



acjrd

*"Heading towards a federal criminal justice system?
Past, present and future of EU Justice"*

SEMINAR & CHRISTMAS NETWORKING EVENT

11th December 2023, 5pm

The Blue Room, The Law Society

EUROPEAN JUDICIAL NETWORK

25 years connecting justice

Dublin 11 December 2023

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1. History of judicial cooperation

Irish legislation

- Foreign Tribunals Evidence Act, 1856 & Extradition Act 1870.
- Criminal Law (Jurisdiction) Act, 1976 – to allow for co-operation between the Northern Irish and Irish jurisdictions combatting terrorist violence (including harmonisation of substantive law – double criminality and taking of evidence).
- Criminal Justice Act, 1994 (to give effect to the Council of Europe's Convention on Mutual Assistance in Criminal Matters, 1959).
- Criminal Justice (Mutual Assistance) Act, 2008 – to incorporate into Irish law conventions, agreements and protocols in relation to mutual assistance agreed subsequent to 1984 (no time limits and very far-reaching Garda powers to seize material on search).

Legal framework for cooperation on cross-border cases (aside EU legislation and prior)

- Bi-lateral agreements



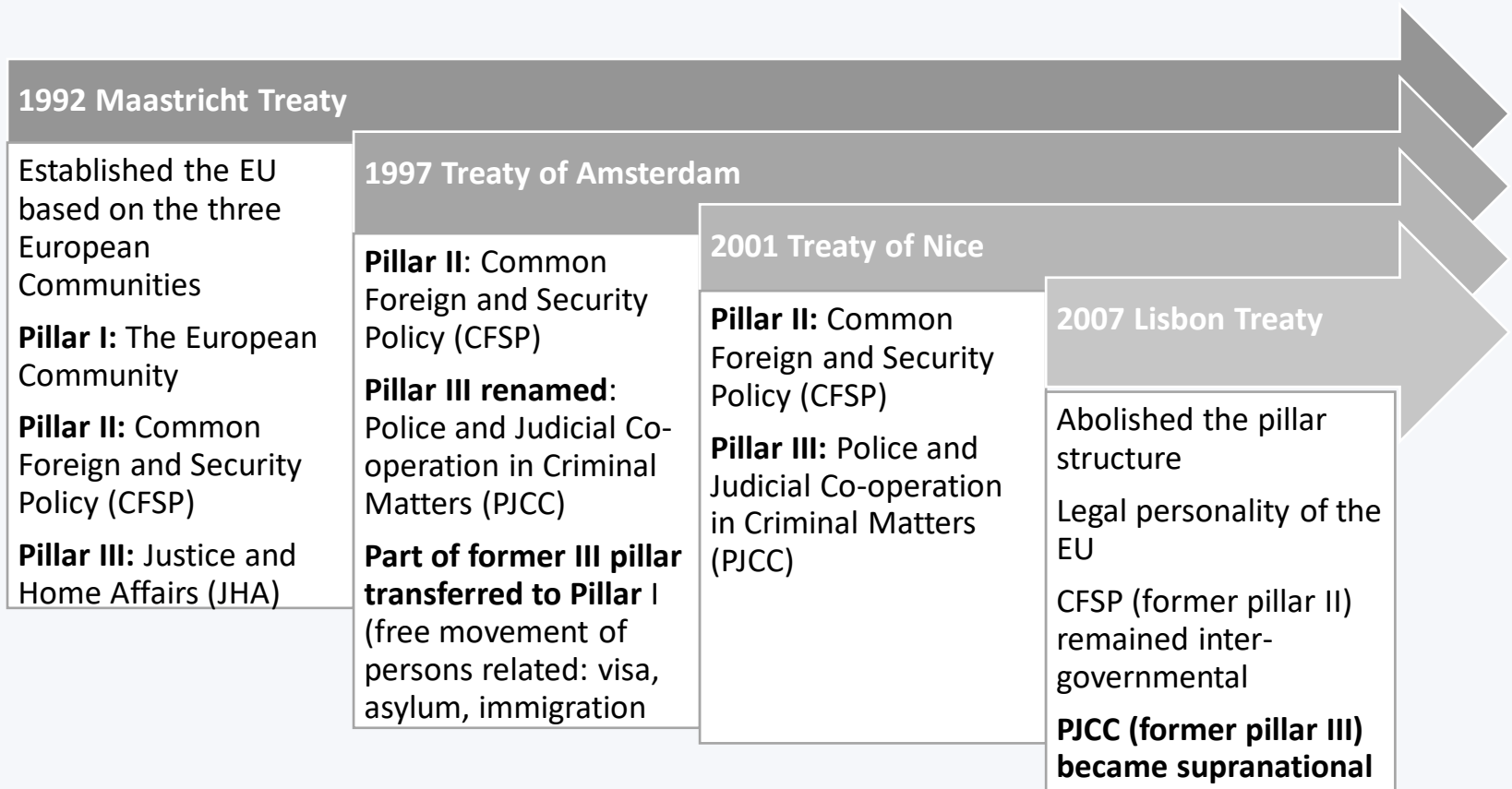
- Council of Europe instruments:
 - European Convention on Human Rights (ECHR) (1950);
 - The European Convention 1959 on Mutual Assistance in Criminal Matters and its protocols, in particular Second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)
 - The European Convention 1957 on Extradition
 - The European Convention 1972 on Transfer of Proceeding
 - Budapest Convention (The Convention on Cybercrime, 2001)



