarding Member State A's accounts: one within the framework of Member State A's national investigation; and another based on Member State B's LoR, which was issued on the basis of **Article 8 of the Mutual Legal Assistance Convention**, confirming that the funds secured in Member State A belonged to victims of fraud as a **predicate offence** committed and investigated in Member State B, and **requesting the restitution of the funds as damages to the victims**. At the same time, given that it was not possible to secure the full amount representing the damage incurred, the intention of both authorities was that after securing and handing over the funds there would be **proportionate compensation of all victims**, not only Member State B's nationals. However, the transfer of the funds made it difficult by applying claims for damages by a third country that was involved, and Member State A's home authorities could not assess the **issue of ownership** in their criminal proceedings. Member State A's home authorities secured in their bank accounts the funds from the predicate offence committed in Member State B. Moreover, the **transfer of the criminal proceedings** to Member State B was not accepted by Member State B's authorities due to a lack of jurisdiction. Therefore, it was necessary to find an **agreement** between Member State A, Member State B and the third country's authorities concerning the **proportionate compensation of all victims**. The main legal issues were as follows.

- **Clarification of the legal basis** by the national authorities for the seizure of the funds, as **there were two legal titles** regarding the same accounts**.**
- **Clarification of who the victims were** in Member State B's criminal proceedings and **who could apply for compensation.** It was the view of Member State B's authorities that only those victims who had suffered damages as a result of the commission of the crime within Member State B's jurisdiction could claim compensation. Also, clarification of **how to compensate as many victims as possible** – not only Member State B's nationals, but also victims of other nationalities.
- Clarification of whether the secured funds could be transferred to Member State B **and at the same time** to the third country involved, according to the distribution key, i.e. a **mechanism that determines the order and the *ratio* under which the victims would be compensated under the reimbursement scheme**. Under Member State A's criminal law, this was not

possible because their law **only** permitted the whole amount of the funds to be transmitted to Member State B, as this country was **where the predicate offence had been committed**.

- How to deal with the secured funds in Member State A's bank accounts that could not be included in Member State B's criminal proceedings (transfer the money to the court's deposit account in Member State A for the purposes of civil proceedings). Ultimately, the decision of Member State A's authorities was to deposit the money so that it would be at the disposal of the **civil court**. In this case, **several dozen victims** were identified, and under Member State A's legislation, if there is **uncertainty over the ownership of the seized assets**, a **civil court needs to decide on the matter of ownership**.

6.3. Asset management

In another case, an accused person was found guilty and sentenced in Member State A to 16 years' imprisonment for participation in an OCG. The court established that the main accused person's role had been to act in Member State B since 2004 on behalf of that same OCG, among others, investing and **laundering the OCG's money** in commercial and financial companies, purchasing public contracts and services, obtaining concessions and administrative authorisations, etc. The court also ordered the **confiscation of all seized criminal assets**. One of the issues that arose concerned asset management, notably the **absence of judicial administrators** ([39]) **for companies subject to a freezing order**. The executing state's law did not provide for the appointment of a judicial administrator for companies subject to a freezing order, which could potentially render the competent authorities' confiscation efforts very weak and ineffective. This perceived legislative gap was considered as having the potential to make the management of assets of the seized companies particularly cumbersome. Moreover, according to the executing Member State's legislation, a judicial administrator – a professional manager appointed by Member State A's court – could only be appointed if the creditors initiated insolvency proceedings. This is a professional who, on behalf of the state, deals with frozen assets until the appeal judgment is rendered; an auxiliary court figure with no equivalent in Member State B's legislation. In accordance with the legislation of the executing Member State, a judicial administrator could be appointed to avoid depreciation of an asset's value, but only in relation to moveable assets. Therefore, solutions had to be found for the operability of a judicial administrator.

The **management of the frozen assets** had to do with **civil insolvency proceedings** in Member State B in relation to a relevant part of the same assets owned by a frozen company, involving a financial company. This company had granted a mortgage of approximately EUR 1 million for the construction of apartments and could thus claim their property with priority over the *bona fide* purchasers if the mortgage was not paid back. Afterwards, in the civil proceedings, other creditors were involved. There is as yet no final decision in the insolvency proceedings in Member State B on whether the suspect's company should be reorganised or enter bankruptcy. If the privileged creditors cannot be paid, they could ask for bankruptcy. According to the law in Member State B, Member State A's freezing order is not preferential, nor would any freezing measure issued in a Member State B criminal proceeding be preferential, as the assets were not free of debts at the moment of freezing. The insolvency proceedings in front of a civil judge in Member State B cannot be affected by criminal proceedings or freezing and confiscation measures. In Member State B's bankruptcy proceedings, the creditors will be satisfied first.

([39]) While a wide range of different terms are used for such traditional administrators, including receivers, official assignees, trustees and bankruptcies, etc., we find judicial administrators to be a useful generic term.

These **civil proceedings raised management problems for the administrator appointed** by Member State A's court, due to the impossibility of further direct management of the assets involved. These problems were added to pre-existing and foreseeable ones relating to **distance**, **language** and **differences in legal systems**.

In this case, Eurojust assisted by organising eight coordination meetings relating to the investigations in both Member States, by advising, through a joint recommendation ([40]) that was followed by the national authorities, that proceedings be transferred to Member State A. Eurojust also provided advice on EAW issues relating to the contemporaneity of proceedings on the same suspect pending in both Member States, and on how to discuss and solve asset recovery issues, notably the freezing and management of assets.

6.4. Criminal recovery versus civil recovery

Case 1. In one case, there was a **civil recovery investigation** into the suspect and his assets that involved **tracing the proceeds** of drug trafficking and **money laundering**, **freezing assets that were purchased with the proceeds** and ultimately **obtaining a civil recovery order (CRO)** ([41]) over properties to the approximate value of EUR 7.5 million situated in two Member States**.** The issues at hand were **asset recovery** and the question of the **validity of Member State A's court-imposed CRO** over immovable assets (real estate) held in Member State B. The authorities of Member State A wished to **explore alternative methods to dispose of the properties** in Member State B in such a way that they did not revert back to the defendant's control. There were various difficulties relating to this case.

