

## **D1.7 First Annual Periodic Activities**

01/05/2018



**Best practices for EUROpean COORDination on  
investigative measures and evidence gathering**

**Version** FINAL

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**Deliverable** D1.7

**Work Package Insert** WS0

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**Approved by Coordinator on:** 14/05/2018

**Dissemination level:** CO (only project partners)

# JUST/2015/ACTION GRANTS

## Technical Report on Progress

<b>Agreement Number</b>	723198
<b>Project Title</b>	Best practices for EUROpean COORDination on investigative measures and evidence gathering
<b>Name of the Beneficiary/Coordinator</b>	Universidad de Burgos (UBU)

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<b>Co-beneficiaries and Associate Partners</b> <b>(Name + Country)</b>	<i>Co-beneficiaries</i> 1. UNIVERSIDAD COMPLUTENSE DE MADRID (UCM) 2. UNIVERSITAT DEGLI STUDI DI PALERMO (UNIPA) 3. UNIWESYTET JAGIELLONSKY (UJ)
<b>Dates of project implementation</b> (Article I.2.2 of the Grant Agreement)	Start date: 01 – 12-2016 End date: 30- 11- 2018
<b>Period covered by the report</b>	01-12-2016 / 30-11-2017
<b>Project website(s)</b> (if applicable)	<a href="http://eurocoord.eu/">http://eurocoord.eu/</a>

## PART 1 – RESULTS AND IMPACT OF THE PROJECT

### 1.1. Present the main achievement of your project so far

The main objective of the Eurocoord project is to promote judicial cooperation by developing a systematic research and generating specific knowledge and tools addressed to different stakeholders as a contribution to the implementation of Directive 2014/41/EU on the European Investigation Order (EIO) through the elaboration of a Code of Best Practice as should be carried out through **WS3**.

The Code aims to standardize the practical application of the European Investigation Order on different Member States by practitioners –specifically those ones participants in present research- based on the basic principles of judicial cooperation in criminal matters: mutual recognition of judicial decisions and approximation of legislations. The validation of the Code will complete the research work intended with this project, since each phase of its development has been essential for the collaboration of researchers, experts and other target groups and professionals, including NGOs, in order to gather their comments

The debate will be activated by the dissemination and communication activities carried out within the European Observatory to be placed in the future on the EUROCOORD website (<http://eurocoord.eu>) if possible or other one created specifically to this aim as well it is a strategy to involve stakeholders in the EIO environment.

In the **WS 1**, the national reports, related to the transposition of the EOI to the legal framework of each Member State partner on the project, were developed and practically finished (Poland and Spain waiting for definitive publication on national official journal respective implementation on EIO).

Through **WS2** it was carried out the relevant task of gathering the huge practice, opinions and considerations of justice professionals and practitioners on law being experts in different areas of international and European judicial cooperation in criminal matters. Through these interviews with the judiciary, the prosecution, the bar and NGOs a report providing assessment and experiences resulting of this material will be prepared in the next future with respect of privacy in order to verify the daily practice of judicial cooperation with legal instruments (or without) anticipating the arrival of EIO. All this work has been done with the importance of publishing the main results of the Project following the dissemination strategy in accordance with **WS 4**; the project partners must work together to disseminate project activities using on-line and multimedia tools. In this way, interviews and information on the project have been conducted as such ones published in local newspapers (*Diario de Burgos*, 10 February 2017, p. 8) as well as in the Program of the University of Burgos Cien & Cia, advertising through the website of the research group (<http://www.ubu.es/la-cooperacion-judicial-civil-y-penal-in-the-scope-of-the-union-European-instruments-procedural-caji>) or through the website of the EUROCOORD Project (<http://eurocoord.eu>).

As a long-term result of this Project, the creation of a European Observatory on the implementation of the OEI is considered to be appropriate. This Observatory will develop the important task of analyzing the practical processing of this instrument, making recommendations based on the Code of Good Practices and guaranteeing the correct issuance and execution of an EOI in the future by different practitioners.

### 1.2. Ethical issues (max. 1/2 page)

Were you faced with any ethical issues during the implementation of the project? How did you solve them?

