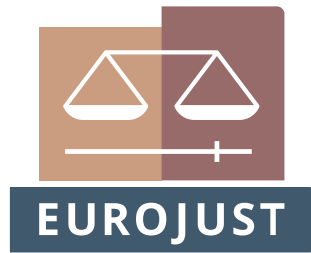


EUROJUST

Report on Eurojust's casework on victims' rights

A contribution to the European
Commission Coordinator for
Victims' Rights mapping exercise

February 2022



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Executive summary

Eurojust, the European Union Agency for Criminal Justice Cooperation, contributes to the fight against serious organised cross-border crime, by coordinating the work of national authorities – from the EU Member States as well as third States – in investigating and prosecuting transnational crime.

Although Eurojust's mandate focuses primarily on cooperation between judicial authorities, experience shows that prosecutors and investigative judges are often in the frontline of identifying and solving issues related to the exercise of victims' rights in a cross-border context.

For this reason, Eurojust is ideally placed to map and report on the challenges encountered by practitioners in this field and discussed between them when the agency is providing its support. This report provides an overview of these challenges in various EU priority crime areas, (Section 1) along with the best practices identified to overcome them (Section 2).

They relate in particular to:

- ▶ the definition and identification of victims (in particular in the case of a high number of victims and/or large-scale terrorist attacks);

- ▶ uncertainties about their procedural status (i.e. victims v. witnesses, or perpetrators of secondary offences);
- ▶ the need to anticipate and mitigate the risk of secondary or repeat victimisation;
- ▶ the consideration given to victims' interests when addressing jurisdiction issues;
- ▶ difficulties related to ensuring victims' compensation.

This broad experience, gained over the years, shows the value of including the victims' rights perspective when designing investigation and prosecution strategies to tackle cross-border crime. Eurojust is committed to supporting these efforts by including more systematically the victims' rights dimension within the support it provides to national judicial authorities, in particular in coordination meetings and Joint Investigation Teams.

In the context of the evaluation of Directive 2012/29/EU, the moment may be opportune to consider recognising and further enhancing Eurojust's role in this field within the EU legal framework.

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Introduction

This report draws on the experience gained by the European Union Agency for Criminal Justice Cooperation (Eurojust) in relation to victims' rights. Based on Eurojust casework and using case examples, the report identifies challenges faced by practitioners and presents solutions and best practices to overcome them.

Eurojust is a unique hub based in The Hague (The Netherlands) where national judicial authorities work closely together to fight serious organised cross-border crime. The role of the agency is to help make Europe a safer place by coordinating the work of national authorities – between the EU Member States as well as third States – in investigating and prosecuting transnational crime.

Eurojust facilitates the coordination of investigations and prosecutions by promoting the exchange of information, detecting cross-links between ongoing investigations, developing prosecutorial strategies and implementing joint actions.

Prosecutors and investigative judges play a pivotal role in ensuring the involvement of the victims in legal proceedings, as victims are often prime witnesses. Identifying and protecting victims is critical to ensure justice is done. Eurojust casework also indicates that a greater focus on victims leads to greater success in the

prosecution of, in particular, trafficking in human beings (THB) and counter-terrorism cases.

As judicial cooperation facilitator, Eurojust plays a critical role in ensuring timely and efficient coordination in cross-border cases involving victims. In particular, Eurojust is in a unique position to facilitate exchanges of information on victims to identify, rescue and protect them, and later on, when appropriate, ensure that they obtain their due compensation.

In 2021, Eurojust set up a dedicated working group to bring together the agency's expertise in this field. The main objectives of the working group are: (i) to promote more systematically the victims' rights dimension in the prosecution strategies discussed and agreed upon with Eurojust's support; and (ii) to ensure an effective and informed contribution to the the European Union's strategy on victims' rights and to the activities of the EU Victims' Rights Platform, of which Eurojust has been a member since its establishment in 2020.

Crime types such as THB, fraud, terrorism or cyber-enabled crimes each have their specificities and call for a tailored-made response to best identify and protect the victims. The report present the main challenges (Section 1) and the best practices identified to overcome them (Section 2).

1. Main challenges

Through its casework, Eurojust has identified several challenges in the protection of victims in cross-border cases. While some of such challenges are common to all victims (Section 1.1), others are more specific to the type of crime (Section 1.2.).

1.1. Cross-cutting issues

1.1.1. Legal, jurisdictional and procedural issues

In Eurojust casework, national authorities clarify that the definition of ‘victim’ needs to be interpreted in accordance with the law of the specific Member States involved in a cross-border case.

Practice shows that on occasion there might not be a straightforward interpretation on how to implement EU and international legal instruments, in particular in relation to the definition of victim and their protection. In this regard, the mere notion of victim as provided for by [Directive 2012/29/EU](#) on establishing minimum standards on the rights, support and protection of victims of crime (the victims’ rights Directive) might add to the complexity of securing victims’ rights. In terrorism cases for example, family members of victims can also enjoy a protective status.

Furthermore, the full implementation of the legislative framework governing victims’ rights is not yet complete. As of January 2021, a number of Member States had not completely transposed the victims’ rights Directive.

A further challenge is the absence of a clear definition of victims of corruption. This can pose issues both at the EU level and within Member States when applying provisions on victims’ rights in EU instruments. For example, Article 30 of [Regulation \(EU\) 2018/1805](#) on the mutual recognition of freezing orders and confiscation orders does not appear to exclude the possibility of restitution or compensation to victims of corruption, such as states or unsuccessful bidders. This provision might hence be seen as providing a narrow ground for restitution and compensation in corruption cases, especially if compared to Article 57(3)(c) of the [United Nations Convention Against Corruption](#), which enables the compensation of victims, without defining who this concerns. Such discrepancies ultimately leave the state at discretion to apply, or not, provisions governing the matter.