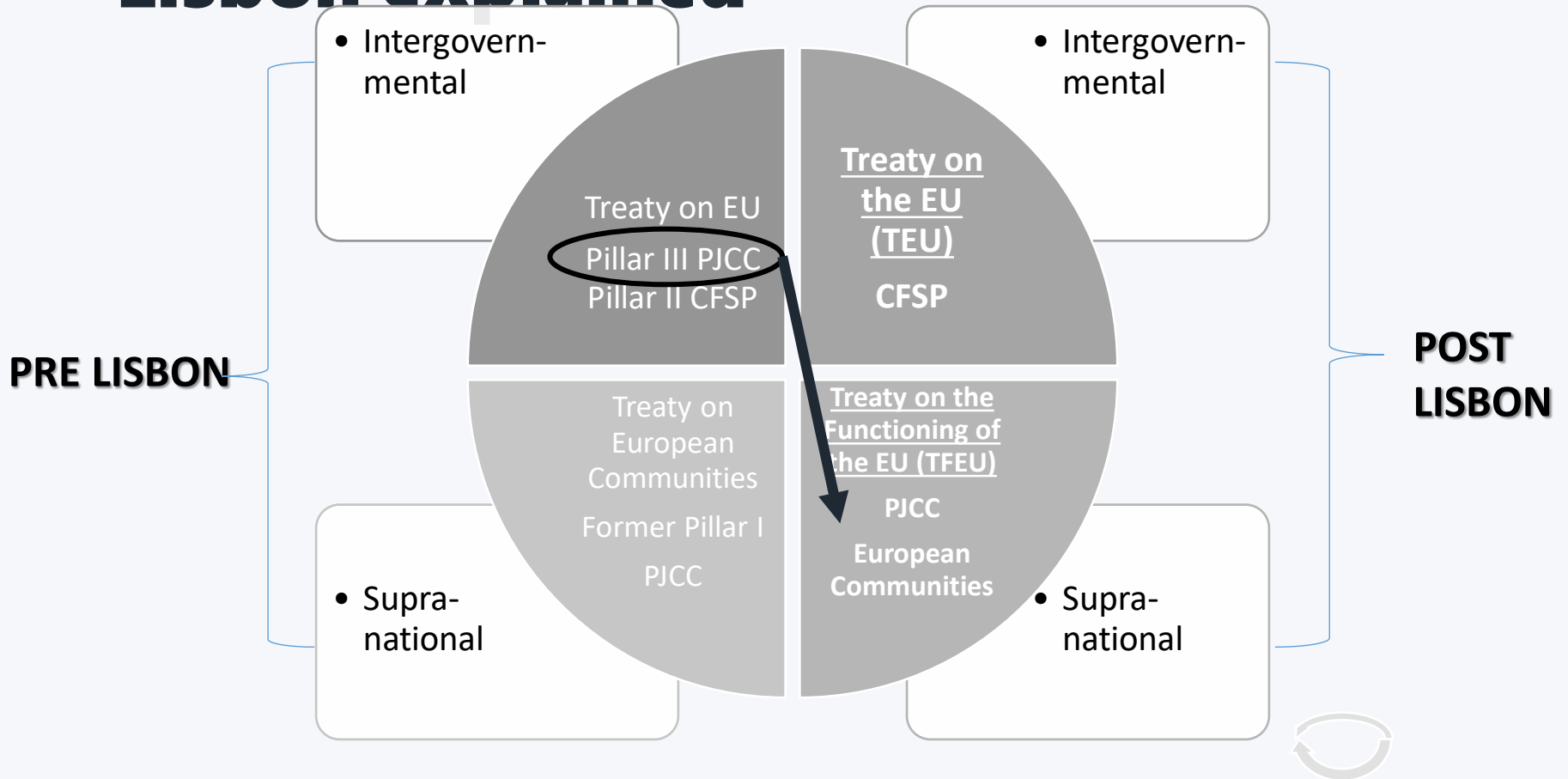
- UN instruments:
 - Palermo convention (United Nations Convention Against Transnational Organized Crime, UNTOC, 2000)
- Reciprocity