- There was **no analogous legislative route** in Member State B that could be used to recognise and enforce Member State A's court-imposed CRO over immovable assets held in Member State B.
- It was difficult to **establish the true size and remaining value of the suspect's property** portfolio due to **partial property repossession and resale** by the authorities in Member State B because of unpaid outstanding arrears accrued against the properties.
- The **costs involved in instructing lawyers in Member State B** to ascertain the true size and value of the property portfolio proved to be prohibitively expensive and did not provide a comprehensive picture of the total assets.
- The issue that **there might be other creditors who had a financial interest in the suspect's properties**. Under Member State B's law, where a debt is enforced against a property, no matter the proportion of the equity in the property that the debt represents, the entire property may be adjudicated to the creditor in lieu of the debt payment. This has the potential to be a **practical problem in pursuing asset recovery in relation to the suspect's entire real estate portfolio**.
- Under Member State B's law, **restraints rank in order of imposition by creditors but prohibitions on the sale of property do not**. A suspect may only be fully deprived of the property if there is no remainder once the debt has been satisfied. The option of adjudicating

([40]) See Eurojust, *Eurojust Written Recommendations on Jurisdiction: Follow-up at the national level*, 2021.
([41]) In the Member State concerned at the time, civil recovery – or non-conviction-based asset forfeiture – is a tool that the national competent authorities frequently apply for CROs to recover assets that have been acquired through demonstrable unlawful conduct.

the entire property to the creditor irrespective of the debt is therefore preferable. It was acknowledged that this option is often not available in other countries.

Case 2. In a separate case, Member State A was conducting a **civil investigation concerning the recovery of assets** that were connected by unlawful conduct relating to **money laundering**, among other things. The issue at stake was also the **enforcement of the CRO that was subject to the *lex situs*.** As in the previous case, the difficulties were as follows.

- There was **no analogous legal mechanism under Member State B to recognise the** CRO or to **register the trustee's interest at Member State B's land registry**.
- **Member State A's authorities** that had the properties vested in them **were continuously incurring costs on a monthly basis** as they were the legal trustees of the properties, **yet they were unable to dispose of them**.

The suggested option was to have a separate criminal investigation in Member State B, for which Member State A would need to provide a summary of the offending behaviour to ascertain whether there was an equivalent offence in Member State B. The legal basis suggested for this option was via spontaneous exchange of information under the Mutual Legal Assistance Convention.

6.5. Asset confiscation

In one money laundering case, the question of the potential **beneficial ownership of the property by a third party** required, under the legislation of the requested State**,** that any available information on the relationship between the registered owners (natural or legal persons) and the convicted person be included in the LoR. A major difficulty in the execution of the LoR was encountered, as the formal owner according to the information in the land registry in the requested state was a company that was not mentioned in the request for confiscation or in any of the additional documents provided. Under the legislation of the requested state, as a general rule, if the registered owner in the land registry and the person identified in the LoR as a convicted person are not the same, a confiscation order cannot be registered. The confiscation order could be registered **as an exception** when the incriminating evidence against the suspect as the real owner of the property had been pointed out in the relevant judicial orders. For this reason, the requesting authority needed to include in the body of the LoR all available information on the relationship between the registered owners (natural or legal persons) and the convicted person. The legal consequences in the requested state might be different depending on the type of relationship involved, for example straw man. The requesting state provided the necessary additional information and the confiscation order was executed, and a sharing agreement was signed between the competent authorities of both countries. **Eurojust** assisted as follows.

- The request was brought to the attention of Eurojust by the **Eurojust Contact Point** in that country.
- **Eurojust expedited the execution of the LOR for confiscation**, which had already been pending for 3 years when it came to the agency's attention.
- **Eurojust clarified the law in the requested state** regarding the competent authority for executing a freezing order and a confiscation order, and regarding the specifics of when the property concerned is not in the name of the convicted person.

6.6. Asset sharing

Issues linked to **asset sharing** also arose in some money laundering cases. In one case, for example, the **requesting (third) country's regime on asset sharing and the temporal scope of application of the changes in legislation of the requested state** needed to be factored in. The requested authorities proposed a discussion with the requesting authorities to reach an agreement on the terms of the asset sharing (the sale was for **EUR 390 000**). The requesting authorities indicated that they did not wish to reach an asset sharing agreement, as they maintained that the proceeds from the sale should be transferred to the requesting state because that was the location of the crime, and the money should be returned there to compensate the victims. However, in the meantime, the legislation in the requested state changed, and the 50/50 rule, with proceeds to be shared between issuing and executing Member States, now also applied to requests from third states. As this change in legislation was of a procedural (not substantive) nature, it became applicable at the moment the public auction took place. Subsequently, the requesting authorities confirmed their legal provisions in relation to asset sharing, and also confirmed their agreement to a 50/50 arrangement, rather than the restitution of the entire amount to the victim (in fact, a court in the requesting state had refused an application by the victim for restitution of the entire amount). As this was a case of **disposal of the assets** by way of **confiscation of the proceeds of crime,** a legal requirement existed to share all realised funds on a 50/50 basis (after deduction of the costs of execution borne by the requested state) between the public revenue services of both countries, without the need to compensate a victim.

In the same case, the countries involved also discussed the issue of the **formalisation of the asset sharing agreement**. Given the novelties in the law of the requested state, and the fact that a very large sum of money was at stake, the authorities involved explored the steps required to formalise an asset sharing agreement. The requesting authorities required an **official communication** from the competent requested authority according to which this case was considered to be **an asset sharing case** by the requested authorities, i.e. an official document that indicated that the requested authorities had initiated the process of negotiation with regard to the sharing of the proceeds of the sale obtained by the requested authorities as a result of the execution of the confiscation order. This document constituted an exchange of communication between the competent judicial authorities of both the requesting and requested states. Thereafter, the requesting authority (public prosecutor) informed its ministry of justice (competent for dealing with matters of seizure and disposal of assets), and the requested authority (centralised court at national level) informed its ministry of justice (Asset Management and Recovery Office), paving the way for an **agreement to be formalised** at the level of their respective **ministries of justice**.

Eurojust liaised with the competent authority in the requesting state to deal with the recovery of assets (Asset Management and Recovery Office). Although the judicial involvement had effectively concluded with the formal communication issued by the requested authority to the requesting authority, **Eurojust maintained the link with the ministry of justice** of the requested state with a view to monitoring the process until the end to **ensure that any issues that might arise with the actual asset sharing agreement at the level of the ministries of justice might be facilitated through Eurojust**. This link was important because the **money remained in a bank account managed by the judicial executing authority** until 50 % of it was finally transferred to the requesting state after the asset sharing agreement was reached. In this case, **with the support provided by Eurojust, the**

countries involved finalised the asset sharing agreement under the **1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime**.