No relevant ethical issues or concerns have arisen up to now in the development of the project. The only aspect that might indirectly have some impact on ethics, although it is more an issue of data protection, was found while collecting data from professionals who have been interviewed in the framework of **WS2**. In this sense, the anonymity of each person who has been interviewed is assured in accordance with present Directive 95/46/EC of 24 October 1995 as well as Regulation (EU) 2016/679 of 27 April 2016 coming into force from 25 May 2018, providing that Member States jointly must set legally binding rules for the protection of individuals with regard to the processing of personal data. These measures are necessary because of the nature of using real information to generate data and thus rely to a large degree on very sensitive information about and statements of individual persons.

In addition, compliance with this ethical commitment has been developed in accordance with the Guidance Note for Researchers and Evaluators of Social Sciences and Humanities Research (2010). According to section H “researchers must consider protection of personal data, but also data that refer to/is or has been obtained from various settings (such as cultural heritage, public space, video and audio recordings, mapping etc.). There are three different categories to which data protection refer: the users, the providers and the environment. All these different aspects must be taken into account when devising mechanisms for data protection in the course of research (including publication of findings and dissemination to the general public). There is an internationally recognized and globally accepted standard (such as ISO/IEC 27001:2005) that can be used by SSH researchers”.

In relation with the present research the ethical issue concerning the data protection as specified shall be solved with the internal employment of interviews answering the both model of questionnaires created by the team (first one addressed to judges and prosecutors, second one addressed to lawyers and NGOs). In this context both models of interviews are deliverables according the project description and shall be made public to European Commission as well as in EUROCOORD webpage. But it shall not be the case of the concrete interviews answered by addressees whose written text and even video-recording only shall be employed by researchers making publically available the further methodology and evaluation report.

### **1.3. Conclusions and recommendations for the European Commission in terms of legislation/policy-making (if applicable)**



The conclusions drawn from the EUROCOORD Project only shall be definitive at the end of the term (next November 2018). Nevertheless, some provisional findings can be advanced as this stage. These are:

- The infringement of the maximum timeframe in implementing the European legislation by several Member States as it is here the case of Poland and Spain in relation with the EIO, which should be transposed by last 22 May 2017 according to Art. 36 (1) Directive 2014/41/EU. At the moment in relation with the countries participating in the present project only Italy has introduced a national legislation related to EIO as it is Legislative Decree n. 108 of 21 June 2017 (*Gazette Ufficiale* n. 162 on 13 July 2017), entered into force on 28 July 2017. Poland is carrying on amendment on Art.589 Criminal Procedure Code and Spain has a Draft Law now in Congress modifying Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union. This conclusion derives from WS1.
- The discordance between theoretical and practical background as far as, according to judicial practice, not always legislative prescriptions are observed; this causes sometimes reduction of procedural guarantees to parties, who are involved in criminal proceedings. In this context the aim to improve the international judicial cooperation is seen as a priority from the Spanish perspective but practice is different according to different policies in foreign countries. This conclusion derives from WS2.
- There is the need to provide a a guide in order to establish a common framework on the judicial practice related to application of European instruments of mutual recognition between Member States and different practitioners introducing best practices on it as it is here proposed. Also relevant knowledge on European judicial area should be provided to some practitioners as far as not all of them are familiarized with EU Law as well as the need to establish coordination between different European mutual recognition instruments (eg between EAW and EIO). This is the task of WS3, whose conclusions shall be presented on due time.
- There is also need to spread information and knowledge on EU legal instruments on mutual recognition and approximation of legislations in order to guarantee procedural rights as it is here the future practice on EIO to different target groups (academia, practitioners,...). In this context the development of activities proposed under the dissemination plans carried out by different partners are essential and contain the package of WS4.

## **PART 2 – WORKSTREAMS AND ACTIVITIES**

### **2.1. Implementation of the Workstreams**

#### **➤ Workstream 0 – Management and Coordination of the Project**

##### **I. Activities**

###### **Implemented activities**

1. Brussels Kick-off meeting with the Commission
2. Project kick- off meeting in Burgos (M1).
3. 2<sup>nd</sup> project meeting in Palermo (M6).
4. 3<sup>rd</sup> project meeting in Madrid (M12).



