

**EUROJUST**

European Union Agency for  
Criminal Justice Cooperation

# International cooperation in drug trafficking cases with third countries

## Practical experiences of Liaison Prosecutors at Eurojust

April 2024

Criminal justice across borders



Luxembourg: Publications Office of the European Union, 2024

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Print: ISBN 978-92-9404-296-5      doi:10.2812/23295      QP-05-24-217-EN-C

PDF    ISBN 978-92-9404-297-2      doi:10.2812/35988      QP-05-24-217-EN-N

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# 1. Introduction

The findings of the recent *European Drug Report 2023*, issued by the European Monitoring Centre for Drugs and Drug Addiction, are worrying but crystal clear <sup>(1)</sup>:

Drug issues have an impact **everywhere**. Almost **everything** with psychoactive properties has the potential to be used as a drug and **everyone**, whether directly or indirectly, can be affected by illicit drug use and the problems associated with it.

Obviously, the encompassing prevalence and availability of drugs also affects the fight of law enforcement and judicial authorities around the EU against drug trafficking by organised crime groups. Increasingly, investigations have links to non-EU countries and practitioners see the need (and opportunity) to somehow turn to these countries for judicial cooperation. To achieve this, the European Union Agency for Criminal Justice Cooperation (Eurojust) provides support as far as possible, primarily through the Liaison Prosecutors (LPs) posted at its premises. Thanks to Eurojust's involvement and the cooperation of LPs, several very successful operations have been conducted <sup>(2)</sup>.

This is also reflected by an increasing number of registered cases at the agency: countries with an LP located at Eurojust were requested to participate in cases (all crime types) 708 times in 2023. A significant share of these requests relate to drug trafficking cases (between 123 and 172 per year between 2019 and 2023, resulting in more than 170 coordination meetings and 37 joint investigation teams (JITs)).

As a continuous increase in referred cases is to be expected, and to provide additional assistance to prosecutors and investigating judges across the EU, Eurojust's anti-trafficking working group decided to issue an analysis paper regarding this topic.

The purpose of this analysis paper is to highlight potential recurrent issues and challenges in judicial cooperation between EU Member States and third countries in drug trafficking cases <sup>(3)</sup>.

After a brief introduction to the role of Eurojust LPs, dedicated country pages focus on each third country, followed by conclusions and a statistical section.

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<sup>(1)</sup> European Monitoring Centre for Drugs and Drug Addiction, *European Drug Report 2023*.

<sup>(2)</sup> See Eurojust [press releases](#) for illustrative examples:

— '[Successful takedown of a drug trafficking network in Italy and Albania](#)';

— '[Eurojust coordinates dismantling of Serbian marijuana trafficking network operating from Spain](#)';

— '[Ringleader of Lithuanian drug trafficking network arrested](#)'.

<sup>(3)</sup> See also the infographic '[Eurojust cooperation with third countries](#)'.

## 2. Scope and methodology

Given the large number of drug trafficking cases registered by Eurojust with regard to third countries, it has been decided to limit the focus of this analysis paper to those countries that have seconded an LP to Eurojust. The majority of requests from national judicial authorities to facilitate judicial cooperation are linked to these countries.

The main aim of this paper is to furnish judicial practitioners with a concise and useful overview. It is not meant to be an exhaustive examination of all recurring issues of judicial cooperation with third countries, but rather an easily accessible and readable document to have at hand when considering such cooperation options in a specific case.

The report aims to inform and stimulate the initiation and/or deepening of cooperation with third countries. Although the focus of the analysis is on drug trafficking cases, some sections will inevitably be of a more general nature, relating to judicial cooperation instruments used in drug trafficking cases. As a result, the report is not complete in that regard.

Eurojust has published other reports regarding cooperation with third countries, such as:

- ▶ [\*Leaflet on Enhancing Cross-Border Cooperation in Criminal Justice in the Western Balkans\*](#);
- ▶ [\*Guidelines on Joint Investigation Teams Involving Third Countries\*](#) and a corresponding [\*Checklist for Practitioners\*](#).

All LPs at Eurojust at the time of drafting (late 2023) participated in this project to gain a first-hand understanding of possible difficulties and best practices. Unlike other reports, this document is not primarily an analysis of Eurojust's drug trafficking casework with these countries, due to the extremely large number of cases that would have to be assessed in detail with limited resources. Instead, the expertise and experience of the LPs in drug trafficking cases proved to be a more reliable and thorough source for this report.

In a first step, all drug trafficking cases from 2019 to 2022 with each concerned country registered at Eurojust as case owner and requested party were identified.

Secondly, the LPs were provided with the list of cases and asked to provide input to three thematic topics:

- ▶ legal and practical issues in judicial cooperation;
- ▶ best practices of judicial cooperation; and
- ▶ the role of Eurojust LPs in drug trafficking cases.

After the analysis of their written contributions, the project team conducted targeted face-to-face interviews with almost all LPs.

The outcome is this paper.

### 3. Eurojust Liaison Prosecutors at a glance

LPs come from non-EU countries and are posted at Eurojust, based on an agreement on cooperation with the respective country <sup>(4)</sup>. They work side by side with their colleagues from Member States to provide support in cross-border investigations involving their country. In the interest of facilitating judicial cooperation between Eurojust and the third country, LPs have access to Eurojust's operational tools and facilities, including the use of office space, the conference centre, support by Eurojust's staff and secure telecommunications services.

The national authorities of the third countries determine the mandate and duration of each posting. Twelve third countries have seconded LPs to Eurojust: Albania, Iceland, Georgia, Moldova, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States <sup>(5)</sup>. The United Kingdom has had an LP at the agency since 2021, under the EU-UK Trade and Cooperation Agreement, and the Working Arrangement signed with Eurojust in the same year.

In March 2021, the Council adopted a decision authorising the European Commission to open negotiations on international agreements on cooperation with Eurojust between 13 third countries and the EU. Negotiations with Armenia have been concluded and the agreement signed on 5 April 2024, and formal negotiations have started with Algeria, Colombia and Lebanon.

LPs and their assistants may also participate in operational and strategic meetings, at the invitation of the President of the Eurojust College and with the approval of the National Members concerned. National Members, their deputies and assistants and Eurojust staff may also attend meetings organised by the LP or other competent authorities from the involved country.

The Eurojust LPs aid and/or assist in, inter alia:

- ▶ issuing and/or carrying out requests for mutual legal assistance (MLA), also at the preparatory stage, i.e. before the actual transmission of the request and in parallel to official channels of communication, where applicable;
- ▶ communicating and exchanging data with competent national authorities;
- ▶ negotiating and drafting agreements for JITs and organising and participating in coordination meetings and joint action days / coordination centres;
- ▶ providing advice on the legal practicalities and best practices in gathering evidence;
- ▶ providing advice on domestic legislation, including in real time (during operations) and in urgent cases;
- ▶ overcoming language barriers.

<sup>(4)</sup> All agreements can be found [here](#). The procedure is as follows.

— Since 2019, Eurojust cannot negotiate or conclude international agreements, but the agency works closely with the European Commission to develop 4-year strategies to enhance its international reach. These strategies specify the third countries and international organisations with which there is an operational need for cooperation. Based on this list, the Commission submits to the Council of the European Union its recommendation for a decision authorising the opening of negotiations for international agreements on cooperation with Eurojust. The Council then adopts a decision authorising the Commission to open negotiations with Eurojust acting as an observer. The negotiations and conclusion of the agreements must follow the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union.

— As with most international agreements, both the cooperation agreements and the international agreements include a series of basic features: a preamble with recitals justifying and explaining the different provisions, and several chapters with the enacting terms or provisions.

— The language used gives a clear indication of the binding nature of the agreements and their respect of the different principles of international law, and compliance with the Vienna Convention on the Law of Treaties.

— As regards the provisions themselves, they include inter alia the scope of cooperation, the data protection regime, the obligation/possibility and modalities for posting LPs and magistrates, general provisions on termination, amendment, etc.

<sup>(5)</sup> A 12th LP (from Iceland) took up duties in March 2024.

They are also integral members of several of Eurojust's working groups, such as the Anti-Trafficking Team <sup>(6)</sup>. This team is a centre of expertise on judicial cooperation, offering stakeholders specialised advice, information, services and products based on Eurojust's casework in the fight against trafficking (trafficking in human beings, migrant smuggling, drug trafficking, trafficking in firearms and trafficking in cultural goods) and its links to organised crime and the protection of children.

Eurojust also has a network of Contact Points in other third countries, enabling direct contact with the competent authorities in those countries when a crime extends beyond the EU's borders. To date, the network has Contact Points in over 70 countries <sup>(7)</sup>.

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<sup>(6)</sup> The Eurojust College is supported on its operational and Management Board activities by working groups that:

- prepare draft work plans establishing the objectives, projects and activities;
- undertake tasks which are clearly defined and directly linked to the mandates received, in line with their annual work plans; and
- carry out any other task assigned to them by the College, functioning as preparatory bodies of the work of the College.

<sup>(7)</sup> For more information, please refer to the above-mentioned infographic and the Eurojust Annual Report 2022 (<https://www.eurojust.europa.eu/annual-report-2022/cooperation-partners/third-countries>).

## 4. Country-specific information

Statistics can be found in Chapter 6.

### 4.1. Albania



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Albania signed a Cooperation Agreement in October 2018 <sup>(8)</sup>, with the first LP taking up duties in January 2021.

Between 2019 and 2023, Albania has been involved in **99** drug trafficking cases (requesting and requested country) and participated in **38** (drug trafficking related) coordination meetings, **17** JITs and **2** coordination centres.