From a procedural and jurisdictional perspective, Eurojust has identified a series of challenges.

One of the difficulties is that victims can sometimes be witnesses as well, or, in some countries, they are only granted the status of witnesses. As Eurojust casework has shown, in some instances of THB or in some sham marriage cases, the same person might be seen as potential victim in one country’s investigation and suspect in another ⁽¹⁾. This raises questions regarding their procedural status. In this respect, Eurojust’s [Booklet on the judicial use of information following the debriefing of migrants at external borders](#) analyses, from different case examples and discussions among practitioners, how the matter is handled by national authorities. As the main outcome of this analysis, it appears that the legal status of migrants who give statements on the spot immediately after disembarkation is not regulated in a uniform way across the EU and in associated countries, notably for those who are potential victims of THB. The booklet indicates that the main legal classifications of such migrants are suspect or witness.

In complex cases of investment fraud, Eurojust helps national authorities to discuss the possible centralisation of the proceedings in one country. However, as highlighted in the Eurojust Guidelines on How to Prosecute Investment Fraud, jurisdiction is regulated differently in EU Member States. While some EU Member States can include victims from other countries in their proceedings if they have been defrauded by the same organised criminal group (OCG), others can prosecute only on the basis of the facts concerning their own victims if the perpetrators acted from abroad.

Shortcomings were identified when protecting victim’s rights notably within the context of the Regulation governing mutual recognition of freezing and confiscation orders. For example, in one case, a Member State issued a freezing order with a restitution request to the victim. However, in this particular case, the executing Member State declared it would not execute the freezing order on the grounds that the account of the suspect was frozen in a national investigation, despite the possibility provided by Article 10(1)(b) of the Regulation ⁽²⁾.

(1) See [Eurojust’s Report on National Legislation and Eurojust Casework Analysis on Sham Marriages](#), October 2020, and [Eurojust Report on Trafficking in Human Beings](#), February 2021.

(2) Art. 10 (1) (b) of Regulation (EU) 2018/1805 provides that ‘the executing authority may postpone the execution of a freezing order transmitted in accordance with Article 4 where the property is already the subject of an existing freezing order, in which case the execution of the freezing order **may be postponed until that existing order is withdrawn**’ (emphasis added).

Depending on national legislation, the status of victim is not always recognised at all stages of the proceeding.

In a Eurojust case, a freezing order was issued on the ground that a victim in the issuing state had been swindled into making a bank transfer to a bank account in the executing state. In this case, the funds had already been frozen in an ongoing investigation in the executing state. In the meantime, the bank compensated the victim and filed a claim for restitution/compensation.

Although the right to restitution/compensation is provided at the trial stage in the executing state, it is unclear whether the bank would qualify as a victim according to national law at the investigation stage.

In this case, discussions are ongoing on the possible way forward, namely the transfer of the investigation from the executing state to the issuing state and the freezing of the accounts in the execution of the freezing certificates issued by the issuing state where the bank has the status of victim at the investigation stage.

In some jurisdictions, it is not possible to freeze money/assets for the purpose of restitution or compensation of the victims in a cross border case even under Regulation 2018/1805/EU. In practical terms, the matter can be addressed by lifting the freezing order and issuing a civil order within the frame of a civil proceeding conducted in relation to the criminal proceeding.

In the context of the discussions related to the ongoing evaluation and impact assessment of [Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union](#), the need to, inter alia, strengthen asset recovery for the benefit of victims was raised by participants to the process with a view to a potential revision in 2022.

Finally, for several crime types, there are specific legal issues, such as the lack of uniform rules governing compensation across the EU for victims of terrorism (e.g. under a specific compensation regime for victims of terrorism or under the general compensation system for victims of crime) or the fact that the principle of full reparation is not applied in all states.

1.1.2. Logistical and technical challenges

Eurojust casework has identified a series of hindrances to the full observance of victims' rights. One of them

is the need to mitigate the high risk of secondary and repeat victimisation in cases of multiple cross-border requests for interviews with victims. The lack of knowledge of the victim of the language of the country or of its legal system was also identified as an obstacle to a satisfactory level of protection of the rights of the victims.

Another obstacle is the identification of victims, which might not be straightforward. For example, in the immediate aftermath of a terrorist attack, the main challenge is the registration and identification of victims, including victims who have suffered psychological damage. For victims of labour exploitation and victims in migrant smuggling cases where migrants have been trafficked, they are often not aware of their status as a 'victim', since they received funds themselves or agreed to the smuggling.

In other cases, such as investment fraud cases, getting a comprehensive overview of the victims can be difficult, as not all victims will file a report to the police for various reasons: victims may not (yet) be aware that they have been defrauded. This happens in particular when OCGs mix legal and fraudulent activities. Also, victims may have feelings of shame or they may have invested money of illicit origin.

Some criminal activities affect a large number of victims, in particular in cyber-enabled crimes such as investment fraud schemes whereby criminals aim to lure their victims into transferring them money with appealing 'get-rich-quick' schemes. In such cases, victims can be counted in the thousands. Such cases pose operational challenges mainly but not exclusively related to the identification and compensation of the victims.

The difficulty in compensating large numbers of victims in complex cases such as those of fraud or cyber-enabled crimes is exacerbated by the increase in these types of crimes accompanied by an imbalance in terms of human resources and skills allocated to their investigation and prosecution.

There are legal systems where difficulties arise with victims being compensated or receiving restitution, in cases where the funds are found in a bank account of a third party. In such cases, it might happen that there is (i) no evidence against the third party in question, (ii) no evidence linking the third party with criminal activities, or (iii) a simple refusal by the third party to return the money in the absence of a court order. It is not always possible to obtain the said court order because there is no evidence that the person has committed a crime. In these cases, the victims of fraud will have difficulty in getting back the funds that have been laundered through endless bank account transfers.