2. Development in cross-border judicial cooperation in the EU

EU developments: from Maastricht to Lisbon



EU developments: pre- and post Lisbon explained



EU developments: aspects of judicial cooperation in criminal matters

1992 Maastricht Treaty

- Pillar III allowed for greater cooperation in the field of JHA – required unanimous agreement.

1997 Treaty of Amsterdam

Framework Decisions
Mutual Recognition as the cornerstone of judicial cooperation: introduced in the Area of Freedom Security and Justice (AFSJ) & **Tampere Programme** (1999 – 2004)
European Judicial Network (EJN) created through Joint Action (1998)
Eurojust Decision (2002)

2007 Lisbon Treaty

- Regulations, Directives
Decisions
- EJM legal basis revised: EJM Decision (2008)
- Eurojust legal basis revised for the second time: Eurojust Regulation (2018)

EU developments: relevant provisions in Lisbon Treaty

- Chapter 4 of Title V Part Three, TFEU:
- Articles 82 – 86
- Emergency Break available to MSs: Art. 82.3
- Opt-Ins
- 2 speed potential where initiative backed by 9 MS
- Creates variable geometry of situation and less legal certainty

Protocol 21

- Ireland does not participate in EU measures in the Area of Freedom Security and Justice (o/w Justice and Home Affairs) unless it wants to...effect sovereignty, security, challenges requiring cross-border cooperation and integration at EU level.
- Ireland's Declaration confirming the intention to participate to the maximum extent possible, particularly those relating to police cooperation.
- & Article 8: Ireland can notify that it no longer wishes to apply the Protocol.
- Ireland's non-participation in Schengen largely as a result of the Common Travel Area arrangement with the UK.

EU developments: judicial cooperation post Lisbon

- Directive on the European Investigation Order (2014)
- EPPO (established in 2017, operational since 2021)
- Regulation on freezing and confiscation orders (2018)
- e-evidence legislative package: Regulation on European Production Orders and European Preservation Orders for electronic evidence and Directive on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings (2023)
- Regulation on transfer of criminal proceedings (ongoing)

Brexit

- After UK referendum in 2016 it commenced with Article 50 procedure
- TCA with surrender procedure – more grounds for refusal
- Possible erosion of rights in particular if the UK exits the European Convention on Human Rights
- Lengthening of time for surrender

Developments in Irish criminal law

- As per the Government Strategic Plan and legislative priorities Ireland has largely kept up with legislative requirements – judged by many factors including international and regional studies (ICCL, Amnesty? ICCL?) and number of infringements?
- Transfer of Sentenced Persons.
- Amendments to the EAW Act 2003
- Criminal Procedural Act 2021 – for the first time provides for the introduction of preliminary trial hearings for trial on indictment.
- Ongoing review of use of Protocol 21.