#### Challenges and best practices

- ▶ In some cases, there is a **lack of early cooperation and coordination** between all countries and all stakeholders involved. Sometimes parallel investigations are conducted and the countries conducting the investigations delay the transmission of information and evidence at the judicial level. This is also sometimes the case with JITs. The request for a JIT sometimes comes at different stages of the proceedings: while a foreign Public prosecutor's office (PPO) is in the midst of its investigation, Albanian authorities are only at the beginning of a case.
- ▶ Not all Member States are aware of the possibility of signing JITs with third countries. There are no legal obstacles to using this instrument to cooperate with third countries, especially those that have a cooperation agreement with Eurojust. A JIT facilitates cooperation with third countries instead of making several MLA requests, which take longer and whose procedure is more cumbersome.
- ▶ With regard to JITs:
  - ▶ Albania has a strong legal basis for the establishment of JITs, based on national legislation and bilateral and multilateral agreements. In addition, the prosecution offices, in particular SPAK (Special Prosecution against Organised Crime and Corruption), already have considerable experience with JITs. SPAK is always a member of a JIT in organised crime cases.
  - ▶ Judicial authorities are invited to first reach an informal, preliminary agreement on the establishment of a JIT and then to submit the official, formal MLA request to Albania. An Albanian PPO can be a member of a JIT if there is an ongoing investigation in Albania. A JIT could also be considered solely for the purpose of freezing and confiscating assets during the final stage of an investigation.

#### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2nd additional protocol.
- ▶ Bilateral agreements (for example with Italy and Kosovo <sup>(\*)</sup>, and others on extradition).
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).

Further information on national criminal law legislation, bilateral and multilateral agreements, etc. can be obtained via [https://www.pp.gov.al/Cooperation/LEGAL\\_BASIS](https://www.pp.gov.al/Cooperation/LEGAL_BASIS).

See also <https://www.euralius.eu/index.php/en/library/albanian-legislation/category/84-jurisdictional-relations-in-criminal-matters> (domestic legislation on MLA in English, but not updated).

<sup>(\*)</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>(8)</sup> [Available here on Eurojust's website.](#)



- ▶ The procedure to set up a JIT is, in brief, as follows.

So far, there are no known legal challenges concerning JITs in Albanian courts.

(1) At the proposal of the prosecutor, the head of the relevant PPO, through the Prosecutor of General or the Head of the Special Prosecutor's Office, may request the creation of joint investigation teams in the following cases.

(a) The party's investigations into criminal offences require difficult and demanding investigations having links with other parties.

(b) A number of parties are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action for the parties involved.

(2) The Ministry of Justice decides to approve the request of a foreign authority for the creation of a joint investigation team, except when it deems that the requested actions endanger sovereignty, security or important interests of the state. In cases where the foreign authority has directly addressed the General Prosecutor or the Head of the Special Prosecutor's Office, they notify without delay the Minister of Justice.

(3) The Ministry of Justice refuses the request if it becomes clear that the requested actions are expressly prohibited by law or if they violate the basic principles of the Albanian legal system. In this case, the ministry shall immediately inform the foreign authority.

(4) Once the Ministry of Justice has given its approval, it forwards the authorisation, via the Prosecutor General, to the Chief Public Prosecutor of the PPO having territorial jurisdiction over the investigation of the offence for which the establishment of the investigation team is requested, or to the special jurisdiction, if applicable.

- ▶ Two examples of successful cooperation within a JIT are operations [Shpirti](#) and [Highway](#). The latter was a very sophisticated JIT and was active for over 6 years. The extensive duration of their partnership allowed for the development of trust between the JIT leaders, which also facilitated cooperation in other instances. With funding support from the [Instrument for Pre-Accession Assistance](#), Albanian and Italian authorities were able to share real-time telephone interception. One effective strategy identified was the permanent deployment of an experienced Italian police officer to Albania, enabling real-time exchange of evidence.

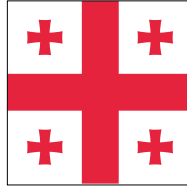
- ▶ Both for MLA requests and issues relating to a (potential) JIT, approaching the Albanian LP could significantly improve and speed up cooperation and coordination in specific cases.

### Specific issues related to drug-trafficking investigations

- ▶ **Undercover agents** can only be Albanian police officers. Foreign officers can only observe and support, in coordination with Albanian police.
- ▶ A JIT **seconded member** can be present while investigative activities are carried out on Albanian territory, but the domestic authorities always carry out the activities.
- ▶ Requests for approval of **controlled deliveries** shall be sent in Albanian. A substitution of the drug is not necessary.
- ▶ **Precursors**: if there is no criminal offence under Albanian law, the MLA request will not be executed (Article 506 of the Albanian Criminal Procedural Code). The production, import, export, transit, trade and holding of precursors (that are included, based on the law, in the pertinent charts/tables) is punishable by imprisonment up to 5 years. (Article 284/c of the Criminal Code).

For more details about the Albanian judicial system and judicial cooperation, please visit the [country section of the European Judicial Network \(EJN\) website](#).

## 4.2. Georgia



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Georgia signed a Cooperation Agreement in March 2019, with the first LP taking up duties in June 2020.

Between 2019 and 2023, Georgia has been involved in 1 drug trafficking case.

### General issues

MLA requests for searches, seizures and freezing of assets can only be carried out under certain conditions:

- ▶ the crime for which legal assistance is requested should be punishable under both the legislation of the requesting foreign state and that of Georgia (in abstracto dual criminality);
- ▶ the offense for which legal assistance is sought must be an extraditable offense under Georgian legislation;
- ▶ the execution of the request must comply with Georgian legislation.

If the MLA request concerns carrying out investigative activities with intrusive procedural powers, a court or other competent authority of a foreign state must authorise the request.

### Establishment of JITs

JITs can be concluded between Georgia and Member States and/or third countries based on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The other UN conventions could also serve as a legal basis. Under domestic law, the set-up of JITs is governed under Article 12<sup>1</sup> of the Law on International Cooperation in Criminal Matters. In accordance with Georgian law, the Office of the Prosecutor General of Georgia is the competent authority to authorise the set-up of a JIT and appoint the Deputy Prosecutor General who will be signing the JIT agreement (depending on the type of crime). Georgia requires a formal request for setting up a JIT. The letter should at least contain information about the features of the case, offences concerned and a brief justification of the need for setting up a JIT.

Further details can be found in Annex II of the [Eurojust guidelines on JITs involving third countries](#).

### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2nd additional protocol.
- ▶ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005 (Freezing orders).
- ▶ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990 (Freezing orders).
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ Bilateral agreements (Armenia, Azerbaijan, Bulgaria, Greece, Kazakhstan, Turkey, Turkmenistan, Ukraine and Uzbekistan).
- ▶ Ad hoc agreements.
- ▶ The principle of reciprocity.

See also [Law of Georgia on International Cooperation in Criminal Matters 2010](#).

### Special investigative techniques

Covert measures and controlled deliveries can also be requested, based primarily on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and other treaties, agreements or the principle of reciprocity, if applicable.

### Recommendations and additional information

- ▶ If the request concerns conducting activities with intrusive procedural powers, as mentioned above, dual criminality might be an issue in some instances. In such cases, Georgian authorities apply the *in abstracto interpretation of dual criminality*.
- ▶ The central competent authority for MLA, JTs, extradition and freezing is the Prosecution Service of Georgia. This includes incoming and outgoing requests. The preferable languages of MLA requests are Georgian and English. Another language may vary per treaty.
- ▶ The Ministry of Internal Affairs of Georgia is the central authority regarding covert measures and controlled delivery, while the spontaneous exchange of information is dealt with by both the Prosecution Service and the Ministry.

### 4.3. Moldova



- ▶ [Presentation on the Eurojust website](#)

Eurojust and the Republic of Moldova signed a Cooperation Agreement in July 2014. It entered into force in October 2016, with the first LP taking up duties in September 2023.

Between 2019 and 2023, Moldova has been involved in 8 drug trafficking cases (requesting and requested country) and participated in 4 coordination meetings.

Moldova's law enforcement bodies have adequate legal instruments to investigate drug trafficking crimes. The Criminal Proceeding Code of Moldova provides the necessary legal frameworks such as controlled deliveries, undercover agents, setting up of JITs and more.

One of the challenges facing Moldova in the prosecution of drug trafficking is the use of the internet as a market for drug trafficking. Difficulties arise in the field of cooperation between law enforcement authorities and internet service providers, especially those based in other states.

Additionally, investigations should focus not only on drug trafficking, but also on the laundering of drug trafficking money.

It should be noted that no country can solve these major issues alone and, in this context, cooperation with Member States through Eurojust plays a primary role for Moldovan authorities in international cross-border drug trafficking cases, whenever necessary and applicable.

The LP's objective is to enhance communication with national authorities that possess the jurisdiction to prosecute drug trafficking. This will help in identifying cross-border drug trafficking cases, opening cases, setting up coordination meetings and increasing the number of joint investigation teams involving Moldovan authorities.

There are no specific requirements from the Moldovan side for the JIT agreements in drug trafficking cases.

#### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2<sup>nd</sup> additional protocol.
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ Bilateral agreements concluded by Moldova ([Bulgaria](#), [Czechia](#), [Latvia](#), [United Kingdom](#)).
- ▶ Chapter IX of the Criminal Proceeding Code, 'International Legal Assistance in Criminal Matters' (which regulates MLA requests, JITs, extradition, transfer of sentenced persons and recognition of criminal judgments by foreign courts).
- ▶ [Law No. 371/2006 on international legal assistance in criminal matters](#).

## 4.4. Montenegro



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Montenegro signed a Cooperation Agreement in May 2016, with the first LP taking up duties in December 2017.

Between 2019 and 2023, Montenegro has been involved in **24** drug trafficking cases (requesting and requested country) and participated in **4** (drug trafficking related) coordination meetings and **1** coordination centre.

### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2nd additional protocol.
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ Bilateral and multilateral agreements.
- ▶ Montenegrin law on mutual legal assistance in criminal matters.