7. Cooperation with third countries

Eurojust's casework shows that cooperation with third countries in money laundering cases very much depends on the third country and the particularities of the case. In some cases the cooperation has proved quite swift and effective, for example resulting in a decision to open an investigation solely on the basis of information shared in an LoR issued to them, and to seize the proceeds of the alleged money laundering. The increase in the number of Contact Points for Eurojust and Liaison Prosecutors posted at Eurojust has proved very useful in this regard. In other cases, however, it has proved difficult to cooperate in a timely manner. Some cases show that the tracing of money transfers within the EU is reasonably manageable, but when cooperation is required from outside the EU it becomes difficult, and sometimes authorities discontinue the pursuit of such cooperation. Some of the difficulties encountered in these money laundering cases involving third countries related to **asset recovery**, as follows.

- The authorities of the third country as a requested state had problems obtaining banking data, as the **IBAN of the sending bank account** could not be identified when transferring funds because some third-country transfers were not actually from that country's financial institutions. Instead the third state's banks used them merely as intermediary banks.
- The authorities of the third country complied with the LoR only after several reminders sent through **Eurojust**, but still not in full, partly with reference to **bank secrecy**, and did not provide the full information before the conclusion of the criminal proceedings in the requesting country.
- The need to trace the amounts transferred from bank accounts in the requesting state to accounts of **cryptocurrency and trading companies in the third country**, for which an LoR was issued but did not lead to any results.
- The **very formalistic and protective legal system of one requested third country in relation to the freezing of assets** resulted in the requested state, in practice, being unable to disclose to the requesting state either details as to the status of the execution of its LoR or the outcome of the LoR until the authorities of the requested state had taken the necessary formal decisions. This long procedure led to unexpected delays. However, it also showed that a prior and thorough investigation into the money trail by the requested third state, while it may be time consuming, often results in the requesting authorities ultimately receiving the full paper trail without the need to send additional LoRs to the requested third country.

Case 1. In one case involving a Member State and a third country, issues linked to **a possible breach of the *ne bis in idem* principle,** due to the opening of a money laundering investigation by the requested state following **a cash seizure made in the execution of an LoR while the requesting state was also investigating money laundering,** were discussed between the states involved. Due to the amount of money seized (EUR 4 million in cash) in execution of an LoR, the requested authorities **decided to open domestic criminal proceedings to investigate** a **money laundering** offence.

This could have raised a possible ***ne bis in idem*** issue under **Article 54 of the 1990 Convention implementing the Schengen Agreement of 1985** ([42]) (CISA). From the perspective of the requested state, this case was primarily an investigation by the requesting state, which incidentally and as a result of the execution of an LoR had led to the start of a criminal investigation for money laundering in the requested state. Although the commencement of the investigation on the basis of the *notitia criminis* as a result of the execution of an LoR was appropriate, the legislation of the requested state provided for an offence of money laundering even if the proceeds of crime were proceeds of a predicate offence committed abroad **(criteria of extraterritorial application of domestic criminal law)**. The Court of Justice's judgment in the *Kraaijenbrink* case was invoked as it offered a **criterion for considering the existence or not of two criminal proceedings for money laundering and the possible application of the non *bis in idem* principle across the EU**, in connection with the concept of 'the same facts'. After recalling the *Van Esbroeck* case ([43]) concerning the irrelevance of the legal qualification of the facts for the application of Article 54 CISA, the Court ruled as follows ([44]):

> *[D]ifferent acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as 'the same acts' within the meaning of Article 54 of the Convention implementing the Schengen Agreement merely because the competent national court finds that those acts are linked together by the same criminal intention …*

In light of the above, and despite the fact that the opening of criminal proceedings in the requested state was appropriate, **Eurojust** proposed that the requested authorities consider issuing an LoR to the requesting state, outlining the possibility of **transferring the criminal proceedings** in the requested state to the requesting state. Irrespective of the matter of the transfer of criminal proceedings, the issue of the **disposal of the seized cash remained**. The requested authorities decided to propose to the requesting authorities the **transfer of the criminal proceedings for money laundering** that originated from the cash seizure. With regard to the cash seized, the requested authorities decided to confiscate that money within the framework of a separate and previously unconnected conviction of the same individual in the requested state. The reasoning of the requested authorities was that since (i) this conviction in the requested state preceded the execution of the LoR, (ii) the money had been found in the requested state, (iii) there were strong reasons for the money to be considered to constitute proceeds of crime and (iv) the money belonged to the same individual, keeping the cash seized for the purpose of a future confiscation in the requesting state would not be in the interest of the requested authorities.

Case 2. In a separate case involving Member State A and third country A, third country A was conducting a criminal investigation into, *inter alia*, **money laundering** against a bank in third country A used by a company from third country A with strong links to third country B and several other countries, including Member States. Third country A was also a respondent in **arbitration proceedings** initiated by the shareholders of the bank in third country A. Member State A was conducting criminal proceedings concerning participation in an OCG, export offences, forgery and fraud against, inter alia, three

([42]) Convention implementing the Schengen Agreement of 14 June 1985 between the governments of the states of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders

([43]) Judgment of the Court of Justice of 9 March 2006, *Van Esbroeck*, C-436/04, ECLI:EU:C:2006:165.

([44]) Judgment of the Court of Justice of 18 July 2007, *Kraaijenbrink*, C-367/05, ECLI:EU:C:2007:444, paragraph 36.

individuals and one company from Member State A, along with a company from third country A (the same that was under investigation in third state A) with links to several countries. Member State A authorities were also conducting separate, albeit related, **confiscation proceedings**. Although asset sharing was a matter to be agreed by the Ministries of Justice in Member State A and third country A once these proceedings were concluded, Member State A indicated that there might be a benefit in discussing it in advance. In terms of cooperation, third country A informed Member State A, by spontaneous exchange of information, about any criminal connection between third country A's investigation and any Member State A and third country A persons or legal entities relevant to Member State A's investigation. After reviewing the information conveyed by third state A, Member State A would reply whether it was interested in acquiring that information for their proceedings. In that case, a formal LoR to the third state would ensue, via Eurojust. Eurojust assisted by organising a coordination meeting and facilitating the exchange of information.