Other Challenges

- Rule of Law issues in some Member States – Article 7 infringement proceeding against Poland?
- Further enlargement of the Union?
- External event – natural disaster/pandemic or other seismic event impacting on the EU/Member States?
- Harmonisation v Flexibility for the sake of divergent national practices and procedures?
- Demonstrating the advantages of variable geometry as a useful tool for intergovernmental cooperation in more sensitive policy areas?
- Creates the necessity of a very active diplomacy, in particular at the level of the Perm Rep in Brussels?
- How to keep up? With policy, legislation and implementation?
- The answer – a “two-speed EU”?

Court of Justice of the EU

- Interpretation of legal instruments in judicial cooperation and creation of autonomous concepts of EU law
- Fundamental Rights and Prison Conditions (*Aranyosi and Caldaru*)
- Impact on the application of EU law on the national level – e.g. in absentia and ne bis in idem
- Impact on the structure of the national judicial systems - e.g. concepts of “issuing and executing authorities”
- Irish High Court – an activist Court – many preliminary references to the CJEU.
- Infringements

3. EU actors in cross-border cooperation

European Judicial Network:

Connecting Justice since 1998 – 25 years of EJM

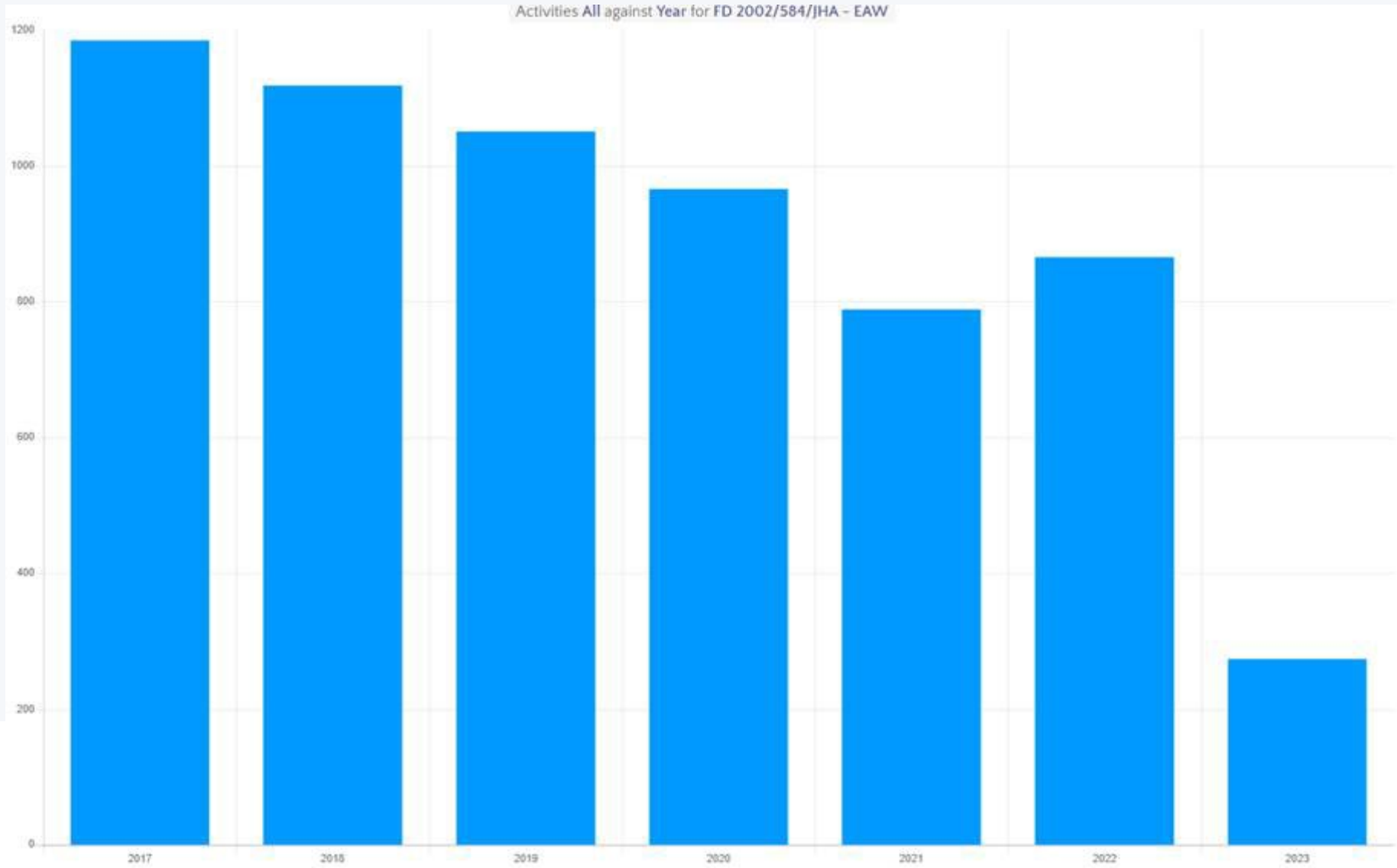
The EJM is a European Union Network consisting of more than 400 competent authorities and experts in international judicial cooperation: Ministries of Justice, Prosecution Offices, Judiciary and Law Enforcement Agents