### Recommendations and additional information <sup>(9)</sup>

- ▶ To avoid undue delay in mutual judicial cooperation, direct communication with Montenegrin authorities is highly encouraged <sup>(10)</sup>, as foreseen in different conventions such as the Second Additional Protocol to the Council of Europe 1959 Convention. This can also be done through the LP at Eurojust, in order to establish direct channels of communication between judicial authorities. Accelerating the cooperation process is of vital importance to Montenegrin judicial authorities.
- ▶ An example of a successful cooperation between several countries and Montenegro is [Op. Florida](#). A coordination meeting at Eurojust helped clarify how to proceed with MLA requests towards Montenegro and exemplifies how effective cooperation with Montenegro can be achieved.

In another case, German and Montenegrin authorities had several coordination meetings at Eurojust to discuss how and when results/evidence of covert measures (surveillance) in Montenegro could be shared with Germany following their MLA request.

- ▶ In the past and still today, Montenegrin authorities were and are confronted with significant delays – or even no replies at all – to MLA requests sent to other European judicial authorities. In many of the cases, a referral of the case to Eurojust significantly shortened the duration of the process.
- ▶ When drafting an MLA request to Montenegro, it is paramount to include and specify the legal basis for the requested measures. Practice has shown that this is not always the case, which leads to delays in the execution of incoming MLA requests. Although not required, it is advisable for efficiency reasons to provide a translation into the Montenegrin language, especially in urgent cases.
- ▶ So far, Montenegro has only concluded one JIT (with Moldova), without the involvement of Eurojust. The number of JITs with the support of Eurojust is expected to increase, following the launch of the [CRIM JUST Western Balkans](#) project hosted by Eurojust. Parallel investigations and rather unclear provisions in the Montenegrin MLA law before its change in 2019 could be possible reasons for this low number. The main legal basis for setting up a JIT is the Second Additional Protocol to the

<sup>(9)</sup> International agreements signed by Montenegro can be found here:

- <https://www.gov.me/mpa/organizacione-jedinice-ministarstva-pravde-ljudskih-i-manijskih-prava/direktorat-za-medunarodnu-saradnju>;
- <https://www.gov.me/mpa/medunarodna-saradnja/bilateralni-ugovori>;
- <https://www.gov.me/mpa/medunarodna-saradnja/multilateralni-ugovori>.

<sup>(10)</sup> Montenegro allows for direct communication by the Supreme State Prosecution Office.

European Convention on Mutual Assistance in Criminal Matters. Montenegro can only be a member of a JIT if there is an ongoing national investigation. Montenegro requires a formal letter of request (LOR) for setting up a JIT to be sent to **the Supreme State Prosecutor of Montenegro** <sup>(1)</sup>.

For more details about the Montenegrin judicial system and judicial cooperation, please visit the [country section of the EJN website](#).

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<sup>(1)</sup> For more details, see the chapter on Montenegro in the [Eurojust guidelines on JITs involving third countries](#).

## 4.5. North Macedonia



- ▶ [Presentation on the Eurojust website](#)

Eurojust and North Macedonia, then the former Yugoslav Republic of Macedonia, signed a Cooperation Agreement in November 2008, with the first LP taking up duties in November 2018.

Between 2019 and 2023, North Macedonia has been involved in 14 drug trafficking cases (requesting and requested country) and participated in 1 (drug trafficking related) coordination meeting.

So far, North Macedonia has not experienced any major legal problems in its judicial cooperation with Member States in drug trafficking cases. The dual criminality of drug trafficking had been established in all cases and the legal basis for granting MLAs had been in place. As regards practical issues, in some cases the North Macedonian authorities experienced a change in the responsiveness of foreign judicial authorities as soon as an action was completed and the evidence was handed over. After that moment, they became less responsive. However, the assistance of the Eurojust LP quickly resolved these problems.

### Best practices and recommendations

- ▶ Due to the relatively low number of drug trafficking cases and JITs with North Macedonia – and consequently less experience among European judicial authorities – it is advisable to contact the LP in case an MLA request needs to be sent or if the setting up of a JIT is envisaged.
- ▶ **Interrogation of suspects** at the request of a foreign PPO. According to North Macedonian law, the disclosure of evidence to the suspect is a prerogative <sup>(12)</sup>. In most cases, the MLA request is sent without any concrete evidence, so that the execution of the MLA request is often refused. The North Macedonian authorities must explicitly state what evidence they have shown the suspect and, as foreign authorities usually do not provide this evidence, the request cannot be executed. Therefore, the best practice is to provide some evidence, if possible, together with the MLA request.
- ▶ Coordination between judicial and law enforcement authorities and the spontaneous exchange of information prior to the arrest and seizure of drugs is one of the best practices highlighted by North Macedonian authorities.
- ▶ English is accepted only in urgent MLA requests.
- ▶ There are no specific conditions regarding the admissibility of evidence in North Macedonian proceedings, with one exception: testimony during the trial must be given in person, or at least by videoconference. Foreign evidence is accepted in North Macedonian courts.

### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2nd additional protocol.
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ Bilateral and multilateral agreements concluded by North Macedonia.
- ▶ Criminal Code and Criminal Procedure Code of North Macedonia.
- ▶ Law on International Cooperation in Criminal Matters (LICCM).
- ▶ Police Cooperation Convention for South East Europe (2006).

<sup>(12)</sup> See Art. 302 para 5 of the Criminal Procedure Code of North Macedonia: 'The public prosecutor shall be obliged to disclose to the defendant all the evidence that was collected during the investigation procedure against him or her, as well as any exculpatory evidence that might be useful to the defence.'

- ▶ JIT agreements may be signed based on the Second Additional Protocol to the European Convention on MLA in criminal matters. North Macedonia can be a member of a JIT in any criminal case, regardless of the stage of the proceedings (pre-investigative stage or investigation). The Prosecutor General is authorised to sign a JIT agreement <sup>(13)</sup>. A formal request to the North Macedonian authorities is needed. There is only limited experience with JITs.

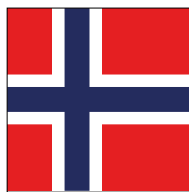
For more details about the North Macedonian judicial system and judicial cooperation, please visit the [country section of the EJN website](#).

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<sup>(13)</sup> For more details, see the chapter on North Macedonia in the [Eurojust guidelines on JITs involving third countries](#).



## 4.6. Norway



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Norway signed a Cooperation Agreement in April 2005, with the first LP taking up duties later the same year. Norway was the first third country to assign a Liaison Prosecutor to Eurojust.

Between 2019 and 2023, Norway has been involved in **126** drug trafficking cases (requesting and requested country) and participated in **27** coordination meetings and **7** JITs.

Selected rulings by the Norwegian Supreme Court are translated into English and available here: <https://www.domstol.no/en/supremecourt/rulings>.

### General issues of importance

As Norway does not apply the EIO framework, standard letters of request based on the above-mentioned legislation have to be used. However, in some cases the Norwegian judicial authorities have reinterpreted an EIO as an ordinary MLA request if the content was sufficient. The local PPOs are usually responsible for executing the requests and will often forward the request to the Police Prosecutor. Norway accepts requests in English.

### Examples of challenges

Some of the challenges that the Norwegian judicial authorities have experienced in this context mainly relate to the following.

- ▶ Late replies from foreign authorities to Norwegian MLA requests. Unlike the EIO framework, the applicable international conventions do not provide for a similarly rigid system of time limits for replies. This is a common problem with requests to technology companies, such as requests for content from social media applications.
- ▶ The handling of different covert measures, especially in drug trafficking cases: differences in legislation on when, for what purposes and how covert measures can be used; who is competent to authorise them; and the admissibility of the evidence collected. From a more practical point of view, cross-border audio and physical surveillance of a suspect/vehicle can sometimes be challenging.

### Legal instruments for judicial cooperation

- ▶ Schengen Convention of 1985 (and area).
- ▶ [Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of the Convention of 29 May 2000 on Mutual Assistance in Criminal matters between the Member States of the European Union and the 2001 Protocol thereto.](#)
- ▶ [Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.](#)
- ▶ Convention on surrender on the basis of an offence between the Nordic States, the 'Nordic Arrest Warrant'.
- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2nd additional protocol.
- ▶ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990 (Freezing orders).
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).

Please note that Norway has not implemented the European Investigation Order (EIO).

### Best practices

- ▶ In complex cases where a comprehensive MLA request needs to be sent, it is preferable to discuss the request with the Norwegian authority that will be the addressee before issuing it. The Norwegian LP at Eurojust can provide assistance in this regard.
- ▶ Before requesting information in evidential format, it is preferable to request that the available information be shared as intelligence at the police level, in order to have prompt access to this information. Example: Norwegian police can directly access a ‘National Currency Register’ which shows the transactions in another currency, for instance when transferring cash abroad to another currency, or paying with a credit card in another currency (for bank account information and content, however, a judicial order would still be needed).
- ▶ If information on national criminal law is needed in the course of an ongoing cross-border investigation, it is preferable to seek clarification promptly through Eurojust’s LPs. An official MLA request is then often unnecessary.
- ▶ Establishing a JIT: although there is no specific national legislation on JITs in Norway, international agreements such as the EU–Norway Agreement (primarily) and the Council of Europe / UN Convention constitute a profound legal basis for JITs with Norwegian authorities. Norway already has considerable experience with JITs, including in drug trafficking cases <sup>(14)</sup>. Public prosecutors (i.e. prosecutors working at the district level or in the office of the Director of the Public Prosecution Service) in charge of investigations have the authority to decide on setting up a JIT. Norway can be a member of a JIT if there is an ongoing investigation in Norway. No formal MLA is required to set up a JIT <sup>(15)</sup>.
- ▶ The Norwegian definition of ‘controlled delivery’ is normally when the drug is not substituted but is allowed to pass under strict supervision and control, and therefore similar to the common definition in European / UN Conventions.

For more details about the Norwegian judicial system and judicial cooperation, please visit the [country section of the EJN website](#).

<sup>(14)</sup> Example: <https://www.eurojust.europa.eu/news/coordinated-arrests-international-drug-trafficking-group>.

<sup>(15)</sup> For more details, see the chapter on Norway in the [Eurojust guidelines on JITs involving third countries](#).

## 4.7. Serbia



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Serbia signed a Cooperation Agreement in November 2019, with the first LP taking up duties in March 2020.