8. Cooperation with the European Public Prosecutor's Office

To prepare for the start of the European Public Prosecutor's Office's (EPPO) operations and the immediate cooperation that needed to follow, Eurojust and the EPPO signed a working arrangement ([45]) covering operational cooperation, institutional relations and administrative matters in February 2021, laying out the detailed practical procedures for their cooperation in the fight against crimes affecting the EU's financial interests. Following the start of the EPPO's operations on 1 June 2021, Eurojust was involved in casework with the EPPO.

Eurojust's relationship with the EPPO is governed by Article 50 of the Eurojust Regulation ([46]). Article 4 of the working arrangement stipulates that the EPPO and Eurojust shall share information that is relevant to their competences, including personal data, and Eurojust shall inform the EPPO of any criminal conduct in respect of which the EPPO is competent. According to Articles 5 and 6, the EPPO can request, and vice versa, that Eurojust verify in its case management system whether information held by the EPPO matches, and if so share it. Article 7 provides that if, on the basis of information provided by Eurojust, the EPPO decides that there are no grounds to initiate an investigation or to exercise its right of evocation, the EPPO shall inform Eurojust without undue delay. A similar duty to inform applies when the EPPO decides to initiate an investigation or transfers a case to the competent national authorities. According to Article 8, in the case of EPPO investigations involving Member States that do not participate in the EPPO, it may invite the national member concerned at Eurojust to provide support in judicial cooperation matters. Also, Article 9 makes clear that in transnational cases involving Member States that do not participate in the EPPO, or third states, the EPPO may request that Eurojust provide support, such as organising coordination meetings and coordination centres, setting up JITs and preventing and solving conflicts of jurisdiction.

In one case, as a result of the exchange of information between the national competent authorities and the initiatives taken by **Eurojust**, it emerged that there were linked investigations conducted by Member State A and the EPPO. Member State A's investigation was into **VAT fraud** by domestic companies amounting to several hundred million euro, to the detriment of Member State A, and the **money laundering** of the proceeds of the VAT fraud. The **money laundering scheme** consisted in the company entering into new business with companies from other Member States, by receiving valuable goods or the money they are actually laundering, from the companies that delivered the goods or paid the money. The **EPPO evoked the national investigations** conducted by Member State B's authorities concerning a Member State B company involved in major **cross-border VAT fraud**. Member State B's European delegated prosecutor, as the handling European delegated prosecutor, conducted the EPPO investigations. Eurojust assisted national authorities by organising two coordination meetings, facilitating the exchange of information, the execution of reciprocal EIOs between Member State A and the EPPO, the drafting and setting-up of a JIT agreement and the preparation of a common action.

([45]) See https://www.eurojust.europa.eu/working-arrangement-between-eurojust-and-eppo.
([46]) 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) (OJ L 295, 21.11.2018, p. 138).

9. Potential conflicts of jurisdiction and *ne bis in idem* issues

Eurojust cases are often linked because **parallel investigations** are being carried out in more than one country. Issues regarding the **predicate offence** and the possibility of **transfer of proceedings** are some of those most commonly discussed**.**

Case 1. In one case, Member State A was conducting a large-scale investigation into unlawful activities by a legal entity, **money laundering**, VAT fraud and fraudulent management of accounts. Member State B was also conducting a money laundering investigation against two Member State A nationals. At the request of Member State A's authorities, the same assets, amounting to over **EUR 600 000** from three companies, **were frozen** in the same bank in Member State B. In order to respect the time limits, proceedings in Member State B regarding the proceeds of crime **were separated** from the criminal case and sent to court. Member State B's court declared the assets frozen within the framework of Member State B's criminal case as proceeds of crime, and decided to **confiscate them to the benefit of Member State B's state budget**.

This decision was not executed, pending a similar decision to be rendered in Member State A's criminal case. Because two Member State A nationals were suspected of committing money laundering in Member State B's investigation, Member State B's authorities sought to **transfer their criminal proceedings** to Member State A. **The transfer was refused due to the unresolved issues with the frozen assets.** In the meantime, Member State A's investigation revealed that there were no grounds to believe that the frozen assets in Member State B's bank were proceeds of crime, and as a result the actions of the accused persons **could only be qualified as VAT fraud, and not as money laundering**. From the perspective of Member State A's authorities, the **purpose of asset freezing** was not the confiscation, **but the restitution of damage done to the state budget of Member State A as a result of unpaid VAT**.

The main legal and practical issues in this case were as follows.

- **Conflict of jurisdiction.** Essentially different qualifications of one criminal activity covering two jurisdictions: Member State A's investigation showed that the actions of the accused persons qualified only as **VAT fraud**, while in Member State B this activity qualified as **money laundering**.
- **Different purposes of asset freezing in criminal proceedings.** In Member State A's investigation, the purpose of the freezing was not the confiscation, but the restitution of damage done to the state budget of Member State A as a result of unpaid VAT. In Member State B's investigation, the purpose of the freezing was the confiscation, which ended with a court in Member State B declaring the assets frozen in Member State B's criminal case to be proceeds of crime and deciding to confiscate them to the benefit of Member State B's state budget.
- **Conflict of jurisdictions and unresolved issues of transfer of proceedings from Member State B to Member State A remained.** Member State B's criminal case was sent to Member State A with the request to take over their prosecution. Member State A's authorities requested clarification on the initiation of the investigation in Member State B. Member State A indicated that criminal proceedings in Member State B had been initiated on the basis of information received from Member State A. Assets in Member State B's investigation had been frozen after these assets had been frozen in Member State A's investigation, and Member State A requested that Member State B freeze the assets. Member State B, knowing that Member State A was

carrying out an investigation, **did not consult with Member State A, as provided for in the Framework Decision on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings** ([47]). **Member State B** provided clarification but, as a result, Member State A decided not to take over Member State B's criminal proceedings.

- **The question of the right legal basis for the freezing/confiscation of the assets.** After a comprehensive analysis of Member State A's investigation it was found that the funds held in Member State B's bank were the funds of a suspect in Member State A's investigation and companies controlled by him, which were used for the payment of goods on the basis of money orders with foreign suppliers for actually acquired goods. According to the **case-law of Member State A's supreme court**, the money in Member State B's accounts could not automatically be considered proceeds of crime. The main purpose of the suspects was not to hide or legalise proceeds of crime, but to conduct business and evade taxes. As a result of such activity, the state budget of Member State A suffered major damage in the amount of not less than **EUR 4 million**, and the state tax inspectorate **filed a civil claim** within the case. Ultimately, Member State B's court declared the assets frozen in Member State B's criminal case to be proceeds of crime and confiscated them to the benefit of Member State B's state budget.