5. Project monitoring and steering committee.
6. Administrative and financial management
7. Ethics management
8. Preliminary evaluation

**Activities delayed or not implemented yet:**

1. **4<sup>th</sup> project meeting in Poland (M18).** 2 people of each partner will meet in Poland to discuss project outcomes and implementation. Associated partners will be invited.
2. **Final project meeting in Burgos (M24).** 2 people of each partner will meet in Burgos to discuss project final results.
3. **Final evaluation** (formative evaluation in order to assess adherence to objectives and results)

**Unforeseen activities**

N/A

**II. Output(s)**

**Output 1:** Project Handbook

**Output 2:** Kick-off-meeting report and 2<sup>nd</sup> project meeting report

**Output 3:** Monitoring meetings months 5 and 11.

**➤ Workstream 1: Title: COMPARATIVE ANALYSIS OF SPECIFIC NATIONAL AND EUROPEAN JURISPRUDENCE AND LEGISLATION**

**I. Activities**

**Implemented activities**

**1. Comparative Research Methodology:** A common methodology has been established in order to compile legislation, jurisprudence and references related to the implementation of Directive 2014/41/EU on the EIO in Italy, Spain and Poland in a uniform manner. In the first part, the text – departing from the experience in the application of FD 2002/584/JHA on the European Arrest Warrant – has focused on specific general issues which are deemed as problematic in the process of implementation of Directive, such as the concept of coercive measure, the definition of issuing authority, the role of defence, grounds for non-recognition or non-execution the EIO. In the second part, the text has highlighted some questions related to specific investigative measures in order to assess if the regulation at national level can affect judicial cooperation in this field. Among investigative measures, the one that poses more problems, especially at practical level, is the interception of telecommunications, on which is requested a detailed analysis. Another topic to investigate is related to the utilisation at national level of evidence gathered abroad through the EIO.

**Activities delayed or not implemented yet**

**2. Jurisprudence Analysis at national (Spain, Italy and Poland) and European level.** This activity is in course of implementation regarding Italy. We are monitoring how public prosecutors and judges are applying Legislative Decree of 21 June 2017, n° 108, entered into force on 28 July 2017, by which Italy has implemented Directive on EIO. At this regard it is useful the Handbook on the EIO addressed by the Minister of Justice to Public Prosecutors

and judges with the aim to establish common practices in the application of this new instrument of judicial cooperation. The above mentioned Legislative decree is very recent so at the moment there is not any judgment of our Supreme Court.

**3. Interview addressed to judicial authorities and involved juridical practitioners.** This activity is partially implemented. We have conducted some interviews with Italian public prosecutors and judges who have experience in the field of judicial cooperation. We have planned interviews with defence lawyers.

**5. Comparative analysis and assessment of the results.** This activity is strictly connected to the implementation of Directive 2014/41/EU in Spain and Poland. We have written an Italian Report on national legislation regarding the EIO, following the structure defined in the Comparative Research Methodology, but the comparative analysis requires knowledge of legislation and case law also in Spain and Poland.

**Unforeseen activities**

N/A

**II. Output(s)**

**Output 1:** Compilation Framework, only electronic.

**Output 4:** Italian National Report on EIO

**➤ Workstream 2: Title: COMPREHENSIVE RESEARCH ON LEGAL PROTECTION IN THE EU MEMBER STATES UNDER THE EOI PROVISION**

**I. Activities**

**Implemented activities**

1. Elaboration of both models of open questionnaires in English addressed to judges and public prosecutors (model 1, 22 questions) and lawyers and NGOs (model 2, 18 questions) related to their training and practice on judicial cooperation, specifically on the topic of cross-border evidence. Both deliverables.