Between 2019 and 2023, Serbia has been involved in **86** drug trafficking cases (requesting and requested country) and participated in **26** coordination meetings, **4** JITs and **2** coordination centres.

### General information

Ratified international treaties take precedence over laws in the hierarchy of legal acts. This principle, together with the explicit provision of Article 1 of the Serbian Law on Mutual Legal Assistance in Criminal Matters of 2009, according to which this law shall apply only in the absence of a ratified international treaty or if a particular matter is not regulated by it, guarantees the supremacy and priority of the conventional provisions regulating MLA.

This is relevant, for example, in cases of double criminality. This is a prerequisite for the execution of MLA requests in Serbian law. However, on the basis of this constitutional principle, it can be successfully argued that the international convention takes precedence over national law, and therefore no condition of double criminality can be imposed for the execution of the request, if such a request is not provided for in the international convention.

### Challenges and best practices

- ▶ Serbia relies on MLA requests, leaving more discretion to the requesting countries in the execution of the request, with no particular deadline for the execution of the request. This process can be very lengthy in certain circumstances and, in a significant number of cases, without any feedback from the requested authority for long periods of time. Therefore, in practice, a significant number of late replies and a certain degree of uncertainty as to the status of execution of the letters rogatory have been encountered, both in cases where Serbia requests assistance and in cases where it executes a letter rogatory, in particular in cases where the legal framework obliges to request assistance through central authorities. The Eurojust LP can assist if problems arise in this regard.
- ▶ To avoid undue delay in mutual judicial cooperation, direct communication with Serbian authorities is highly encouraged, as foreseen in different conventions such as the Second Additional Protocol to the Council of Europe 1959 Convention or in bilateral agreements, for example with Montenegro and Slovenia. The Eurojust LP can assist both in indicating the competent authority and establishing direct communication, and in forwarding the LOR in parallel with formal channels. The Ministry of Justice of the Republic of Serbia remains the central authority for both international cooperation

### Legal instruments for judicial cooperation

- ▶ Council of Europe European Convention on Mutual Assistance in Criminal Matters, 1959 and its second additional protocol.
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ Bilateral agreements (Serbia has concluded bilateral treaties relevant to international judicial cooperation with about 30 countries).
- ▶ Serbian law on Mutual Legal Assistance in Criminal Matters of 2009.

and MLA requests for the cases where direct communication is not possible based on international agreements<sup>(16)</sup>.

- ▶ The time (and resources) required for the translation of MLA requests was also identified as an issue affecting the timeframe for the execution. As Serbia does not require translations of incoming requests under the European Convention on MLA, practical issues such as the availability of a sworn translator with sufficient knowledge of specific terminology at a given time may have an impact on both the time needed and the quality of the execution of an incoming request. Although not required, it is therefore advisable to **provide a translation into Serbian**, especially in urgent cases.
- ▶ Determining conditions for special investigative measures such as searches, seizures and surveillance has also proven to be challenging. This might have a negative impact on the admissibility of evidence at a later stage, in particular at the trial stage. A frequently identified example is the hearing of a suspect by police. This may only be admissible as evidence in Serbian proceedings if a defence lawyer has been present at the hearing. If collected information shall serve formally as evidence at a later stage, this should be mentioned in the rogatory letter.
- ▶ In complex cases where a comprehensive MLA request needs to be sent, it is also advisable to discuss directly with the Serbian authorities who will be the addressees prior to issuing the letter of request. Here again, the assistance of the Eurojust LP may facilitate and speed up the communication.
- ▶ **Controlled deliveries** are possible under Serbian procedural law. Occasionally, problems arise with outgoing controlled deliveries when the legislation of another country does not allow such a covert operation by another state. For incoming MLA requests on controlled deliveries, it is necessary to provide a description of the facts, the transport vehicle and the identity of the drivers. Under Serbian law, only the Specialised PPO and the Prosecutor General (Supreme Public Prosecutor, formerly Republic Public Prosecution Office of the Republic of Serbia) are competent to authorise a controlled delivery. A request is usually sent to the PPO via the police and the PPO must give its consent.
- ▶ Undercover agents may be police officers or security and military officials. Foreign agents/officials can only be authorised in some special cases<sup>(17)</sup>.
- ▶ Extended confiscation is also possible under Serbian law, specifically for seizure and confiscation. In case of urgency, it is advisable to send requests through the Financial Intelligence Unit, otherwise requests are regularly sent through the central authority. Requests can also be sent through the Eurojust LP, but only for facilitation and monitoring purposes.

Before requesting information in evidential format, it is advisable to request that the available information be shared as intelligence at the police level. Practical experience has also shown that identifying the authorities responsible for executing a request already at the initial stage of information exchange has an impact on the speed of execution of the request, even when the request is transmitted via central authorities.

<sup>(16)</sup> The Department for International Cooperation and Legal Assistance, established in the Supreme Public Prosecution (formerly Republic Public Prosecution Office) as the hierarchically superior prosecution office in Serbia, has a coordinating role in the area of MLA and may be of assistance when the LOR falls under the competence of the prosecution service.

<sup>(17)</sup> Art. 185, Criminal Procedure Code of Serbia.

## Establishment of JITs

Serbian authorities consider JITs a very effective tool of cooperation, as it allows for direct exchange of evidence in complex cases. Serbia already has quite significant experience with JITs, the majority of which have been concluded in drug trafficking cases <sup>(18)</sup>. The legal basis for the establishment of a JIT is mainly the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Some bilateral agreements (e.g. with Slovenia and other neighbouring countries) also contain provisions relating to JITs. It should be noted that the Minister of Justice signs a JIT for Serbia and that a request for the establishment of a JIT has to be submitted to the Serbian Ministry of Justice together with a draft JIT agreement (formal requirement). There are no specific provisions in Serbian law that determine the stage of criminal investigation at which a JIT must be set up or the offences concerned <sup>(19)</sup>.

A handbook on MLA in the Serbian language is available [here](#).

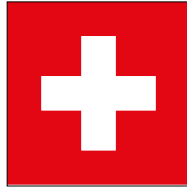
For more details about the Serbian judicial system and judicial cooperation, please visit the [country section of the EJN website](#).

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<sup>(18)</sup> Example of a successful Spanish–Serbian JIT in a drug trafficking case: <https://www.eurojust.europa.eu/news/eurojust-coordinates-dismantling-serbian-marijuana-trafficking-network-operating-spain>.

<sup>(19)</sup> For more details, see the chapter on Serbia in the [Eurojust guidelines on JITs involving third countries](#).

## 4.8. Switzerland



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Switzerland signed a Cooperation Agreement in November 2008, with the first LP taking up duties in March 2015.

Between 2019 and 2023, Switzerland has been involved in **128** drug trafficking cases (requesting and requested country) and participated in **17** coordination meetings and **9** JITs.

### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its 2<sup>nd</sup> additional protocol.
- ▶ Bilateral agreements (e.g. with Italy).
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ [Swiss Federal Act on International Mutual Assistance in Criminal Matters](#).

### General issues of importance

- ▶ In Switzerland, mutual assistance proceedings are administrative in nature. The consequence of this is that the right to be heard and the right to appeal have to be granted. These rights have to be granted before the gathered evidence can be transmitted to the requesting state. Therefore, the Swiss MLA procedure can be split into several steps.
  - (1) **Preliminary examination.** The authority entrusted with executing the request will examine whether the statutory requirements for mutual assistance have been met.
  - (2) **Ruling on whether to consider the request.** If the outcome of the preliminary examination is positive, the executing authority will issue a (prima facie) summary ruling that it will consider the request, including the reasons for its decision. It will specify that the material requirements for the grant of mutual assistance have been met. The mutual assistance measures that have been requested and are deemed to be admissible will be ordered at the same time. Basically, no appeal may be filed against the ruling to consider the case. Exceptions: seizure of assets and/or presence of foreign officials during the execution of the request, but only if an immediate and irreparable prejudice is caused.
  - (3) **Execution of the request.** The measures are then executed. Entitled parties by then should be given the opportunity to participate in the proceedings, particularly in the triage of the gathered documents concerning them. As the request is a part of the files, the document and its content will then be disclosed to the entitled parties.
    - (4a) **Simplified execution / settlement procedure.** Entitled persons, specifically the holders of documents, information or assets, may agree to hand these over. Based on the consent given, the executing authority may immediately hand over the documents or assets to the requesting state.
    - (4b) **If the entitled persons do not agree with the simplified execution, cannot be contacted or the settlement procedure fails.** The executing authority will issue the final ruling. It is the only ruling that is subject to appeal (with two exceptions, see above). As such, entitled persons may challenge only this final ruling, which is issued once the request has been completed, together with any preceding interim rulings that were possibly issued. Once the final ruling is enforceable, the documents and evidence that have been gathered may be handed over to the requesting state.

- ▶ Formal requirements for an MLA request must be taken into account. A checklist is available and should be considered before sending the request <sup>(20)</sup>. Swiss authorities will accept foreign requests that are formulated in one of Switzerland's three official languages (French, German or Italian). In cases of urgency, it is advisable to find out in advance the official language of the requested authority <sup>(21)</sup>.
- ▶ It is important to note that the above-mentioned procedural information rights also entail the right to examine documents, comprising the LOR and its attachments sent to Switzerland. As long as confidentiality is requested in the letter, collected evidence can only be secured/seized (e.g. bank statements) pre-emptively but cannot be provided to the requesting state until this confidentiality is lifted, as the suspect needs to be heard before.

### Establishment of JITs

JITs can be concluded between Switzerland and Member States and/or third countries based on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, respectively on Art. 80d<sup>ter</sup> et sqq. of the Swiss Federal Act on International Mutual Assistance in Criminal Matters. Two specific requirements need to be fulfilled <sup>(22)</sup>.