In this case, Eurojust advised national authorities on the above matters, contributed to the minimisation of the breach of the *ne bis in idem* principle, organised a coordination meeting and facilitated the exchange of information.

Case 2. In another case targeting crimes against the financial interests of the EU ([48]) (PIF crimes) and involving EU funds in the amount of approximately EUR 800 000 allocated for agricultural purposes, two Member States had parallel investigations ongoing and set up a JIT. Member State A was investigating **misuse of company assets**, in addition to the PIF crime committed by five suspects and their companies. Member State B was investigating **self-money laundering** generated by the PIF offence and other offences. The question raised during a coordination meeting at Eurojust was whether the acts investigated in both Member States and charged as **misuse of company assets** in Member State A and **self-money laundering** in Member State B were the same acts in relation to the same suspects. Eurojust national members have the power to recommend to their home authorities which jurisdiction is best placed to prosecute ([49]). These joint recommendations take into account Eurojust's Guidelines for Deciding 'Which Jurisdiction Should Prosecute?'. The guidelines, taking account of the relevant EU legal framework ([50]), put forward a number of factors to be considered when making a decision on which jurisdiction should prosecute, including territoriality, location of suspect(s) and the availability and admissibility of evidence ([51]). A further relevant document is the *Report on casework in the field of*

([47]) Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

([48]) Crimes against the financial interests of the EU (as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29)) not only affect the European Union's financial interests but also harm its reputation and credibility. These crimes include fraud relating to the EU budget, large-scale VAT fraud affecting two or more Member States, corruption, misappropriation of assets committed by a public official and money laundering involving property derived from these crimes. See also https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/pif-crimes.

([49]) See Eurojust, *Eurojust Written Recommendations on Jurisdiction: Follow-up at the national level*, 2021.

([50]) See in particular Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

([51]) Eurojust, *Guidelines for Deciding 'Which Jurisdiction Should Prosecute?'*, 2016, pp. 3–4.

prevention and resolution of conflicts of jurisdiction ([52]). With a view to avoiding a **possible conflict of jurisdiction and consequent *ne bis in idem*** situation in respect to this question, the JIT members requested that Eurojust's Operations Department prepare a document with a legal assessment of the matter.

The **legal assessment** helped the national authorities to make informed decisions, as it focused on criteria, in the light of the case-law set by the Court of Justice ([53]), such as the following.

- **The subject matter, meaning whether the alleged behaviour by the suspects coincided in both criminal files.** In this respect, the legal assessment presented the dates/periods of time, the amounts of money defrauded and transferred to private accounts, the accounts to and from which they were transferred and the location of ATM withdrawals. The assessment also looked at the **legal interests** protected in the two proceedings and the **main legal qualifications** in these proceedings, highlighting, as repeatedly stated by the Court of Justice, that the difference between the legal interests protected and between the legal qualifications given to the acts are irrelevant for the purpose of assessing the subject matter.
- **Time.** In this respect, the legal assessment presented an overview of all money transactions involving the defrauded EU funds, highlighting the date and time of each and every transaction, helping national authorities to establish whether there was an overlap in respect of the timing of the material acts.
- **Space.** In this respect, the legal assessment pointed to Member State A's and Member State B's investigations relating to acts that occurred in both countries on the same dates. The monies were received by each suspect in their companies' bank accounts in Member State A and transferred successively to bank accounts of suspects or third persons in Member State A and Member State B, to then be withdrawn at ATMs, mainly in Member State B in various cities, but also in Member State A. This assessment helped the national authorities to establish whether the space criterion was met.

In this case, **Eurojust** not only prevented an infringement of the **principle of *ne bis in idem***, but also assisted by facilitating the participation of national authorities in operational meetings and the setting-up of a JIT between Member States A and B, in which Eurojust participated and which it supported. Eurojust hosted three coordination meeting and facilitated subsequent cooperation between the JIT members, including the extension of the JIT.

Case 3. A separate money laundering case involved 12 Member States and five third states. Member State A was investigating **money laundering** originating from the proceeds of trafficking in human beings for sexual purposes committed in Member State B and Member State C. There was no investigation in Member State B. Member State C was investigating **prostitution-related crimes and pimping-and-pandering-related offences** committed by a Member State C national residing in Member State A through online services under his control. The main issue in this case was that of **a possible negative conflict of jurisdiction**. The **predicate offence could not be proved** in Member State A because online pimping and pandering (at least committed by providing online services) was not a crime and did not constitute a predicate offence for money laundering in that Member State.

([52]) Eurojust, *Report on casework in the field of prevention and resolution of conflicts of jurisdiction*, 2018.
([53]) https://www.eurojust.europa.eu/case-law-court-justice-european-union-principle-ne-bis-idem-criminal-matters

Thus, a **court decision from Member State C convicting the main suspect** for aggravated pandering would be **a precondition to be able to proceed in Member State A for money laundering**. **With regard to Member State C**, the main suspect resided in Member State A, thus an EAW would have to be issued by Member State C's authorities. However, since aggravated pandering was not among the 32 offences listed in Article 2(2) of the Framework Decision on the EAW ([54]) for which verification of the double criminality of the act is not needed, the surrender would be subject to the condition that the acts for which the EAW would be issued by Member State C constituted an offence under Member State A's law (Article 2(4) of the Framework Decision on the EAW). This situation could thus lead to a so-called **negative conflict of jurisdiction**, i.e. a situation in which either no Member State claims jurisdiction or one or more Member States have jurisdiction, but choose not to exercise it or have not exercised it yet. In a **preliminary opinion**, Eurojust offered the **suggestion of prosecuting the main suspect in Member State C** for the following reasons.

- The whole proceedings should be concentrated in one jurisdiction so as to avoid an artificial split in connected criminal activities.
- Member State A's proceedings for money laundering could not be brought before the court without the prosecution of the predicate offence committed in Member State C.
- Member State C should be able to issue an **EAW** even though aggravated pandering was not among the 32 offences listed in Article 2(2) of the Framework Decision on the EAW for which verification of the **double criminality** of the act is not needed. This is because there is a corresponding offence in Member State A that fulfils the requirements of double criminality, and therefore this principle does not constitute an obstacle to the EAW.
- Member State A's authorities were willing to **transfer their proceedings** concerning money laundering to Member State C, **however self-laundering did not constitute a criminal offence in Member State C** (as opposed to Member State A). Hence, in Member State C it would not be considered a separate crime from the predicate offence. **This would lead to a conviction only for the predicate offence,** which was aggravated pandering.