2. Interviews to the targeted practitioners have been carried out, either in person or via skype taking notes and even recording, whenever this was possible and consent was provided in national languages (Italian, Polish and Spanish). In the case of Spain 18 judges and public prosecutors have been interviewed as well as 6 independent lawyers and lawyers working in NGOs, mostly of them practising in Madrid. The partners faced great difficulty in identifying lawyers to be interviewed, either because not so many offer the adequate profile –for not so many deal with transnational criminal cases–, or because they were reluctant to share their experience, or did not want to expose themselves before University Professors.

**Activities delayed or not implemented yet:**

1. The elaboration of a common methodology on judicial practice to assess the interviews carried out (delayed): one document common for all partners (deliverable). Justification: delay of the commencement of the project, delay of WS1 and delay of interviews by difficulties related to addressees. Proposed deadline: first week of February.

2. The elaboration of assessment compiling and evaluating results derived from interviews to diverse practitioners in the participating countries (delayed): three documents, each for different partner (deliverable/s). Justification: delay of prior deliverable due to specified reasons. Proposed deadline: end of February.



**Unforeseen activities**

N/A

**II. Output(s)**

**Output 1:** Diagnosis of the current situation related to legal framework on judicial cooperation in criminal matters pointing the different international and European legal instruments at the moment employed.

**Output 2:** Diagnosis of the current situation related to judicial practice in international and European judicial cooperation in criminal matters specifically addressed to the admissibility and transmission of evidence; in sum, how it operates at the moment with illustrative experiences.

**Output 3:** Diagnosis of the current gaps related to legal framework and judicial practice to be used in the further elaboration of the Code of Best Practices (WS 3).

Other outputs associated to EUROCOORD as example:

- BACHMAIER WINTER, L., 'Cross-border investigation of tax offences in the EU: scope of application and grounds for refusal of the European Investigation Order', *European Criminal Law Review* 2017, vol. 7, n. 1, pp. 46-66.
- BACHMAIER WINTER, L., 'Mutual recognition and cross-border interception of communications: the way ahead for the European Investigation Order', in C. Brière and A. Weyembergh (eds.), *The needed balances in EU Criminal Law: past, present and future*, Hart Publishing, West Sussex, 2017, pp. 313-336.
- CAJI website: <http://www.ubu.es/la-cooperacion-judicial-civil-y-penal-en-el-ambito-de-la-union-europea-instrumentos-procesales-caji>
- Conference *Espacio judicial europeo y proceso penal*, Burgos, 4-5/5/17, 100 participants, <http://www.ubu.es/la-cooperacion-judicial-civil-y-penal-en-el-ambito-de-la-union-europea-instrumentos-procesales-caji/cursos-y-congresos/espacio-judicial-europeo-y-proceso-penal>
- EUROCOORD website: <http://eurocoord.eu>
- JIMENO BULNES, M. 'Orden europea de investigación en material penal', in M. Jimeno Bulnes (coord.), *Aproximación legislativa versus reconocimiento mutuo en el desarrollo del espacio judicial europeo: una perspectiva multidisciplinar*, Bosch, Barcelona, 2016, pp. 151-210. Printed in Spanish, 100 copies.
- JIMENO BULNES, M. 'Orden de investigación en material penal: una perspectiva europea y española', in T. Bene, L. Luparia and L. Marafioti (eds.), *L'ordine europeo di indagine. Criticità e prospettive*, Giappichelli Editore, Torino, 2016, pp. 24-56.
- JIMENO BULNES, M. 'Brexit and the future of European Criminal Law – A Spanish perspective', *Criminal Law Forum* 2017, vol. 28, n. 2, pp. 325-347.
- JIMENO BULNES, M. (coord.), *Espacio judicial europeo y proceso penal*, Tecnos, Madrid 2018, forthcoming. To be printed in Spanish, 350 copies.

➤ **Workstream 4:** Title: TRAINING AND DISSEMINATION

**I. Activities**

**Implemented activities**



1. Main project website published (English language)
2. Establishment of presence, communication and debate on social media channels (twitter)
3. Offline communication campaigns: newspapers, professional publications. Eg: Publications in widely read press such as „Rzeczpospolita”, about polish legislative undertakings in implementation of EIO (accepted, ahead of print, authors: Professor Adam Górski, PhD Ariel Falkiewicz).
4. Events and conferences.
5. Promotion of judicial cooperation by developing systematic research and generating specific knowledge and tools addressed to the different stakeholders to contribute to the efficient and coherent application of the Directive 2014/41/EU on the European Investigation Order (EIO) in criminal matters and other relevant regulations;
- 6.