The use of alleged *bona fide* account holders can make the investigations more complex

In a fraud case, a freezing order was issued by Member State A under [Framework Decision 2003/577 on the execution in the European Union of orders freezing property or evidence](#) and executed by Member State B. The funds frozen in the bank account of a person that appeared to be a bona fide third party totalled EUR 200 000 (the total amount of the fraud was EUR 1.5 million).

After the entry into force of Regulation 2018/1805/EU on the mutual recognition of freezing and confiscation orders, strengthening the protection of victims, Member State A further issued a freezing certificate for the restitution of the EUR 1.5 million to the victim of the fraud. The account holder in Member State B maintains that he is a bona fide third party and that the funds on his account pertain to a loan, justifying the legitimate origin of the funds and hence calling for the freezing order to be lifted. As a response, Member State A informed Member State B that it is in the process of opening an investigation against the account holder too and has requested Member State B not to inform the latter of the opening of the investigation and to maintain the funds frozen.

In this example, while the victim knows that the funds are identified and frozen, the funds might however prove difficult to reconstitute due to the third party seeking to prove his/her bona fide. The cross-border dimension of the case exacerbates this difficulty, as the criminal proceedings are ongoing in one state while the funds are frozen and the bank account holder is located in another.

Finally, Eurojust identified additional issues. For example, it might be difficult at times to track and stop bank transfers urgently in order to return the defrauded funds to victims. The difficulty in providing for the return of physical goods or some form of compensation to person/communities that are the subject of damage stemming from environmental crimes, for example, is exacerbated by the fact that such crimes often harm 'voiceless victims', as mentioned in the report on [Eurojust's casework on environmental crime](#).

1.2. Challenges specific to particular crime types

1.2.1. Victims of terrorism

The issues listed below were identified on the basis of inputs by Member States and third States (e.g. via

Eurojust questionnaires or discussions during Eurojust meetings) and on the basis of investigations and prosecutions in which Eurojust assisted. Some are also applicable to other crime types.

Efficient, rapid and reliable procedures for identification of victims are essential in the aftermath of an attack. However, Eurojust experience indicates that practitioners encountered difficulties in the registration and identification of victims, including victims who suffered psychological damage.

In the course of the investigation, a series of additional difficulties were identified. The first was the lack of knowledge of the language of the country where the attack took place, which proved a challenge in the immediate aftermath of the attack but also during the investigation and court proceedings. The second was the lack of knowledge of the foreign legal system, the available victims' rights, legal (and other) aid and representation and compensation, which is also applicable beyond the investigation stage. In addition, the risk of secondary and repeat victimisation if there are multiple foreign requests for interviews suggested a need to coordinate among countries that may wish to interview the same victim(s).

Finally, during and after court proceedings, another series of obstacles emerged from Eurojust casework. It is hard to keep foreign victims informed if they are not in the country during the court proceedings. Issues related to the translation of trial/file documents into a language that victims understand, as set out in the victims' rights Directive, were also outlined in some cases. The procedural status of the victim may be unclear, in particular when the victims are also called as witnesses. The lack of a cross-border witness protection programme was also identified, along with the lack of uniform rules regarding compensation across the EU (e.g. under a specific compensation regime for victims of terrorism or under the general compensation system for victims of crime). Linked to the last of these points, the principle of full reparation does not seem to be applied in all states.

1.2.2. Victims of trafficking in human beings

Eurojust [report on Trafficking in Human Beings, best practice and challenges in judicial cooperation](#), dated February 2021 dedicates a separate chapter to victims of THB, including recommendations for overcoming issues related to their identification and protection. They relate mainly but not exclusively to the identification of the victims, their protection and securing their testimonies.

Convincing victims to come forward and provide statements to law enforcement and judicial authorities and cooperate in investigations and prosecutions by testifying against their perpetrators was identified as one of the main challenges.

The Dutch authorities reported on the difficulty in ensuring the physical presence of the victims in some instances. Their experience indicates victims who are trafficked to or within the EU often file a complaint with the Dutch authorities for crimes perpetrated in another EU country. Investigations are rendered more difficult if these victims do not have legal grounds to stay on Dutch soil and that the case only has a remote connection to the Netherlands ⁽³⁾. The Dutch prosecution service then has no jurisdiction under Dutch law to further investigate and prosecute. In another category of instances, the victim has applied for asylum in another Member State and needs to pursue his/her claim in the country of arrival.

As a result, in the first example, the prosecutor will have to decide that it is no longer necessary for the plaintiff/victim to remain in the Netherlands for the purpose of the investigation, which will lead to the deportation of the victim and in the second case the victim will be relocated in another country. In both instances, the gathering of relevant information that could benefit also parallel investigations in another EU country will be more difficult. In the light of possible similar issues in other Member States, the Dutch authorities consider that, to supplement the possibility to exchange information via Eurojust for example, an EU Regulation governing the matter could be envisaged, with an alternative solution being to explore ways to foster the transfer of plaintiffs/victims of THB within the EU.

1.2.3. Victims of fraud

The recent Eurojust [Guidelines on How to Prosecute Investment Fraud](#) show how this type of crime draws in victims from all over Europe and the world, in particular when it is perpetrated online.

The guidelines also highlight that in the light of the *ne bis in idem* principle, particular attention has to be paid to the possible impact on linked/parallel proceedings when top-level suspects are prosecuted. While in relation to some perpetrators – such as call-centre agents – it is generally unproblematic to prosecute individual acts, this can become more complex in relation to the top level of an OCG when a suspect is prosecuted for organised crime in one country and there are victims in multiple jurisdictions. In such cases, the ‘*idem*’ criterion has to be assessed ⁽⁴⁾. Thorough coordination between all countries involved and agreement on the best approach to the prosecution of suspects at the top

level of an OCG is of great importance, partly to avoid that high-level suspects be in the position to choose the most lenient country to establish their activities.