- ▶ A formal request to Swiss authorities to agree with the establishment of a JIT is needed.
- ▶ A specific clause (the 'Swiss clause') needs to be inserted into the agreement. Summarised, it states the following.
  - ▶ Evidence and information gathered on Swiss territory in the context of the JIT may be used exclusively in the ongoing criminal investigations.
  - ▶ Evidence and information gathered on Swiss territory in the context of the JIT may be used exclusively as information to progress the investigation, but not as evidence to request, motivate or render a final decision on guilt or sanction at the trial stage or by the ruling authority.
  - ▶ If any evidence or information gathered on Swiss territory is required to be used at the trial stage or by the ruling authority, a formal request for MLA must be addressed to the competent authority in Switzerland. If the MLA is not granted, evidence or information gathered on Swiss territory within the framework of the current JIT shall be removed from the case file of the foreign procedure.

### Freezing order

In Switzerland, prosecutors have the power to issue freezing orders without needing a court decision. If funds need to be frozen in bank accounts, only the MLA authorities or PPOs have the capacity to freeze assets.

### Covert measures

- ▶ The Swiss Criminal Procedure Code <sup>(23)</sup> covers all major covert measures that are applied in other European investigations <sup>(24)</sup>. Some of the covert measures require the authorisation of the compulsory measures court. Due to the nature of MLA procedures in Switzerland, no real-time information can be submitted to the requesting state if the information is not gathered in the course of

<sup>(20)</sup> <https://www.rhf.admin.ch/dam/rhf/en/data/strafrecht/wegleitungen/checkliste-ersuchen-ausland-e.pdf.download.pdf/checkliste-ersuchen-ausland-e.pdf>

<sup>(21)</sup> See the database of Swiss localities and courts 'ELORGE' (<https://www.elorge.admin.ch/elorge>).

<sup>(22)</sup> For more details, see the chapter on Switzerland in the [Eurojust guidelines on JITs involving third countries](#).

<sup>(23)</sup> <https://www.fedlex.admin.ch/eli/cc/2010/267/en>.

<sup>(24)</sup> Examples: Surveillance of Post and Telecommunications (Art. 269), use of special technical devices for the surveillance of telecommunications (Art. 269bis), use of special software for the surveillance of telecommunications (Art. 269ter), Surveillance using technical surveillance devices (Art. 280), observation (Art. 282), monitoring banking transactions (Art. 284), undercover investigations (Art. 285a), undercover enquiries (Art. 298a).

a JIT. If a covert measure needs urgent implementation on Swiss territory and it is unclear which authority to contact, the on-call agent of the Federal Office of Justice can be reached via the Federal Office of Police.

- ▶ **Controlled deliveries:** as Switzerland has signed the Second Additional Protocol to the European Convention on Mutual Assistance, its Article 18 applies. The competent authority for approving the request is the canton where the border crossing occurs. In drug trafficking cases, one of the 26 cantonal PPOs usually has jurisdiction. If the canton is unknown, the federal authorities are considered to be competent.

### Spontaneous exchange of information

Under Swiss law, the spontaneous exchange of information is called 'spontaneous transmission of information and evidence'. It can have its legal basis in an international convention such as Art. 11 of the Second Additional Protocol to the European Convention on Mutual Assistance or in Art. 67a of the Federal Act on International Mutual Assistance in Criminal Matters.

### Recommendations and additional information

- ▶ Due to the administrative nature of mutual assistance proceedings, these can be time-consuming. It is therefore advised that the police cooperation channels be thoroughly explored before submitting a Letter of Request to Switzerland.
- ▶ Since certain covert measures can only be granted by the Compulsory measures court, in cases of qualified violations of the Federal Act on Narcotics and Psychotropic Substances <sup>(25)</sup> it is crucial to be as precise as possible in the request (type of drug, assumed quantity, degree of purity).
- ▶ Evidence gathered through a Swiss authority is subject to a 'reservation of specialty' <sup>(26)</sup>, which prohibits certain uses of the information provided by Swiss authorities (either in investigations or as evidence).
- ▶ Requests for extradition should be directed to the Extradition Unit of the Federal Office of Justice. This authority is solely responsible for evaluating and approving such requests. If evidence-gathering measures are requested in addition to an extradition request, a separate request should be used.
- ▶ The Extradition Section of the Federal Office of Justice receives requests from foreign authorities for Switzerland to take up criminal prosecutions on their behalf. These requests are then forwarded to the appropriate Swiss PPO. The terms for the transfer and acceptance of criminal proceedings are outlined in the Federal Act on International Mutual Assistance in Criminal Matters <sup>(27)</sup>.

For more details about the Swiss judicial system and judicial cooperation, please visit the [country section of the EJN website](#).

<sup>(25)</sup> [https://www.fedlex.admin.ch/eli/cc/1952/241\\_241\\_245/de](https://www.fedlex.admin.ch/eli/cc/1952/241_241_245/de).

<sup>(26)</sup> <https://www.rhf.admin.ch/dam/rhf/en/data/strafrecht/wegleitungen/formular-spezialtaetsvorbehalt-e.doc.download.doc/formular-spezialtaetsvorbehalt-e.doc>.

<sup>(27)</sup> [https://www.fedlex.admin.ch/eli/cc/1982/846\\_846\\_846/en](https://www.fedlex.admin.ch/eli/cc/1982/846_846_846/en).



## 4.9. Ukraine



- ▶ [Presentation on the Eurojust website](#)

Eurojust and Ukraine signed a Cooperation Agreement in June 2016, with the first LP taking up duties in August 2018.

Between 2019 and 2023, Ukraine has been involved in **25** drug trafficking cases (requesting and requested country) and participated in **6** coordination meetings, **2** JITs and **1** coordination centre.

So far, Ukraine has not experienced any major legal problems in its judicial cooperation with Member States in drug trafficking cases. As regards practical issues, in some cases the Ukrainian authorities experienced some challenges in qualifying substances as drugs, for example where substances considered as medicines in the EU are illegal narcotics in Ukraine or vice versa <sup>(28)</sup>. Assistance from the Eurojust LP is mostly sought in cases of:

- ▶ the need for rapid execution of MLA requests;
- ▶ identification of the relevant Ukrainian/EU competent authority for further direct cooperation;
- ▶ coordination of actions when several countries are involved;
- ▶ rapid obtention of permissions for control deliveries;
- ▶ setting up a JIT.

### General information

- ▶ **Dual criminality** is not a prerequisite for MLAs, so MLA requests may be executed. However, extradition is not possible, as dual criminality is still required.
- ▶ **The quality of translation** is an occasional problem. Sometimes the translation is not very good, or the request is translated into a language not provided for in the international treaty. Despite English and French being officially accepted as languages under the 1959 Convention, it should be noted that Ukrainian authorities will still have to translate the request into Ukrainian. If the matter is urgent, it is advisable to send the request directly in Ukrainian to avoid any potential delays.
- ▶ **Controlled deliveries** are possible. However, there is not much experience with such requests from Member States, as most originate from non-EU countries and are handled in Ukraine or at the bilateral level. In a case of controlled delivery, if the date or route are still unknown, the Ukrainian LP can ensure the swift transmission of MLA requests to all involved states via the National Desks at Eurojust.

### Legal instruments for judicial cooperation

- ▶ Council of Europe European Convention on Mutual Assistance in Criminal Matters, 1959 and its second additional protocol.
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention against Transnational Organized Crime (UNTOC).
- ▶ Bilateral agreements (for example with Baltic countries, Poland and other non-EU countries).

<sup>(28)</sup> Example from an older case: Subutex.

- ▶ Ukraine can offer nearly all the requested legal assistance, but most of the coercive measures require a court order as per Ukrainian law. The related court decision of another country is prejudicial to Ukrainian authorities. It is recommended to attach the court order to the MLA request to expedite the process. Due to a rather formalised process, signatures, stamps and originals for the documents are required. Email explanations or submissions are acceptable only at the operational level. Submission by post is mandatory to obtain the materials for execution. If a country's legislation does not require a court order for a particular measure, it would be advantageous to state this fact in the MLA request.
- ▶ The main legal basis for establishment of a JIT is the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The authority in Ukraine that decides on setting up a JIT is the Prosecutor General's Office. Ukraine can only be a member of a JIT if there is an ongoing investigation in Ukraine and only in the pre-trial stage <sup>(29)</sup>. A formal request to set up the JIT is required. The Ukrainian LP at Eurojust mostly prepares the draft JIT agreement and organises the translation into Ukrainian.

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<sup>(29)</sup> For more details, see the chapter on Ukraine in the [Eurojust guidelines on JITs involving third countries](#).

## 4.10. United Kingdom



- ▶ [Presentation on the Eurojust website](#)

The United Kingdom has stationed an LP at Eurojust since 1 January 2021. The current LP took up duty in March 2022, supported by a team of assistants.

### Legal instruments for judicial cooperation

- ▶ Council of Europe's European Convention on Mutual Assistance in Criminal Matters, 1959 and its two additional protocols, supplemented by the [EU-UK Trade and Cooperation agreement \(TCA\)](#).
- ▶ No longer applied: EIO and the 2000 EU Convention on Mutual Assistance in Criminal Matters and its Protocols.

Between 2019 and 2023, the United Kingdom has been involved in **172** drug trafficking cases (requesting and requested country) and participated in **36** coordination meetings, **8** JITs and **3** coordination centres <sup>(30)</sup>.

Since the United Kingdom's withdrawal from the EU, the legal basis for MLA in criminal matters has changed. For example, in place of the EIO, the country has reverted to the drafting of international LORs for securing evidence required and for incoming requests to the United Kingdom. Recently, a [new form](#) has been introduced to assist in the drafting of requests <sup>(31)</sup>. The use of this form is mandatory since 1 September 2023. The same applies to arrest warrants, for which a specific [form](#) is to be used <sup>(32)</sup>.

The United Kingdom is limited in terms of establishing a JIT with countries that have not ratified the second additional protocol <sup>(33)</sup>.

For further details, see Eurojust's [note for judicial practitioners on future cooperation with the United Kingdom](#). Instructional guidance to assist with drafting MLA requests from Member States is also available online <sup>(34)</sup>.