The EJM supported more than **70.000** requests for cross-border investigations over the last 10 years.

The EJM is an effective and flexible structure that facilitates judicial cooperation by consolidating best practices, improving the implementation of international legal instruments and creating mutual trust within the EU and beyond!

Total number of EJN EAW cases (2017 – 2023 partial reporting)



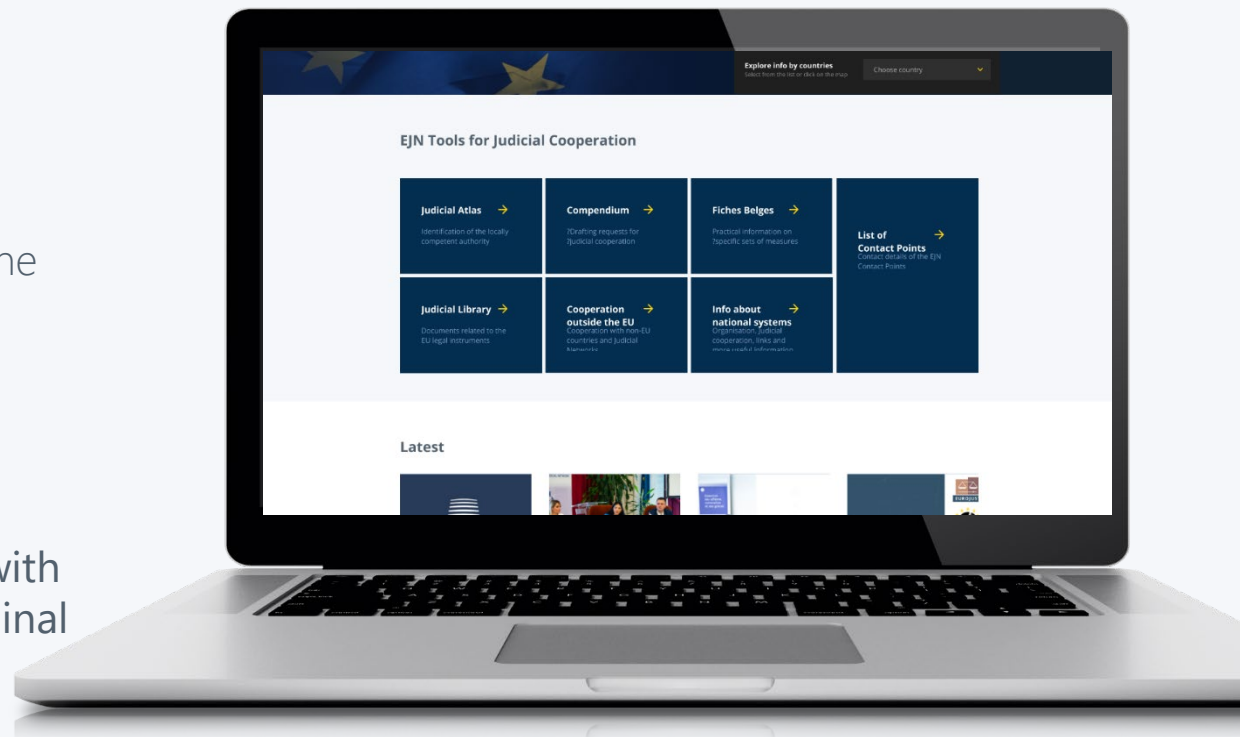
EJN website | EJN e-Tools

5 e-tools

- Fiches Belges
- Atlas
- Compendium
- Judicial Library
- Contact Points (only for the CPs)