Another challenge relates to how to avoid a ‘first come, first served’ effect when handling a large number of victims. In this regard, Eurojust casework advocates for the need to set up a coordinated approach and a methodology to return the criminal assets that have been seized and confiscated for the purpose of restitution based on EU and non EU-legal instruments. There is a need to take into account that some investigations are at a more advanced stage than others, to ensure a comprehensive identification of all victims. This was done in a case in which, as the outcome of a coordination meeting, a prosecutor drafted a list of victims to ensure their identification and hence their compensation in an even and coordinated fashion.

Practitioners reported on the difficulties associated with fraud concerning large numbers of victims. These were highlighted in the context of the *Regulation on mutual recognition of freezing orders and confiscation orders*. It concerns situations when there is a money-laundering investigation in one country, with a bank account subject to a freezing measure and a freezing order. A request for restitution is issued by the authorities in another country, where there is an investigation for swindling. Even if the authorities in charge of the money-laundering case are willing to enforce the restitution, there can be issues when it is apparent that other victims have sent money to the same bank account, but the amount seized is not sufficient to compensate all of the victims, because of subsequent debit movements, namely to other jurisdictions, while there are as yet no other pending requests for restitution.

This raised several questions from the part of the practitioners: (i) should the restitution be enforced without giving the opportunity to other victims to make their claim in other jurisdictions?, and (ii) what actions should be taken to inform national authorities of the existence of the frozen bank account and the possible existence of other victims in their jurisdiction (via namely spontaneous exchanges of information)? and (iii) can victims be considered affected persons, in the sense of the provision of Article 2(10) of the *Regulation on mutual recognition of freezing orders and confiscation orders* if the enforcement of a restitution order in total to one victim can impair the possibility of other victims obtaining restitution, at least in part? ⁽⁵⁾.

(3) The trafficking/smuggling often took place in Italy or Libya and the victim or the alleged criminals do not have Dutch nationality and are not related to the Netherlands in any way.

(4) ‘... a set of concrete circumstances which are inextricably linked together in time, in space and by their subject-matter.’ See also Court of Justice of the European Union judgment of 9 March 2006 in [Case C-436/04, Van Esbroeck](#).

(5) The Commission clarified that for the interpretation of Regulation 2018/1805, victims should not be considered as “affected persons” within the meaning of Article 2(10). This notion is in particular important in the context of Article 32 (obligation to

In fraud cases, with suspects operating in multiple jurisdictions, the risk of conflict of jurisdiction is exacerbated.

1.2.4. Victims of corruption

In one corruption case, a request was made to return the confiscated assets on the basis of Article 57 of the United Nations Convention Against Corruption to the country where the victims were located, as opposed to the country where the corruption took place. However, issues arose in relation to where the funds would be held and how they would be disposed of. For example, the recipient country would want the funds to be in a domestic bank account, while the countries in possession of the funds raised a number of issues such as how to dispose of them in a way that would be transparent and would benefit the victims.

Sometimes the state is the victim. The damage can be significant, and in the investigation phase it often proves difficult to quantify. When the investigation is over, the investigative judge has to identify the civil responsibility of a company, for example. These cases normally take a long time to conclude. Furthermore, either the execution of the sentence and the determination of civil responsibility is very difficult or there is a tendency for the court to sanction the criminal acts relatively mildly compared to the actual damage suffered by the state.

1.2.5. Victims of counterfeited goods

The qualification of an illegal activity as a criminal offence, in some cases of counterfeiting and product piracy, may prove difficult and have an impact on the recognition of the status of victim.

For example, in the majority of EU Member States' legal systems, there is a minimum threshold for a case to be handled as a criminal case. This threshold might not be met in cases of delivery of small amounts of counterfeited goods that would, as a result, be handled as an administrative offence. The latter is often subject to an insignificant administrative penalty. In addition,

this legal qualification would deprive the company that suffered the damage from being recognised as a the victim of a criminal offence. Finally, in many instances the administrative national authorities lack sufficient resources to conduct a wider assessment that would connect the case to what might be a larger criminal enterprise and hence be in a the position to alert the law enforcement authorities.

In other Member States, the difficulty in evaluating the exact amount of the damage may hinder the granting of effective compensation to the right holders/victims. The issue is particularly problematic in the area of audiovisual piracy, where it is usually overcome by confiscating the money gained by the sale of pirated material to the benefit of the confiscating state. This however does not compensate the right holders/victims unless they, in turn, claim compensation from the confiscating state through a separate civil procedure, which might prove long and cumbersome.

Finally, in some counterfeiting cases, it is essential to evaluate the costs of research, raw materials, processing, marketing, distribution and profit margins concerning the original product to determine the damage and the loss of revenue. For fake products, for example, the cost of raw materials and processing were borne by the criminals and, as such, cannot be included in the calculation of the compensation of the victims. Sometimes, companies are reluctant to provide this information as it is seen as a possibility that might put them in a disadvantage, should their competitors get hold of it. The lack of a reliable data repository from where the judicial authorities could obtain information regarding the costs and profit percentages related to a consumer product exacerbates their difficulty in evaluating the damage.

More generally, determining the exact value of the damage in counterfeiting cases might be difficult. This determination is however sometimes key to the triggering of prosecution, as in some Member States, the value of the damage and the amount of the lost revenue is part of the legal definition of the offence.

inform affected persons) and Article 33 (legal remedies against the recognition and execution of freezing and confiscation orders).

2. Best practices

Building on Eurojust experience, this section identifies a series of best practices developed by practitioners with the support of Eurojust. Through case examples and case illustrations, this section highlights inter alia the need for early cooperation and exchange of information and puts forward concrete solutions to preserve victims' rights.