**Activities delayed or not implemented yet:**

Social media campaign – due to inappropriateness of measures to main, scientific, objectives (short messages, rapid exchange of information);

Training courses

European Observatory on EIO

Exploitation and dissemination focused on policy makers and non-judicial authorities

**Unforeseen activities:**

N/A

**II. Output(s)**

**Output 1:** Project website ([www.eurocoord.eu](http://www.eurocoord.eu)). And social media presence. The partners have disseminated the activities and results of the project through their social networks and platforms.

**Output 2:** Social media presence. Partners has disseminate the project activities using online and Media Tools.

**Output 3:** Dissemination plan

**2.2. Timeline (max. 1 page)**

Please confirm that the project will be completed by the deadline set in the Agreement. Which corrective measures were taken to make up for any delays ?

The EUROCOORD project will be carried out within the duration established in the Agreement.

Consortium meetings have been held with to compensate for delays. In these meetings, action plans such as dedication of more efforts to each task have been established to compensate for these deviations.

**2.3. Visibility of EU funding (max. 1/2 page)**

How was the visibility of the European Union's financial support ensured throughout the project?

The visibility of the European Commission's funding has been ensured by mentioning it and also by publishing the commission's logo, as is showed in the following image.



Co-funded by the Justice  
Programme of the European Union.  
n° ref. 723198

Written material, press conferences, presentations, publications, in summary in every dissemination and communication event where Eurocoord project was involved, the European commission was mentioned.

**2.4. Main problems/difficulties in the implementation (max. 1/2 page)**

Were you faced with any problems/difficulties during the implementation of the project? How did you solve them?

The main problems encountered have been mentioned above, when describing the activities carried out and the provisional outcomes of the project. In general it can be affirmed that the main difficulty lies in the delay of two of our three target countries, in transposing the EIO Directive. This has put the partners before the difficult decision, of either waiting until a legal text is in place or working with the draft law, and facing the additional burden of updating the reports at a later moment, once the legislative process has ended.

The uncertainty of the legislative process has caused delays in completing WS1 and WS2. As WS3 relies greatly upon the outcomes of those WSs, the timetable regarding WS3 – elaboration of Code of Best Practices–, will also suffer delays. As to the definition of the structure to be followed in the drafting of the Code of Best Practices, we are still waiting for the feedback of the EU officer, as to the preferred structure.



Finally, the

process of hiring the research assistants presented also several problems, at least at Complutense University: first, the process for announcing the offer of the posts could not be done until the relevant Universities signed the EU contract, which did not happen until approx. March; second, due to the rigid and completely outdated proceedings for public contracts in Spanish universities, the whole process for hiring a person took several months; third, the selection of the research assistant is not done by the project leader, but by a commission of the University, upon criteria that not necessarily match with the needs of the project; and finally, there are fixed durations for the contracts, therefore if the person “assigned” is not fit for the work, another six months have to pass until another person can be hired. This has caused the work to advance at a slower pace than planned.

Regarding Italy, in the implementation of the project we faced some difficulties related to the enactment of several new laws in the field of judicial cooperation in the gathering of evidence. Alongside Legislative Decree no. 108 of 2017 aimed at implementing Directive 2014/41/UE, are to mention Legislative Decree no. 52 of 2017 aimed at implementing the European Convention on judicial assistance in criminal matters of 2000 – that still regulates matters not covered by Directive on the EIO - and Legislative decree no. 149 of 2017 on “jurisdictional relationship with foreign authorities”. Lastly, by Legislative decree no. 216 of December 2017 has been approved a comprehensive reform of interceptions of telecommunications, that could have an influence on the application of the EIO. These reforms have posed practical problems of coordination among different sources. We are monitoring instructions given by Eurojust as well as by our Minister of Justice in order to solve these problems. Another problem is to find lawyers with specific experience in the field of judicial cooperation with particular reference to letters rogatory. We are solving the problem addressing questions to lawyers involved in NGO.