Since its withdrawal from the EU, cooperation between EU and UK judicial authorities has remained largely the same. The method of obtaining the evidence, i.e. MLA requests in place of EIO, has changed, however the ability to engage in judicial cooperation, in particular JITs, remains largely unchanged.

In relation to drugs cases, there is a limit on the ability of the United Kingdom to undertake some covert action on an evidential basis. Intercept material can be obtained only for intelligence purposes and would not be able to be used evidentially by another country. On the other hand, material obtained by another country, of their own volition, can be used in UK courts. Intercept material obtained within the United Kingdom is ordinarily used as intelligence to develop an investigation and to obtain arrest/search warrants, depending on the strength of the intelligence and on a case-by-case analysis.

<sup>(30)</sup> Figures concerning the United Kingdom for the period 1 January 2019 to 31 January 2020 relate to it as a Member State, and for the period 1 February 2020 to 31 July 2023 as a third country.

<sup>(31)</sup> Mentioned under Article 635 of the EU-UK Trade and Cooperation Agreement.

<sup>(32)</sup> Article 606 and Annex 43 of the EU-UK Trade and Cooperation Agreement.

<sup>(33)</sup> The United Kingdom can and has also used:

— Article 49 of the United Nations Convention against Corruption (2003);

— Article 19 of the United Nations Convention against Transnational Organized Crime (2000);

— Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

For more details on JITs with the United Kingdom, see the [Eurojust and JITs Network Secretariat joint Guidelines on JITs involving third countries](#), p. 31.

<sup>(34)</sup> EU mutual legal assistance instructional guidance – GOV.UK ([www.gov.uk](http://www.gov.uk)) in French, German, Polish, Portuguese and Spanish. See also [Guidelines for authorities outside of the UK](#).

Prosecutors can obtain evidence from outside the United Kingdom using MLA. This takes the form of a formal request issued by a designated prosecuting authority or a court. A prosecutor is not always required to obtain material from outside the United Kingdom; often it can be obtained by investigators through police cooperation channels, dependent upon each country. A distinction should be made with regards to materials obtained for intelligence purposes and those for evidence. Ordinarily, material will be obtained on an intelligence perspective on a police-to-police basis, before a targeting MLA request. This is often referred to as police-to-police informal cooperation, pre-MLA assistance or mutual administrative assistance. The appropriate mechanism to be used to obtain evidence from outside the United Kingdom generally depends on the type of assistance being sought and the domestic legislation of the country from which the assistance is sought. However, in some circumstance, dependent upon the countries and the material requested, it can be provided to police directly by way of spontaneous exchange of material for the purpose of use as evidence.

Police-to-police channels are encouraged from the outset via Interpol.

Guidance in relation to controlled deliveries, surveillance and phone intercepts can be found within the MLA guidelines issued. These can be found here:

Mutual legal assistance – GOV.UK ([www.gov.uk](http://www.gov.uk)) or <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3741>.

For a freezing order/restraint, the use of a form is mandatory <sup>(35)</sup>. A special department within the Crown Prosecution Service deals with this, even after a conviction.

Within the United Kingdom, sentencing guidelines are often published with regards to some offences, categorising the harm and culpability of a convicted person. When sentencing, a judge can step outside of the ranges should there be sufficient rationale for doing so, once hearing the aggravating and mitigating factors of the case <sup>(36)</sup>.

For more details about the UK judicial system and judicial cooperation, please visit the [country section of the EJN website](#).

<sup>(35)</sup> Annex 46 of the EU–UK Trade and Cooperation Agreement (<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3486>).

<sup>(36)</sup> See [here](#) for the General Sentencing Council website. In respect of drug trafficking, the courts decide firstly upon the role of the individual, which will be either leading, significant, or lesser, before deciding upon the category and class of offense(s). As a starting point, the guidelines take someone who has been found guilty after trial, and has no previous convictions. Should a person plead guilty at any stage from the commencement of criminal proceedings they will be entitled to up to one third off their sentence. Should they have previous convictions, this will aggravate (i.e. increase) the potential sentence. Once this has been determined, the courts will hear related aggravating features, i.e. previous convictions, exploiting a vulnerable person, use of weapons, and previous convictions, before hearing factors which mitigate the offence, i.e. pressure/coercion, no previous convictions, one-off incident, age/maturity/mental capacity. The aggravating and mitigating features within the guidelines are non-exhaustive, i.e. additional ones can be referenced if relevant to the case. See also [Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another](#) – Sentencing ([sentencingcouncil.org.uk](http://sentencingcouncil.org.uk)).

## 4.11. United States



- ▶ [Presentation on the Eurojust website](#)

Eurojust and the United States signed a Cooperation Agreement in November 2006, with the first LP taking up duties in January 2012. The current LP took up duties in August 2021, and a Deputy LP in April 2022.

Between 2019 and 2023, the United States has been involved in **21** drug trafficking cases (requesting and requested country) and participated in **15** coordination meetings and **1** coordination centre.

The United States and the Member States enjoy a strong level of cooperation when it comes to combating organised crime groups involved in illicit drug manufacturing and trafficking, and particularly **organised crime groups** involved in the cocaine and synthetic drug trade, including fentanyl. Investigations have increasingly focused on darknet marketplaces and encrypted devices that facilitate their drug trafficking activities <sup>(37)</sup>.

At the prosecution level, the Narcotic and Dangerous Drug Section within the Department of Justice's (DOJ) Criminal Division and the United States Attorneys' Offices located around the country, individually or in partnership, investigate and prosecute priority international drug trafficking groups. Their work is often complemented by other components within DOJ's Criminal Division, including the Money Laundering and Asset Recovery Section, the Computer Crime and Intellectual Property Section and the Office of International Affairs. In certain cases, state and local investigators and prosecutors may also be involved.

DOJ has two LPs stationed at Eurojust. They facilitate coordination meetings, provide training sessions and contribute to Eurojust-based practitioner networks and projects.

### Best practices and challenges

- ▶ **Direct cooperation** with the EU counterparts responsible for the execution of MLA requests. Such communications may occur **before** the request is submitted, in order to prepare the groundwork for its execution and to ensure it reflects information from foreign authorities regarding what is feasible and how best to obtain the requested information. Particularly in dynamic and complex cases, such approaches can facilitate and expedite positive results.
- ▶ **Presence and observation of witness interviews and searches** in certain circumstances.
- ▶ **Adherence to confidentiality provisions in MLA requests.** It is essential that the requested Member State honour a request from the United States that the request – and the information contained therein – be kept confidential. The unauthorised disclosure of confidential requests may prejudice the specific investigation, and may also have a chilling effect on the use of the MLA channel in future cases, when maintaining the confidentiality of information is necessary.

### Legal instruments for judicial cooperation

- ▶ Bilateral MLA treaties with Member States.
- ▶ Multilateral conventions: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, which, for example, contains provisions on the confiscation of narcotic drugs and psychotropic substances, the freezing and confiscation of proceeds from the trafficking of such substances, and controlled deliveries; United Nations Convention Against Transnational Organized Crime (UNTOC), which, for example, contains provisions on spontaneous exchanges of information, as well as special investigative techniques such as controlled deliveries, surveillance, and undercover operations.

<sup>(37)</sup> For example, Op. SpecTor, the seizure of Hydra market, the takedown of ANOM.

- ▶ Advanced Review of Information Responsive to MLA requests. In certain circumstances, it can be helpful for US authorities to review information obtained by the Member States in response to a US request before the Member State transmits the full response in official form, particularly in cases where there is urgency and/or when there may be a delay in completing the procedural steps necessary to provide the official response.
- ▶ Requests from Member States to the United States – probable cause requirement.

When addressing MLA requests to the United States, practitioners should take into account that US prosecutors generally must satisfy a **probable cause** requirement to secure a warrant from a US court to: (1) search a location and seize evidence or proceeds of a crime; (2) cause the production of the content of communications from communications and other electronic service providers; or (3) arrest an individual upon belief that the person committed an offense. Probable cause is a requirement of the Fourth Amendment to the US Constitution, which provides that ‘... no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’ In order to obtain an arrest warrant, the court must find that there is probable cause to believe that a crime has been committed and that the person sought for arrest committed the offense. The ‘substance of all the definitions of probable cause is a reasonable ground for belief of guilt’<sup>(38)</sup>. Similarly, the probable cause requirement permits US courts to issue warrants to conduct searches only when a prosecutor can establish that there is probable cause to believe that a crime has been committed and that the evidence of that crime will be found in the place to be searched<sup>(39)</sup>.

MLA requests requesting a search and seizure in the United States should describe a **specific location** to be searched and the **specific items** to be seized. In addition, the request should **specify the sources of information** supporting the belief that a crime was committed, and that evidence of a crime will be found in the location to be searched<sup>(40)</sup>. The request should also include a **description of any other evidence** uncovered by the investigators **that corroborates** the statements of the source(s)<sup>(41)</sup>.

## JITs

Article 5 of the Agreement on Mutual Legal Assistance between the United States of America and the European Union provides a legal framework for the United States and Member States to participate in JITs. The United States considers whether to participate in a JIT, and the terms of any such participation, on a case-by-case basis. In evaluating whether to participate in a JIT, the United States considers, among other factors, whether the objectives could be accomplished through alternative means, including through other law-enforcement-to-law-enforcement channels and MLA requests. Given that the United States and Member States often collaborate effectively through such alternative channels, and given that such channels can be more flexible in nature and have the benefit of being implemented rapidly, in many cases the United States will prefer to proceed on the basis of existing working arrangements, rather than entering into a JIT.

The terms and conditions under which the United States may participate in a JIT may vary significantly from the terms and conditions agreed upon between Member States, due to differences between the US and Member State legal systems. In preparing a JIT agreement, the drafters should consider the extent of

<sup>(38)</sup> *Brinegar v United States*, 338 U.S. 160, 175 (1949), and that belief must be particularised with respect to the person to be arrested, *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

<sup>(39)</sup> There is probable cause when the available facts ‘would warrant a person of reasonable caution’ to believe ‘that contraband or evidence of a crime is present’ in the place to be searched. *Florida v Harris*, 568 U.S. 237, 243 (2013).