2.1. Identification of victims

The identification of victims is made more complex in cross-border crimes. This is particularly true in cases of terrorism for which the wider definition of 'victim', which includes family members ⁽⁶⁾, becomes of special relevance in the case of casualties as a result of a terrorist attack. Cyber-enabled frauds often pose specific challenges to practitioners mainly due to the large number of victims that are often involved in such type of cases.

Eurojust has provided recommendations to help support the identification of victims in THB cases. Many are applicable to other crime types and they include the following.

- ▶ It can be helpful to involve the European Union Agency for Law Enforcement Cooperation (Europol) at an early stage. Europol's analytical capabilities, and cross-checking against its data bases, can prove to be critical to advance investigations. This helps the authorities to identify links with other countries, initiate criminal proceedings in those countries and identify suspects, victims and their locations, before dealing with judicial cooperation issues.
- ▶ Eurojust coordination meetings allow competent authorities to exchange information and discuss the need for cooperation and investigative measures aimed at finding and identifying the victims. One example involved the investigation following the crash of the Germanwings Flight 9525 in 2015, which killed 150 people from 19 countries. Eurojust's assistance focused on helping family and

other relatives across Europe to identify the victims. Through the appointment of special contact points in all Member States involved, assistance could be provided to ensure, for example, the right to compensation for the families of the deceased.

- ▶ Practitioners indicated that requesting Passenger Name Record data at the beginning of an investigation was a good way to obtain information on the travel of suspects and potential victims accompanying them, without the need to request data individually from each air carrier.
- ▶ In THB cases, coordination meetings also give Eurojust the opportunity to support Member States' efforts to locate, identify, rescue and help victims to report the trafficking, irrespective of where their recruitment, transit and exploitation took place in the EU. In such cases, Eurojust recommends that more THB cases be referred to Eurojust at the very beginning of investigations, so that early cooperation and exchange of information in respect of the rights of all victims can take place.
- ▶ Eurojust encourages national authorities to request information on money flows, as it often leads to the identification of the names and locations of potential (current and past) victims who have sent money via international money transfer services to suspects and their accomplices.

Finally, in 2020, under the chairmanship of Eurojust, the justice and home affairs (JHA) agencies' network decided to focus on the respective roles and victim-related actions undertaken by the JHA agencies. On 18 October 2021, on the occasion of the EU Anti-Trafficking Day, the network issued a the 'joint report of the JHA agencies' network on the identification and protection of victims of human trafficking'. The report aims at making Member States more aware of what the agencies can do towards the early identification and protection of victims of THB and at encouraging Member States to work closer with the agencies in this area.

(6) Article 2 of Directive 2012/29/EU.

Sharing information on victims at the Co-ordination Meeting on terrorist attacks in West African countries

Eurojust held its first coordination meeting with West African countries on 21 and 22 March 2019 to discuss the judicial follow-up to four terrorist attacks. The attacks – which took place on 7 March and 20 November 2015 in Bamako (Mali), on 15 January 2016 in Ouagadougou (Burkina Faso) and on 13 March 2016 in Grand Bassam (Côte d’Ivoire) – left 74 people dead and many others injured.

The meeting was organised at the request of France and included, apart from the French judicial authorities, judicial representatives from Mali, Burkina Faso and Côte d’Ivoire, as well as other EU Member States and third States that were affected by the attacks. Representatives from Europol and Interpol also participated.

This Eurojust meeting was the first of its kind with West African countries regarding terrorist attacks. As indicated by the French counter-terrorism investigating judge, the focus was not only on exchanging operational information on ongoing investigations, but also on sharing information on victims and taking stock of the current terrorist threat in the West African region. (See Eurojust Press Release dated 23 March 2019).

2.2. Victims as the determining factor to avoid conflicts of jurisdiction

Cross-border crimes generate by definition a higher risk of conflicts of jurisdiction. In response, a [Council framework decision on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings](#) ⁽⁷⁾ recognises Eurojust’s capacity to support national authorities in resolving conflicts of jurisdiction. According to Eurojust’s [guidelines for deciding which jurisdiction should prosecute](#), the interests of victims are a very important factor to consider when deciding which jurisdiction should prosecute.

There are particular crimes where the protection of the interest of the victims is a key deciding factor for allocating the given case. Eurojust casework is illustrative of instances where the victims played a critical role in determining who is best placed to prosecute.

(7) See in particular Article 12 of Framework Decision 2009/948/JHA.

(8) See [Report on Eurojust’s casework in the field of prevention and resolution of conflicts of jurisdiction | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#)

(9) Regulation ^(EU) 2018/1727

The interest(s) of the victims can be taken into account when discussing the possible centralisation of proceedings in a single country, for example by means of transfer of proceedings, as set out in [Directive 2017/541/EU](#) (Article 19(3)(c)) for terrorist-related cases. This can typically be considered in cases of parallel investigations, taking place both in the country where an offence was committed and in the country of origin of the victim(s).

The crucial need for coordination is also exemplified in fraud cases. In such cases, the different perspectives and interests of the countries involved need to be taken into account. For example, countries with victims will have a different focus and different needs from countries in which money transactions occurred (e.g. the latter will need to establish the predicate crime of money laundering).

The interests of the victim(s) are also one of the factors that Eurojust considers when advising EU Member States if there are parallel proceedings or conflicting European Arrest Warrant or extradition requests.

Victims’ interests are particularly important in THB cases ⁽⁸⁾. Eurojust has issued several joint recommendations or requests under Article 4(2) of the Eurojust Regulation ⁽⁹⁾ on which state was best placed to prosecute a specific case, conferring primary importance to victim’s rights.

Another illustration of a joint recommendation can be found in a Eurojust case concerning online fraud. In this case, the victim was located in Member State A and the payment was received in a bank in Member State B. Practitioners had to solve a negative conflict of jurisdiction because neither state considered that it was in a position to investigate this offence. The two national desks issued a joint recommendation on which state was best placed to prosecute, taking into account primarily the interests and location of the victim. The solution proposed was then followed by both national authorities.