Eurojust facilitated the organisation of **five coordination meetings**, the execution of **three EAWs**, the **drafting of the JIT agreement** and the issuing of a **preliminary opinion on the jurisdiction best placed to prosecute,** and also organised a **coordination centre.** The coordination centre resulted in (i) the execution of several EAWs, EIOs, LoRs and freezing orders, (ii) the arrests of major suspects in three Member States, (iii) 17 house searches, (iv) the seizure of EUR 500 000 in cash and illegal assets, (v) the freezing of bank accounts and company shares in six countries and (vi) the confiscation of 16 web domains. In terms of outcomes, the investigation in Member State A has concluded and there have been no indictments. In Member State C the investigation is still ongoing. More information can be found online (https://www.youtube.com/watch?v=jX5PlnV6g8k).

([54]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states (OJ L 190, 18.7.2002, p. 1), as amended by Council Framework Decision 2009/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27).

EUROJUST

Pimping and money laundering network dismantled with Eurojust's support

Crime: An Organised Crime Group (OCG) operating from Marbella in Spain managed websites advertising prostitutes in Finland and Sweden and laundered the illegal proceeds. A number of similar OCGs in various countries used the websites to also profit from advertising their victims' services. The illegally obtained assets were invested in cryptocurrency and channelled through intermediaries to international and multi-currency IBAN accounts for the purpose of money laundering.

JOINT INVESTIGATION TEAM ★ FUNDED BY EUROJUST ★

Action: Eurojust actively supported the national authorities of 15 countries in taking down the OCG responsible for pimping and money laundering. Eleven EU Member States and four third countries participated in a joint action, coordinated by Eurojust.

Result: Following the execution of three European Arrest Warrants, the joint action resulted in the arrest of the main OCG suspects in Malta, Romania and Finland. Almost EUR 0.5 million in cash was seized, along with equipment, illegal assets including luxury items, false documents and cryptocurrencies, and 16 web domains in the United States were confiscated. Companies' shares and bank accounts worth EUR 1.5 million were frozen and 17 house searches were carried out in Spain, Malta, Romania, Finland and Hong Kong.

Eurojust's role: Eurojust swiftly set up a joint investigation team with Spain, Finland and Sweden which financed the deployment of nine Spanish police officers to Malta, Romania and Finland. Eurojust helped to bring the prosecution against the main suspects in Spain by solving a jurisdictional issue and reaching an agreement on the best place to prosecute.

On the action day, Eurojust set up a coordination centre at its premises to coordinate simultaneous operations in 15 countries, allowing for real-time exchange of information. The agency enabled the quick issuance of several European Investigation Orders to Bulgaria, Germany, Estonia, Malta, the Netherlands, Romania and the United Kingdom. Eurojust also assisted in swiftly submitting mutual legal assistance requests to the United States, Russia, Hong Kong, Panama and Colombia.

10. Spontaneous exchange of information

In one case, there was a final judgment issued by a court in Member State A against three individuals from Member State B. The main accused had been convicted of money laundering in Member State A. He had built up a network of front companies used to launder ill-gotten gains from drug trafficking committed by X in Member State B. This judgment was passed on the basis of a plea bargain agreement and the **confession of the criminal facts as reflected in the indictment and in the judgment**. **In this case,** the authorities of Member State A informed the authorities of Member State B of this final judgement by way of **spontaneous exchange of information**. In this case, it was noteworthy to bring to the attention of Member State B's authorities that the testimony of Y in relation to the lawful origin of the money was the key evidence for the acquittal sentence issued by the appeal court in Member State B. The appeal court judgement in Member State B related to X, and the case **was also a money laundering case**. It referred to **different phases of the same money laundering scheme**. Thus, **the Court of Justice's judgment in the *Kraaijenbrink* case** ([55]) was considered applicable as it offered a **criterion for considering the existence or not of two criminal proceedings for money laundering and the possible application of the non *bis in idem* principle across the EU**, in connection with the concept of 'the same facts' ([56]). **Eurojust** transmitted the exchange of information to Member State B's authorities with this clarification and asked them whether Y's statement in Member State A's case had any bearing on Member State B's case against X at that stage. In this case, **the spontaneous exchange of information** based on **Article 7 of the Mutual Legal Assistance Convention** as a way to facilitate the **opening of a money laundering investigation** or the **issuing of an EIO/LoR request aimed to provide evidence of the predicate offence.**

On a separate note, there have been cases where issuing/requesting countries had ongoing civil forfeiture procedures that had no equivalent regime in the executing/requested country, and the requests for assistance had to be refused because, under the executing/requested country's law, data collected using means of criminal investigation could not be transmitted on the basis of a civil-forfeiture-based request. In some of these cases, **spontaneous exchange of information** was used as a solution, on the basis of either **national legislation**, such as a provision of the criminal procedural code, or the **Mutual Legal Assistance Convention**.

([55]) C-367/05

([56]) Judgment of the Court of Justice of 18 July 2007, *Kraaijenbrink*, C-367/05, ECLI:EU:C:2007:444, paragraph 36:
'… Article 54 of the CISA is to be interpreted as meaning that:
[…]
different acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as "the same acts" within the meaning of Article 54 of the CISA merely because the competent national court finds that those acts are linked together by the same criminal intention'.

11. Main legal and practical issues

The most relevant issues identified in this report are as follows.