Accessible from the **home page** of the EJN website

For **practitioners** dealing with judicial cooperation in criminal law cases



Eurojust

- ▶ Legal basis Eurojust Regulation (2018/1727)
- ▶ The European Union's Judicial Cooperation Unit
- ▶ **27 Member States** (27 desks, including Denmark)
- ▶ **12 Third States** with a cooperation agreement with EJ (including 4 countries in the Western Balkans:) Albania, Montenegro, North Macedonia and Serbia and Georgia, Iceland, Liechtenstein, Moldova, Norway, Switzerland, Ukraine and the USA – *exchange of operational information is possible*
- ▶ **10 Liaison Prosecutors** at EJ: Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States of America
- ▶ Various projects: SIRIUS, EuroMed, CrimJust

... coordinating investigation and prosecution in criminal cases

Eurojust's Mission:

to stimulate and improve the coordination of investigation and prosecution among the competent judicial authorities of the European Union Member States when they deal with serious cross-border and organised crime.

Eurojust Reg. Amendment (CICED)
2022/838

Eurojust Reg. Amendment (CTR)
2023/2131

Cooperation and complementarity with Eurojust

- Legal Basis **Article 10 of EJN Decision**
Article 48 of Eurojust Regulation
- Privileged relations | Consultation | Complementarity
- Annual **meetings** between *the EJN Presidency Board, Eurojust Presidency Team & the EJN Secretariat*
- Participation in Eurojust WGs meetings (e.g. Judicial Cooperation Instruments Team)
- Cooperation with other networks within Eurojust: **JITs Network, Genocide Network** and **EJCN**
- CISED and ICPA

EUROPOL



 **EUROPOL**
The Hague, Netherlands



“Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy”

(Europol Regulation)



The EPPO

- ▶ is the independent prosecution office of the EU
Established to improve the level of protection of the financial interests of the EU
- ▶ Supranational prosecution office with unique structure, operational since the 1st of June 2021
- ▶ investigates, prosecutes, and brings to judgment crimes affecting the financial interests of the EU.

PC-OC

- The PC (Problèmes Criminels)-OC (Operation of Conventions) is a **Council of Europe committee of experts in the field of international cooperation in criminal matters.**
 - Monitors the application of the Council of Europe conventions related to international co-operation in criminal matters (in particular extradition, mutual legal assistance and transfer of sentenced persons) and proposes new instruments in this field.
 - Provides for tools, such as country information, model forms, practical guidelines, etc. for practitioners
- Composed of representatives of the central authorities of the 47 member states of the Council of Europe and observers.
- National practitioners can make use of the expertise of the PC-OC Secretariat

OLAF

MISSION AND ACTIVITIES

Any illegal activity
Against EU
financial interests
(EU taxpayers'
interests)

Fraud, Irregularities
and Corruption

**Detect,
Investigate,
Protect**

Develop a sound
EU Anti-fraud
Policy

Investigate serious
wrongdoing of EU
staff

EJN cooperation with other regional networks



Specialized networks of practitioners

- ENPE-European Network of Prosecutors for the Environment
- EJCN – European Judicial Cybercrime Network
- European Ports Alliance

But also in police cooperation:

- CARIN Network
- ARO

4. Future of judicial cooperation

Future of judicial cooperation in the EU

New legislative initiatives:

- e-Evidence legislative package;
- Transfer of criminal proceedings;
- Directive on environmental crimes;

Digitalization of justice initiative:

- e- EDES;
- JITs collaboration platform;
- CTR
- ECRIS TCN

Future of EU institutions in judicial cooperation

- EPPO: proposals to extend the scope of the crimes dealt with and the resources (policing?) required;
- Proposed: Anti-Money Laundering Agency;
- The structure and governance of these agencies is dependent on the level of sovereignty that Member States are willing to give up to ensure that they have the resources, legal, operative and technical, to make the desired impact to safeguard the Area of Freedom, Security and Justice.

Thank you for your attention!

EUROPEAN JUDICIAL NETWORK
www.ejn-crimjust.europa.eu