2.3. Mitigate the risk of re-victimisation

As indicated in the [Eurojust Report on Trafficking in Human Beings](#), Eurojust has identified a series of best practices which for most part are also applicable to other crime types.

- ▶ These practices aim to facilitate discussions between national authorities and formal requests for arranging interviews of victims, including the use of video conferencing facilities, to be used in proceedings in cross-border cases and for ensuring the admissibility of evidence from victims.

Conflict of jurisdiction solved by using the best interest of the victim as determining factor

The Prestige, a 26-year-old oil tanker owned by a Greek firm and registered in the Bahamas, broke up off the coast of Galicia, Spain, in 2002. This resulted in the spillage of 77 000 tonnes of heavy fuel, the most serious oil spill ever to occur in European waters, fouling thousands of kilometres of mostly Spanish coastline and forcing the closure of Spanish and French fishing grounds.

Following a recommendation from Eurojust, it was apparent that only one process should take place and, given the circumstances, that Spain was in the best position to conduct the investigations and hold the trial while giving the appropriate guarantees to the French victims.

This case is emblematic of the way a conflict of jurisdiction was addressed by using, as the determining factor, the best interest of the victims in obtaining adequate compensation. The Prestige case also illustrates how the protection of victims has been at the core of Eurojust activities since the beginning. (For more information see: *Eurojust News, No 10, page 14*).

- ▶ Eurojust encourages the seconding of specialised officers to interview potential victims of trafficking and take into consideration the particularities of child victims of THB.
- ▶ Eurojust encourages recourse to videoconferencing to promote cooperation with third States as allowed by Article 18(18) (mutual legal assistance) and Article 4(2) (protection of witnesses) of the [UN Convention against Transnational Organized Crime and its protocols](#) ⁽¹⁰⁾.
- ▶ Eurojust helps national authorities to prevent secondary victimisation of vulnerable victims during the criminal proceedings. In some cases Eurojust it may arrange for interviews with children to be tape-recorded and transcribed for presentation during the trial proceedings, to prevent the children having to be summoned and undergo further trauma.

European investigation order for the hearing of children fosters victims' rights

In one case, sexual offences were committed within the jurisdiction of both the executing state and the issuing state. The victims were living on the territory of the executing state at the time when the investigation order was issued.

Given the age of the victims, the procedures to be followed during the hearing included support from a psychologist from a child protection agency.

All of the formalities and procedures indicated by the issuing authority were respected by the executing authority with a view to limiting as much as possible the impact on the victims.

2.4. Secure procedural and protection rights

With regard to procedural rights and their *ius standi* in criminal proceedings, Eurojust organises coordination meetings dedicated to the preservation of victim's rights in criminal proceedings, with the aim of ensuring that the victims of one country (A) are declared as such within the framework of the country of prosecution (B), as illustrated in the case example below.

One of the objectives of involving victims in judicial proceedings is to enable them to preserve their rights ranging from protection to compensation. More specifically, Eurojust:

- ▶ facilitates discussions and decisions of judicial authorities regarding the access to witness protection programmes or other similar protection measures;
- ▶ supports investigations and operational actions to bring traffickers to justice and give victims access to legal remedies;
- ▶ facilitates the execution of judicial cooperation instruments to ensure victims' effective participation in criminal proceedings and their right to be heard.

(10) This convention is supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and by the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, which allow the use of videoconferencing or other audiovisual transmission in cases of trafficking of human beings and migrant smuggling, respectively (Article 1 of each protocol).

Victims' rights at the heart of judicial proceedings

Eurojust facilitated a case relating to two investigations that were opened in France and in Austria. In the French case, the proceedings mainly focused on the registration of the French victims, although the bulk of the investigations, including the evidence of the crime, was in the Austrian case.

Practitioners faced the question of how to allow the French victims to declare themselves as victim within the framework of the Austrian procedure in order to be able to assert their rights and to present their requests for compensation for the damage.

A coordination meeting between French and Austrian authorities was organised in order to determine the best way to act for the victims. The solution was to help the French victims to declare themselves in the Austrian proceeding and to claim damages by providing the French judge with all the references of the Austrian proceeding and a template document with the correct wording and the mandatory requirements to exercise their rights.

One of the specificities of this coordination meeting was that it was dedicated to the preservation of the victims' rights, in a cross-border case.

More generally, Eurojust suggests that the procedural rights of victims be discussed during the investigation phase, as part of the prosecutorial strategy and in discussions when setting up Joint Investigation Teams, coordination meetings and coordination centres.

- ▶ It proposes that practical arrangements in the investigations regarding victims are systematically addressed in the model agreement for the setting up of a Joint Investigation Team. This is of particular relevance in complex THB cases, in which the trafficking offence is ongoing and there is a need to save and protect a large number of victims who are being exploited in one or more countries.
- ▶ During coordination meetings held at Eurojust, on Eurojust's initiative, participants should share with one another how each country will protect the victims on a joint action day aimed at simultaneously arresting suspects and rescuing and protecting the victims (including using national structures and involving non-governmental organisations). This is of particular importance in THB cases, where judicial

and law enforcement authorities always hold discussions in advance, and take actions to ensure the interests and protection of THB victims during and after joint action days.

- ▶ Setting up a coordination centre, notably in THB cases, allows Eurojust to immediately provide help and ensure that joint actions are taken to benefit not only the judiciary and the police in all participating countries but, importantly, also the victims, to enable them to be rescued and protected in due time.

Victim triggers the issuance of a European Investigation Order

Eurojust facilitated the issuance of a European Investigation Order (EIO) by Spain towards Italy for the hearing at trial of the victims/witness of a terrorist attack in Barcelona in 2017 via videoconference. The main particularity is that the EIO was issued upon the request of the victim's lawyer.