## **2.5. Cooperation within the partnership (max. 1/2 page)**

How did the Co-beneficiaries and Associate Partners participate in the project and what was their role?

The internal collaborative approach and continuous networking has been assured with the following actions:

- Close communication with project coordinator (vía skype, phone and emails)
- Execution of all contractual obligation according to the agreement
- Internal work plan development and task allocation organisation

All co-beneficiaries and associate partners has work together for accomplish common goals and objectives. EUROCOORD consortium is formed by 4 Universities as full partners and 2 Associate partners: UBU (ES), experts on human rights protections applied to criminal proceedings; UCM (ES) with a wide expertise on EIO and several papers published on this field; UOP (IT) joins the theoretical foundation and practical know-how due to the main researcher’s work as deference lawyer, also publishing several papers in the EIO scope; and UJ (PL) with a proven experience on the scope of European Justice and its judicial framework.

Also, the associate partners’ profiles will assure the scientific robustness and sustainability of the outputs, the resources and knowledge generated and the European Observatory for the EOI: Fiscalía General del Estado, the Spanish Prosecutor General's Office, (FGE) will be the main reviewer of the Ws1, Output 3; and Fondazione Rocco Chinnici (FC), fighting against the organized crime, will



contribute

on Italian judicial framework and legal protection (Ws2). Both associate partners, will contribute to Code of Best Practice, and a little contribution is expected for the Dissemination activities.

- University of Burgos (UBU): Leading researcher for this Project is PhD. Mar Jimeno Bulnes, Professor of Procedural Law, University of Burgos - Faculty of Law since 2011. Until then, she has worked as temporary judge for the Provincial Court of Burgos (Spain) for more than 10 years. She was also visiting Professor of Law Chicago-Kent College of Law (USA) in 2012. She has participated in important international committees and fellowships, including the Collaborative Research Network (CRN) on Law Participation in Legal Decision Making, Law and Society Association, European Arrest Warrant Project, TMC Asser Institut (webpage: [www.eurowarrant.net](http://www.eurowarrant.net)), European Criminal Law Academic Network (ECLAN), among others. She has published more than 80 publications in Spanish and English language and got two Nationals honour awards ([www.ubu.es/caji](http://www.ubu.es/caji)).
- University Complutense of Madrid (UCM): UCM team will be leaded by PhD. Lorena Bachmaier Professor. She is Professor at the Faculty of Law at Complutense University since 1996, where she has taught criminal procedure, civil procedure and arbitration, publishing a huge number of papers on Journals, Conferences Book chapters and comments and notes on case law. Recently, she has participated on EU Grant DER 2009-11243 as Director (Fight against terrorism and restriction of fundamental rights in the criminal proceedings) and, currently, is being involved, as Director, with DER 201344888-P (Investigation and evidence in the criminal proceedings in Europe)
- University of Palermo (UOP) in this particular case leaded by PhD. Annalisa Mangiaracina will contribute on the juridical practices analysis: the UOP position and her career gives us the opportunity to get a closely communication with nonacademic stakeholders, such as NGOs or defines lawyers. Annalisa is Researcher in Criminal Procedure since 2012 and has practiced as defence lawyer from 1999 to 2012. She has published more than 20 publications and was involved on 5 transnational projects, among then the Cori Project (2008-2009) on the impact of the European Court of Justice case-law within the national criminal proceedings.
- Jagiellonian University (JU) team is leaded by PhD Adam Stanisław Górski, assistant professor and chair for Criminal Law, Nominated Member of Studies an Research Unit for the Supreme Court of Poland since 2011. His research outputs on the scope of European Arrest Warrant, European Prosecution, Juridical cooperation and cross-border criminal proceedings and his participation on several research projects demonstrate his vast experience, for instance Study on the future institutional and legal framework of judicial cooperation in criminal matters in the EU, 2010/S 77-113934 or Study on disqualifications as a sanctioning measure in the national systems of the Member States, 2010/S 114-171916