<sup>(40)</sup> The source(s) of the information upon which the request is based must be trustworthy. A person is usually considered a trustworthy source if the person is an ordinary citizen or a law enforcement or other government official. If the source has a criminal history, generally, additional information should be provided to demonstrate that the information is reliable.

<sup>(41)</sup> Additional information for foreign authorities regarding the probable cause requirement can be found on the website of the U.S. Department of Justice, Office of International Affairs, [Resources for Foreign Authorities](#).

detail required. In general, a more streamlined text than that used between Member States will provide the necessary flexibility, while still allowing for a sufficient degree of precision in relation to foreseeable circumstances, and supplementary provisions can be agreed upon should circumstances make greater precision necessary.

Inquiries regarding US participation in a JIT should be directed to the U.S. Department of Justice, Criminal Division, Office of International Affairs. In matters that involve Eurojust, such inquiries can be submitted through the US LP. The composition, duration, location, organisation, functioning and other aspects of the JIT will be negotiated with input from the US case team that is working on the investigation, including prosecutors.

## 5. Conclusions

Eurojust's experience and the replies of the seconded LPs regarding judicial cooperation with third countries in drug trafficking cases allow the following, non-exhaustive conclusions to be drawn.

- ▶ Based on the figures from 2019 to 2022, there is reason to expect a further increase in drug trafficking cases referred to at least one country with an LP posted at Eurojust. This assumption is supported by the launch and implementation of new projects focusing on the Western Balkans (Enhancing Cross-Border Cooperation in Criminal Justice in the Western Balkans (CRIMJUST WB); EU Support to Strengthen the Fight against Migrant Smuggling and Trafficking in Human Beings in the Western Balkans (EU4FAST)).
- ▶ While language barriers often remain a significant obstacle to effective cooperation in drug trafficking cases, it should be noted that in urgent cases requiring immediate action, the use of English as the language of communication is accepted in all countries.
- ▶ Judicial authorities are strongly encouraged to consider greater involvement of Eurojust whenever cooperation between Member States and third countries with a Eurojust LP is considered important. The appointment of an LP adds value to MLA procedures by making them more effective: the execution time is shortened, the legal basis for cooperation can be clarified before a request is drafted, the competent authority can be identified immediately, possible problems can be addressed at an early stage and solutions can be found, etc. This is particularly important in urgent cases, such as controlled deliveries, where the execution of a request can be facilitated more easily than through the usual formal channels.
- ▶ There is a solid legal basis for judicial cooperation in all countries. Covert investigative measures such as controlled deliveries, telephone intercepts, surveillance, undercover agents, etc. are a feasible option everywhere, although some practical difficulties sometimes arise.
- ▶ The setting up of a JIT is possible in all countries from a legal and practical point of view. The relevant legislation is in place and experience shows that this tool is an excellent means of cooperation in appropriate cases, particularly for third countries bound by the traditional MLA regime.
- ▶ Direct contact between judicial authorities is considered best practice and is highly encouraged, as long as the legal framework permits such communication.
- ▶ Before issuing an MLA request, it is advisable to use law enforcement channels to contact a foreign authority to assess if specific information/evidence can be obtained through these channels (e.g. United Kingdom).



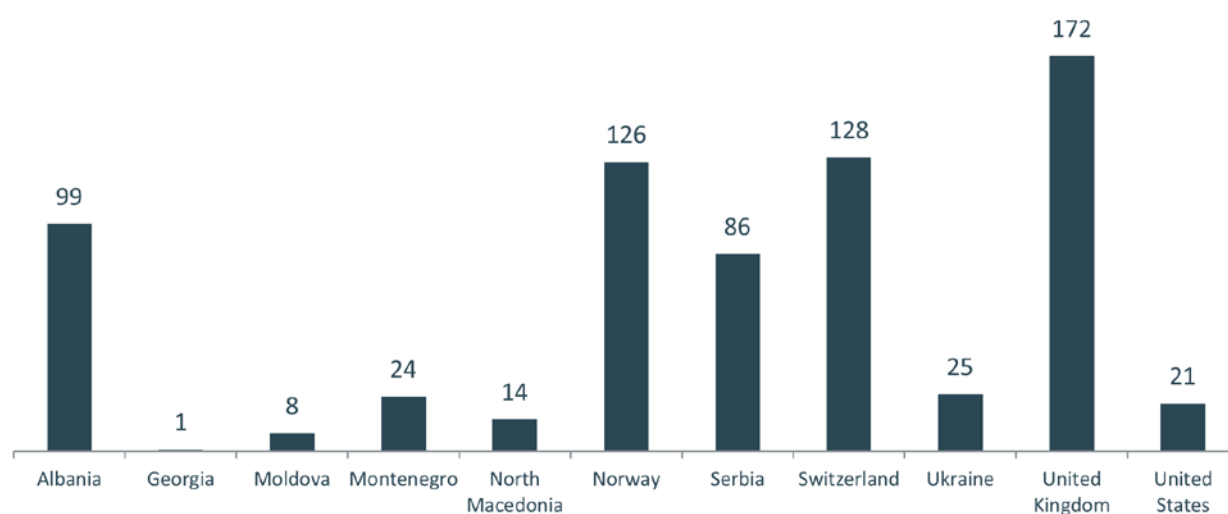
## 6. Statistics

Reporting period: 1 January 2019–31 December 2023.

- ▶ The sources for these statistics are the Eurojust Case Management System and an overview with data on coordination meetings, coordination centres and JITs.
- ▶ Coordination meetings and coordination centres that took place during the reporting period are included in the report.
- ▶ LP cases have been considered for this report.
- ▶ One case can deal with more than one crime type.
- ▶ Due to the ongoing nature of cases, the figures may change after the reporting date.
- ▶ Figures concerning the United Kingdom for the period 1 January 2019 to 31 January 2020 relate to the country as a Member State, and for the period 1 February 2020 to 31 July 2023 as a third country. The UK LP took up duties at Eurojust on 1 January 2021.

The following chart shows the cases of drug trafficking per involved country (as requesting and requested).

### Drug trafficking cases per involved country

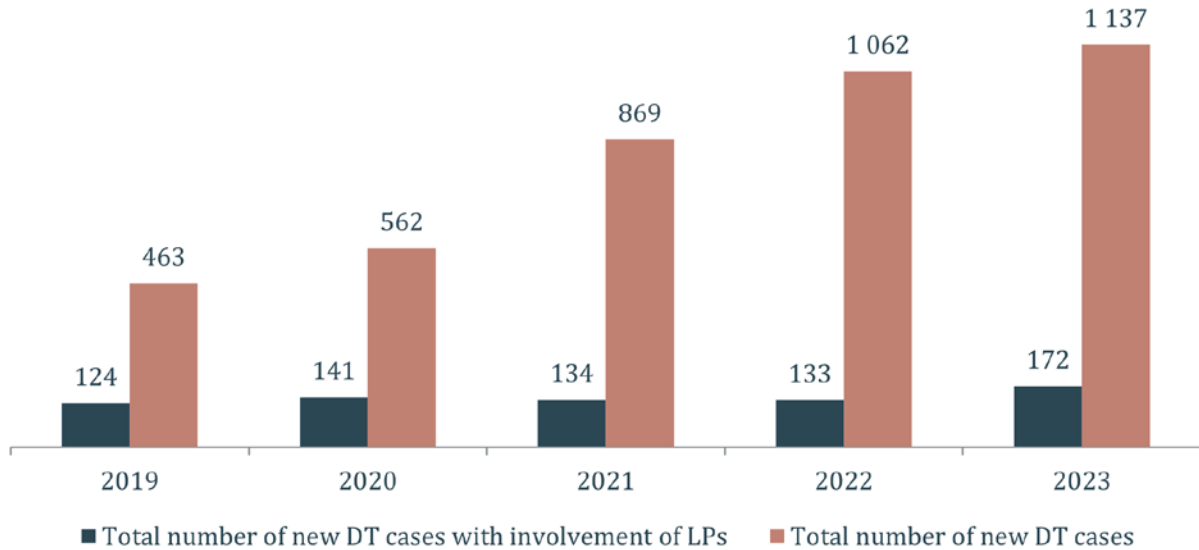


The following table shows the figures on drug trafficking cases per year and per country involved (as requesting and requested).