This case illustrates how an EIO can help to promote victims' rights. The solution found in this case is of particular interest as the EIO Directive does not explicitly provide for the possibility for victims to request the issuing of an EIO to the competent authorities, but only for the defence (Article 1(3)):

The exercise of the rights of victims to be heard in cross-border proceedings was greatly facilitated, by the proactive initiative of the victim's representative during the trial and the broad interpretation of the EIO Directive's provisions by the competent authorities.

2.5. Addressing issues stemming from the large numbers of victims

In certain types of crime, such as cyber-enabled crimes, the number of victims can be considerable and thus create specific problems for practitioners trying to properly identify the victims, assess their claims and respond to competing requests. Eurojust has identified a series of good practices within its [Guidelines on How to Prosecute Investment Fraud](#).

The guidelines indicate that in investment fraud cases it is necessary, as a first step, to gain an overview of parallel or linked investigations at national and international levels. For that purpose, it would be beneficial if national authorities – in particular the police when victims file a report – were to take the time to identify links and get a broader picture of the situation.

Other good practices identified in investment fraud cases include the following.

- ▶ At an early stage, national authorities could – if their legal system allows it – create and send a questionnaire to victims asking whether they would like to provide answers to the questions in written form and join the criminal proceedings to pursue compensation. Furthermore, hearings over the phone could be considered, if provided for in the national legal system. This could allow relevant information to be gathered in a unified and time-efficient manner.
- ▶ Once an overview of the victims is available, it could be helpful to categorise the victims of investment fraud including: victims of attempted fraud and completed fraud; groups of victims by amount of damage; and/or victims for whom the damage was repaired and those for whom it was not.
- ▶ For reasons of procedural economy, it may be advisable to focus on victims above a certain threshold of damage. It should be borne in mind that the legislation in the EU Member States differs as to whether all victims have to be named in an indictment/verdict or whether there is the possibility to include victims with more limited damage by referring to ‘other victims’ and the combined amount of damage.
- ▶ During the trial stage, representatives of groups of victims could be heard in person, representing the different categories. However, in some countries the legal system requires that all victims be heard in person during trial, and there are limited grounds for using written statements in court. A possible solution could be for victims to share legal counsel, to prevent all the victims having to be heard separately.

2.6. Addressing the specific rights/needs of victims of terrorism

The overview below includes examples of solutions used at national level, which are subject to the applicable national law, including examples that reach beyond the minimum standards set out in the victims’ rights Directive and Directive 2017/541/EU on combating terrorism, and may not be relevant/possible in all states.

2.6.1. Centralisation of the information

National authorities are often called upon to organise rescue, support and coordination of action, sometimes within a limited period of time. Some examples put forward by some national authorities include:

- ▶ adopting special legislation concerning victims of terrorism, which is also relevant to the points below;
- ▶ establishing a single point of contact (as envisaged in the [Council conclusions](#) of 4 June 2018 on victims of terrorism or specific unit or prosecution office instituted to provide and coordinate support to victims of a terrorist attack;

- ▶ setting up a national helpline for victims;
- ▶ using Eurojust facilitator’s role to transmit information and ensure follow-up in a timely and efficient manner.

2.6.2. Effective access to justice

Recognising the fact that effective access to justice is of paramount importance to secure victims’ rights, a number of best practices were identified and implemented by national authorities, including:

- ▶ open investigations in countries whose nationals have become victim of a terrorist act abroad;
- ▶ ensuring continuous close collaboration between judicial authorities to address challenges related to differences in legal aid and victims’ rights in legal proceedings set out by national law;
- ▶ ensuring cooperation among existing EU entities, including Eurojust, as envisaged in the Council conclusions of 4 June 2018 on victims of terrorism;
- ▶ taking into consideration the interest of victims when discussing jurisdiction matters and the possible transfer of proceedings, in conformity with the Eurojust guidelines on jurisdiction;
- ▶ judicial authorities proactively reaching out to victims to inform them of their rights and the relevant procedures;
- ▶ providing free-of-charge legal aid, representation and interpretation/translation;
- ▶ using adapted (checklist-based) hearings of victims in the framework of legal proceedings to ensure the recognition of the victims’ rights;
- ▶ providing the possibility for victims of terrorist attacks or their successors in title to prepare, with legal aid and/or together with investigative judges, civil actions;
- ▶ giving victims the possibility to provide evidence, submit requests for action during the investigation – including requests to hear a witness – be present at procedural actions and inspect documents that affect them;
- ▶ giving victims of a terrorist attack the possibility to seek review of the decision not to prosecute or prosecute if the public prosecutor decides not to further sustain the accusation, to act as a private accessory prosecutor or subsidiary prosecutor, and to request a specific sentence in court;
- ▶ giving victims the possibility to be present at the hearings, even if they are to be heard as witnesses, to ask witnesses questions and to apply for gathering of evidence; if victims are heard as witnesses, they are to be provided with fact sheets on their rights both as victims and as witnesses;



Takedown of a multinational human trafficking network

4 September 2021 – Coordinated simultaneous actions take place in Italy and the Republic of Moldova, resulting in the dismantling of the human trafficking network. **Six suspects are arrested** during the operation. **Nearly 90 victims are rescued** from the clutches of the group and given assurances of protection and legal assistance. **Evidence is secured to support judicial follow-up** in the respective criminal courts.

Italian and Moldovan authorities agree to hold a **fourth coordination meeting** at Eurojust in January 2022 to discuss jurisdictional issues (which courts will prosecute which suspects and for which crimes) to avoid possible conflicts of jurisdiction.