- **Differences in national law** in relation to the **requirements for identifying the predicate offence for the conviction for money laundering.** In order to investigate money laundering, some countries **have to investigate the predicate offence as well.**
- **The relevance of dual criminality and the money laundering predicate offence,** i.e. (i) lack of substantive harmonisation concerning whether money laundering would constitute an offence in any Member State irrespective of the jurisdiction where the predicate offence was committed or (ii) when under national law or national case-law **dual criminality is indispensable for international charges** and the **predicate offence in question does not constitute a crime in that country** but merely **an administrative offence**.
- Difficulties in **identifying predicate offences** that take place in other countries.
- **The lack of harmonisation** concerning what constitutes a **predicate offence** for money laundering and criminalisation of **self-laundering** may cause difficulties in prosecuting and in judicial cooperation in situations where money is laundered through several jurisdictions.
- Difficulties in **differentiating money laundering from tax fraud**, especially in missing trader intra-community **cases.**
- **Identification of the beneficial owner of the criminal assets**, which is made difficult by the existence and use of shell companies or letterbox companies, by the identification of extraneous elements in the companies' structures or by the fact that suspects usually do not act under their own name to hide the financial trail that would show the illicit origin of the money. Moreover, the difficulties in and importance of establishing beneficial ownership in third-party confiscation. This shows that clarity in the rules on beneficial ownership is of the utmost importance in money laundering and other cases.
- Where **banks are involved in money laundering schemes, the states' financial systems might be influenced or affected** because the sanctions and legal actions raised against the banks **may affect the financial system of the country**.
- The issue of **legal privilege** in relation to the seized material, where the main suspects of money laundering are lawyers.
- Difficulties arising from **the use of cryptocurrencies**. The use of this type of **digital currency** makes it difficult to keep track of the assets held by those under investigation. It is essential to know the activity and mechanisms used to monetise or convert cryptocurrency into legal tender.
- **Financial expertise and resources that are required to analyse** data relating to **large amounts of cryptocurrency** that are used to launder money, and to ascertain whether they are relevant to the investigations in the other countries involved.
- Issues relating to the fact that the investigations in the various countries involved are **at different stages** – for example, an indictment in one could give rise **to *ne bis in idem*** in two others.
- Practitioners are still not sufficiently familiar with the **Regulation on the mutual recognition of freezing and confiscation orders**.

- Issues relating to **determining who is considered a victim** in a given country, **who can apply for compensation** and how to ensure **proportionate compensation of all victims when the amount frozen is not enough to be restituted to all victims**.
- Issues, such as delays, arising from the **notification by the requested authorities of the owners of bank accounts and related procedural rights** stemming from **differences in national legislation.**
- **Issues arising when there is a civil recovery investigation in one country and there is no analogous legislative route in the requested state** with which to recognise and enforce the requesting court-imposed CRO.
- Difficulties in **establishing the true size and remaining value of a suspect's property** portfolio due **to partial property repossession and resale** by the requested authorities because of unpaid outstanding arrears accrued against the properties.
- **The costs involved in instructing lawyers in the requested state** to ascertain the true size and value of the property portfolio can be prohibitively expensive and not provide a fully comprehensive picture of total assets.
- The issue that **there might be other creditors who had a financial interest in a suspect's properties**, which has the potential to be a practical problem in pursuing asset recovery in relation to the suspect's entire real estate portfolio.
- **Executing authorities** who have properties vested in them **are continuously incurring costs on a monthly basis** as they are the legal trustees of the properties, and **yet they are unable to dispose of them**.
- Delays resulting from the **very formalistic and protective legal system of one requested third state in relation to the freezing of assets leading** to the requested state, in practice, being unable to disclose to the requesting state either details as to the status of the execution of their LoR or the outcome of the LoR until the authorities of this requested state have taken the necessary formal decisions.
- Some cases show that the tracing of **money transfers** within the EU is reasonably manageable, but when cooperation is required from outside the EU it becomes difficult, and sometimes authorities discontinue the pursuit of such cooperation.
- Eurojust cases are linked because **parallel investigations** are being carried out in more than one country. Issues regarding the **predicate offence** and the possibility of **transfer of proceedings** are some of those most commonly discussed**.**
- **Conflicts of jurisdiction** arising from the essentially different qualification of one criminal activity covering two jurisdictions: for example, in one jurisdiction the actions qualify as VAT fraud, while in the other they qualify as money laundering.

12. Best practices

The most relevant best practices identified in the report are as follows.

- The use of highly skilled **experts** to perform house searches **with a focus on digital devices** and to take copies of relevant electronic evidence, with the aim of obtaining access to crypto wallets belonging to the main suspect.
- **Guarantee of confidentiality** on the part of the requested country that the defendants will not become aware of an LoR that has been sent until the moment that the requesting country takes a decision in this regard. This duty of confidentiality is explicitly provided for in domestic legislation on international assistance.
- **The use of Asset Recovery Offices** even in the apparent absence of a criminal investigation, for the purpose of identifying assets from suspects in other countries.
- **Issuing an EIO or LoR** to request certain investigative measures, but also to trigger consideration of whether to launch a criminal investigation into the predicate offence.
- The benefits of including the consideration of **asset recovery precautionary measures** within the framework of a **JIT**.
- **Establishing a JIT solely for the purpose of conducting a financial investigation,** if such is possible under the law of the countries involved.
- Cooperation between PPOs and FIUs is essential for an efficient system for tackling money laundering.
- **In the absence of an appropriate international mechanism** to facilitate the international **recognition of CROs,** consensus was reached that executing authorities should **bring their own criminal money laundering investigation** against the suspect **and recover the assets via their traditional criminal asset recovery pathway.**
- **Where possible,** and in accordance with the **legal principles of each Member State,** the adoption of an **interpretation of a Member State's criminal code** to allow a **CRO to be recognised** with an undertaking by the given Member State's judiciary to cooperate internationally in criminal matters. In another case, the legal basis chosen was the **spontaneous exchange of information** under the **Mutual Legal Assistance Convention.**
- **Repossession and sale of properties by requested authorities** on the basis of the **accrued debt registered against the properties** has the benefit of bringing the properties back within the requested authorities' control and putting a stop to the suspect's ongoing interest in them.
- In cases where the **freezing of assets was for the purpose of restitution to the victims**, it has proved useful for the authorities involved to agree:
    - to issue an LoR on the basis of Article 8 of the Mutual Legal Assistance Convention on the return of items to their lawful owners;
    - that the request contains:
        - (i) an undertaking by the requesting country to make every effort during the course of the investigation to identify the injured parties and to determine their loss, on which the trial court will have to rule,
        - (ii) a reference in the undertaking to the evidence forwarded by the requested country within the scope of execution of any previous EIOs issued by the issuing country,