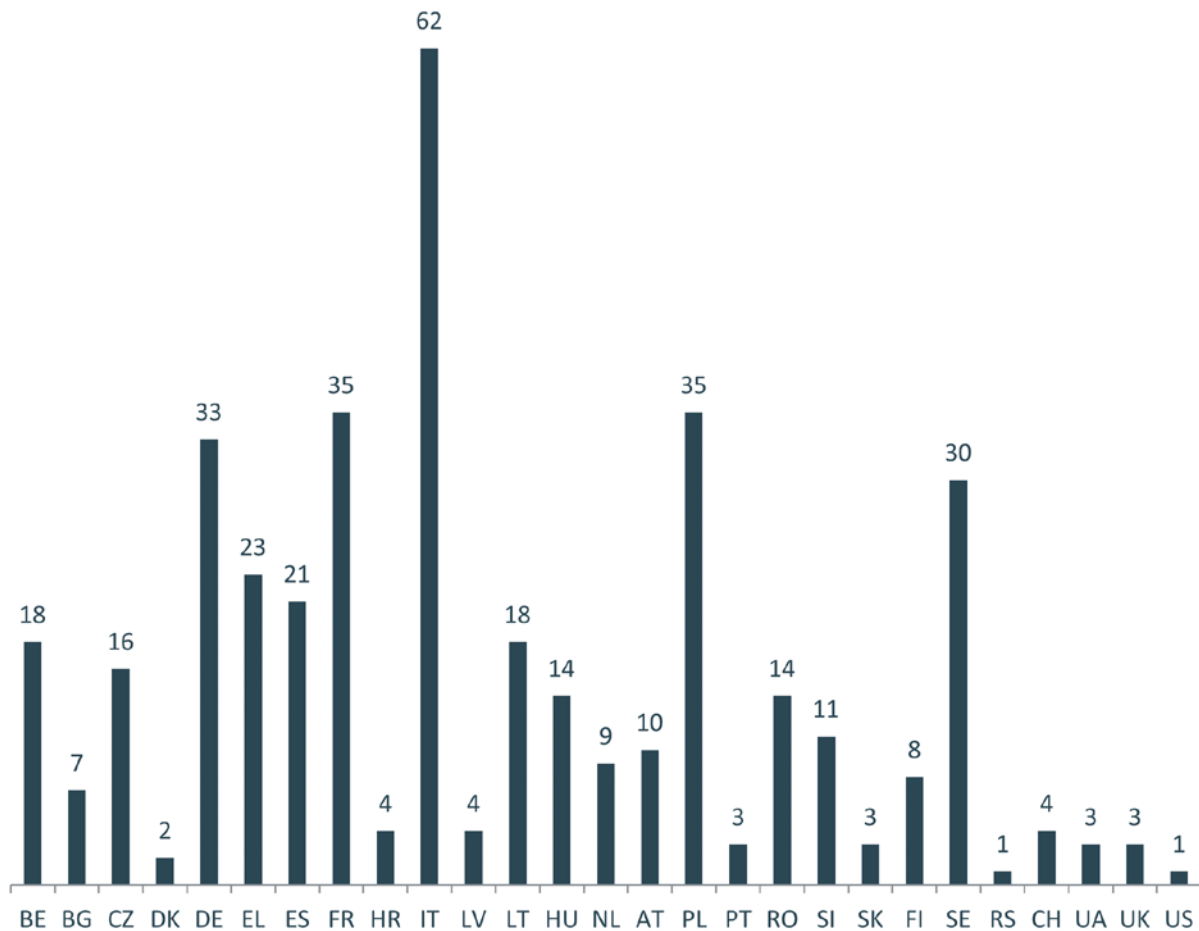
Country	2019	2020	2021	2022	2023	Total
Albania (AL)	10	14	16	19	40	99
Georgia (GE)	-	-	-	-	1	1
Moldova (MD)	1	-	1	2	4	8
Montenegro (ME)	1	3	2	8	10	24
North Macedonia (MK)	-	6	2	3	3	14
Norway (NO)	22	28	28	28	20	126
Serbia (RS)	7	12	12	19	36	86
Switzerland (CH)	33	35	30	16	14	128
Ukraine (UA)	5	5	4	3	8	25
United Kingdom (UK)	41	38	32	33	28	172
United States (US)	4	-	7	2	8	21
<b>Total</b>	<b>124</b>	<b>141</b>	<b>134</b>	<b>133</b>	<b>172</b>	<b>704</b>

For the period 1 January 2019 to 31 December 2023, a total of 4 093 new cases on drug trafficking were registered at Eurojust. The following chart reflects the total number of new registered cases on drug trafficking including all Member States and third countries, and the ones on drug trafficking with the involvement of LPs.

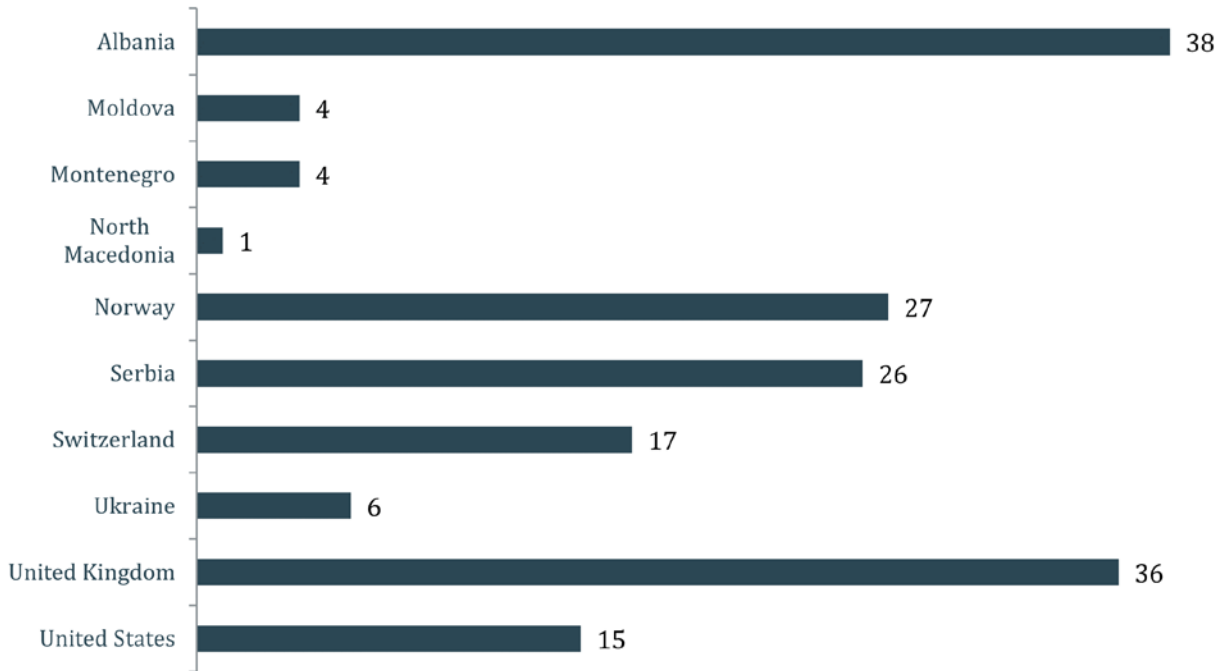
**Number of new registered cases on drug trafficking**



**Requesting countries in drug trafficking cases registered towards LPs**

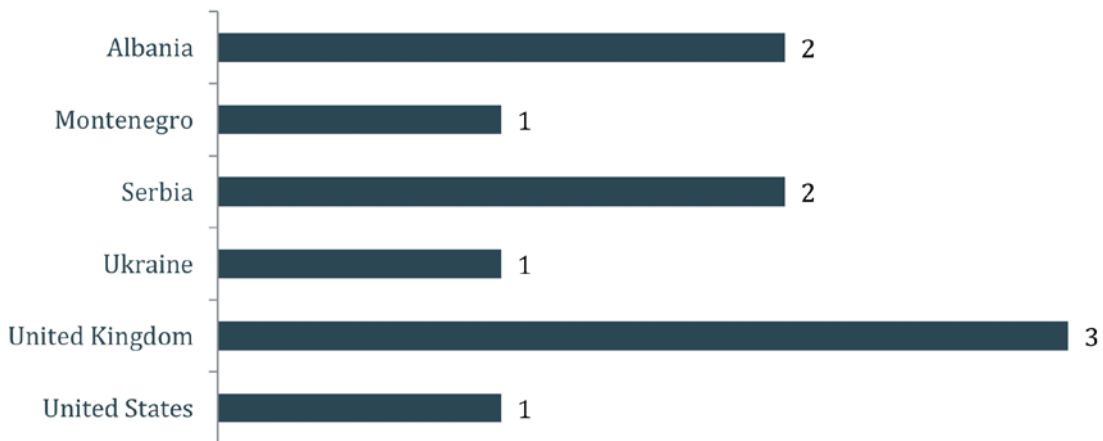


**Participation in coordination meetings on drug trafficking  
2019-2023**



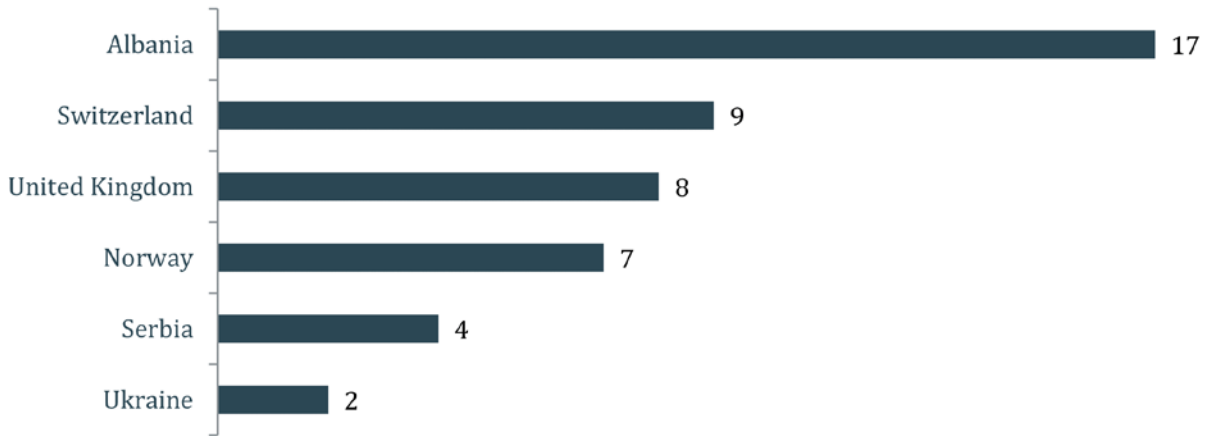
The United Kingdom organised 3 coordination meetings (1 as a Member State and 2 as a third country) and was invited to a total of 33 (7 as a Member State and 26 as a third country).

**Participation in coordination centres on drug trafficking  
2019-2023**



The United Kingdom was invited a total of 3 times (1 as a Member State and 2 as a third country).

**Supported JITs on drug trafficking  
2019-2023**



The United Kingdom was involved in a total of 8 JITs (6 as a Member State and 2 as a third country).







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Print: ISBN 978-92-9404-296-5 doi:10.2812/23295 QP-05-24-217-EN-C  
PDF: ISBN 978-92-9404-297-2 doi:10.2812/35988 QP-05-24-217-EN-N



Publications Office  
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