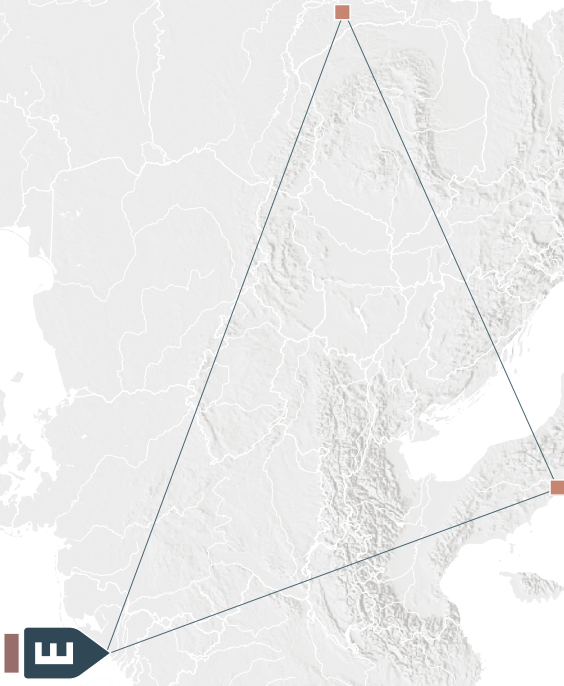
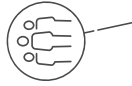
March 2021 – Funded by Eurojust, a **Joint Investigation Team** is established, with operational support from Eurojust and Europol. Italian and Moldovan authorities pool their efforts and succeed in building operational synergies to map out the activities of the criminal group, while collecting and exchanging relevant information and evidence.

March – December 2021 – **three coordination meetings** are held at Eurojust to discuss cooperation needs, plan the establishment of a Joint Investigation Team, and prepare for joint actions.

January 2021 – In an effort to connect the two parallel national investigations, a **case is opened at Eurojust**, involving the **National Desk of Italy, Eurojust's contact point at the General Prosecutor's Office in the Republic of Moldova** and **Europol**, setting into motion a coordinated and structured international response.

Operating since early 2018, a criminal network in the Republic of Moldova uses online platforms to recruit vulnerable women. Coming from precarious socio-economic backgrounds, these women are promised jobs as domestic workers in Italy. Once engaged, they experience severe forms of labour exploitation, are forced to live in wretched conditions, and are subjected to intimidation and threats of violence. Their confiscated passports are used to prepare counterfeit documents, including false COVID-19 health certificates and employment contracts.

Moldovan and Italian authorities separately launch an investigation into this criminal group in 2019.



- ▶ providing the possibility for foreign victims to be heard via videoconference;
- ▶ informing the victims of crime when the defendant is released from custody or has completed his/her sentence, if convicted.

2.6.3. Right to compensation

The initiatives and proposals put forward to foster and facilitate the compensation of victims of terrorist attacks include:

- ▶ establishing a specific system for state compensation of victims of terrorism;
- ▶ making compensation available for all victims of a terrorist act on the national territory regardless of their nationality and in some cases also to nationals who have become victims of a terrorist act abroad and to residents;
- ▶ waiving the need for victims of terrorism to report the crime, to wait for the outcome of police investigations or criminal proceedings or to seek compensation from the offender, to be able to claim compensation;
- ▶ making compensation available to victims of terrorism for persistent psychological effects of the terrorist act and making compensation available to direct and indirect victims;
- ▶ establishing a special tribunal on criminal injuries compensation to administer a scheme of financial compensation for personal injuries inflicted by criminal acts, including terrorism.

Promoting victim' rights at an early stage of investigation

In the aftermath of the 2017 attacks in Barcelona and Cambrils, which involved a large number of foreign victims, Eurojust played a key role in coordinating judicial cooperation between Member States and third States.

A template that clearly describes the assistance to which victims are entitled, their procedural rights and their rights to compensation and allowances according to Spanish law – which is extremely detailed on this matter – was drafted to simplify and make understandable to victims the list of rights to which they are entitled. It was attached to the request for mutual legal assistance (MLA) sent by the Spanish authorities to the states of origin or residence of the foreign victims of the attacks.

For injured victims, forensic medical reports and medical treatments were also requested. The National Member for Spain at Eurojust proactively facilitated the transmission of the information and assisted with follow-up questions. (See [Eurojust factsheet](#) on 'Supporting judicial authorities in the fight against terrorism', page 9).

Conclusions

The complexity of cross-border crimes exacerbates the difficulties in protecting the victims of such crimes. The procedural rights of victims cannot always be guaranteed in full. Difficulties range from the identification of all victims to the complexity of organising their participation in different trials without running into the risk of secondary victimisation. In addition, the right to restitution and compensation cannot always be implemented appropriately due to, for example, the large number of victims or the lack of full harmonisation and implementation of the legislative framework.

No matter how harmonised the legislation, the core element in the implementation of judicial cooperation is the national investigating judge/prosecutor. Eurojust is a critical partner for minimising the risks associated with the cross-border dimension of cases involving victims. Its role as a subsidiary to national authorities in the facilitation of judicial cooperation helps to bring about early cooperation and coordination between countries and actors involved, as part of the obligation to respect the rights of all victims.

Through its casework experience, Eurojust is indeed in a unique position to foster victims' rights. This is in particular the case for preventing and solving conflicts of jurisdiction. Eurojust can also enhance cooperation among national authorities and find concrete solutions for enhancing procedural rights, such as the right to compensation, of victims across the EU.

The new victims' rights Directive will be a key element for enshrining the victim's dimension in cross-border investigations and prosecutions. It could, for example, highlight the necessity for coordination mechanisms in cross-border crimes to prevent victims' rights being jeopardized. Stressing the facilitating role of Eurojust and the specific obligations of the investigating judges and prosecutors would also help to further preserve the rights of victims.

International judicial cooperation is paramount to successfully identify, protect and compensate victims of cross-border crimes. Eurojust is committed to working continuously with all involved stakeholders to that effect.



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