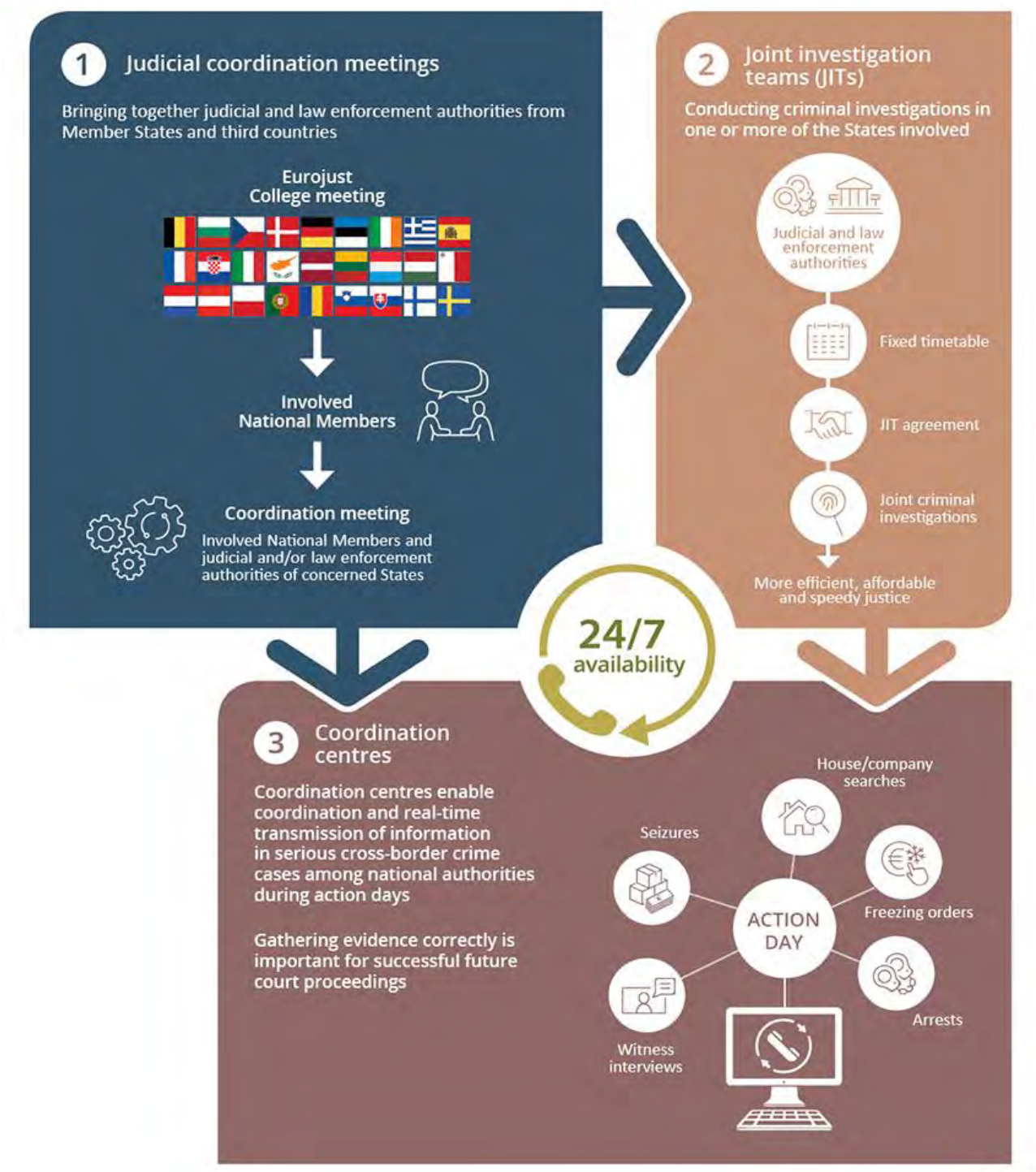
(iii) a list of the account numbers and the amounts the seizure of which is to be requested;

- that an LoR will be accompanied by an order requesting the seizure followed by the transfer of funds to the account of the requesting state's agency for the management and recovery of assets seized and confiscated, with a view to their return to the injured party.

- The benefits of **clarifying,** via Eurojust, where appropriate, the **valid legal basis** to freeze funds for restitution to the victims. For example in the EU, since 19 December 2020, the Regulation on the mutual recognition of freezing and confiscation orders for the Member States bound by it.
- The exchange, through Eurojust, where appropriate, of information between home authorities to secure the seizure of assets.
- When, **in some countries, the violation of due diligence measures is not a criminal offence and there is no corporate liability**, consideration could be given to agreeing on international **recommendations and standards.**
- The centralisation of money laundering investigations and prosecutions at the Member State level may yield relevant results.
- The increase in the number of **Contact Points for Eurojust** and **Liaison Prosecutors posted at Eurojust** has proved very useful in cooperation with third states.
- In the case of **parallel investigations** it is crucial to first link the cases and then to coordinate the actions and agree on how and where upcoming court trials and prosecution will take place.
- Experience shows that practitioners are still not sufficiently informed about the Regulation on the mutual recognition of freezing and confiscation orders and that training is needed.
- Although **asset sharing** is a matter to be agreed at a later stage by the competent authorities of the countries involved once proceedings are concluded, there might be some benefit in discussing it in advance.

13. Eurojust tools to enhance cross-border cooperation

In the money laundering cases analysed in this report, Eurojust provided the following types of legal and practical assistance.



14. Conclusions

Money laundering and issues intrinsically linked to it, such as asset recovery, is a field that has received much legislative attention in recent years, including the proposal for an anti-money laundering package published in June 2021 and the proposal for a Directive on asset recovery and confiscation published in May 2022.

To respond to the need to fight money laundering, Eurojust is a privileged forum for the facilitation of dialogue – taking into account the legal traditions, legal systems and diversity of languages across the EU – and for finding an acceptable solution for the countries involved.

Eurojust's casework on money laundering shows how its legal and practical assistance has – by way of coordination meetings, the establishment of JITs and coordination centres, the drafting of operational guidelines, overviews of Court of Justice case-law and Eurojust reports in a given field of judicial experience – assisted practitioners in finding guidance and solutions.

The report is based on an analysis of cases registered at Eurojust from 1 January 2016 to 31 December 2021, and focuses on certain selected topics: (i) predicate offence; (ii) complex money laundering schemes; (iii) financial and banking information; (iv) asset recovery; (v) cooperation with third countries; (vi) cooperation with the EPPO; (vii) potential conflicts of jurisdiction and *ne bis in idem* issues; and (viii) spontaneous exchange of information.

Based on Eurojust's casework, the report identifies legal and practical challenges in money laundering cases and puts forward solutions and best practices that practitioners should be aware of.

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