

# About joint investigation teams in a nutshell

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## ABSTRACT

Joint investigation teams are fundamental instruments of cooperation in the field of EU freedom, security and justice. The core legal basis of the EU has not been implemented in all member states yet. Nonetheless, joint investigation teams have demonstrated their usefulness in investigating the most serious forms of criminality such as terrorism and drug trafficking. Implementation difficulties include admissibility of evidence in court, high costs of running joint investigation teams and drafting comprehensive agreements on setting up joint investigation teams. This instrument could be used more effectively, in particular through a stronger involvement of both Europol and Eurojust. Joint investigation teams can be considered as a valuable tool in the development of a criminal justice area in the EU.

**KEYWORDS:** cross-border organized crime, mutual trust, law enforcement, joint investigation, Europol, Eurojust.

## Introduction

A joint investigation team (JIT) is a desired instrument for international cooperation of judicial and law enforcement authorities in their fight against organized cross-border crimes as well as a useful tool in facilitating mutual assistance in criminal matters between EU member states.

Experience shows that the JIT initiative has not been widely accepted in practice by member states. The reasons for this seem to be the following: insecurity and uncertainty about national implementation of Article 13 of the Convention on Mutual Assistance in Criminal Matters 29 May 2000 (MLA Convention, 2000) and/or the Framework Decision on Joint Investigation Teams 13 June 2002 (Framework Decision, 2002), which contain identical wording. In addition, other reasons might be a lack of awareness of JITs as an investigative option and a lack of funding, as JITs are usually expensive to negotiate and operate.

The main goal of this article is to provide a brief, yet comprehensive overview of this instrument, mostly from the point of view of practitioners, by analyzing the social and criminal background and the legal framework concerning JIT. The article then discusses, based on the Joint Investigation Teams Manual (prepared by Eurojust and Europol in the framework of the JIT Project), various factors and main elements that play a role in the establishment and operation of JIT, with a particular focus on the outstanding role of Europol and Eurojust in this cooperation. The last part of the article presents some international experience, issues and difficulties, most of them as subjects for future legislation.

### **1. Social and criminal background**

The character and internal structure of crime has been changing steadily in relation to social, economic and international phenomena. While crimes were of "*local nature*" and perpetrators committed crimes in the settlement of their residence or in close neighbourhoods, the "*one crime one detective*" principle in investigation was adequate for social needs and the levels of science and technology of that time. This character of crime made it possible for the scenes of crimes to "reveal" even the perpetrators themselves, and detectives, being experts in the peculiarities of the area and having wide knowledge about it and being familiar with the residents, could immediately identify the tracks of the spot with members of a well-defined circle of perpetrators.

At the beginning of the 50's Western countries, and a decade later ex-socialist states too, saw an explosive qualitative change in the structure of crime. A quantum leap of industry, urbanization, changes in the occupational structure of active population, a growing mobility of the society and the development of the tourist industry created conditions for the rise of "*moving crime*." This new phenomenon led to the reduction of effectiveness of investigation and required changes in the investigation process by defining new underlying principles. There was a sudden increase in the number of perpetrators who committed crimes not in their local areas, but much further away, even in the opposite part of the country, and fled the scenes within seconds, thus complicating the work of the detectives. While formerly, especially in smaller settlements, the appearance of foreigners, in particular in cars, attracted the attention not only of the local population but of local police forces who watched all their movements like a hawk, by the beginning of the 60's this became a widespread mundane phenomenon involving disinterest unfortunately.

Henrik Dorning, a prominent Hungarian expert of criminal sciences who lived in the first half of the 20th century, described this period in the following way: "...in the modern world of technology perpetrators are traveling rashly and become international within the shortest period. Often they plan a theft, fraud or even more serious crimes in one of the remotest countries and commit them in yet another state, but the plunder is taken to a third country, so that the perpetrators temporarily flee the country to a fourth or a fifth one..." (Ernyes, 1998).

This tendency could be observed across Europe. Research performed in France revealed the following findings about the character of crime in France of the 60's: "...It is the result of a permanent development so that perpetrators unceasingly extend their field of activity over the whole territory of France.... Relations with foreigners are more and more often....The activity of criminals has already become international by now..." (La Criminalité en France de 1964–1968).

Both qualitative and quantitative changes in crime required a proper *integrated prosecution system* adjusted to the above mentioned conditions, a system that would include all police organizations in a given country as well as new organizational structures and new methods in the investigation process within the borders of countries.

The qualitative "development" of crime had not stopped and by the end of the 20th century the *international cross-border crime* had appeared as a new phenomenon characteristic of both Europe and the whole world. This called for a wider professional cooperation among countries in fighting cross-border crime.

At all times and in all societies it was a general claim that perpetrators had to be caught and take the consequences of their criminal acts. At all times there existed a personal and institutional framework of prosecution, and the degree and quality of holding perpetrators responsible for their crimes varied periodically and from culture to culture.

The actions taken in the interest of exposing a crime and its perpetrator(s) is the process of investigation. The whole procedure of investigation and the circle of persons who are legally entitled to carry out an investigation are regulated strictly by law, with a clear identification of investigating authorities. Prevailing criminal procedure law lays down a precise description of the rules of investigation, while criminalistics discusses its practical issues, such as technology, methodology and tactics of investigation.

The question of authority during the investigation process depends on the following three factors:

- the division of central and territorial organs of the investigating authority;
- division of labour in accordance with service branches (for example, traffic control agencies may also exercise investigating authority);
- criminalistical angles can also shape the issue of the spheres of authority such as the material importance of a crime, the scene of a crime, the organization level of perpetration, and the accidental relations of perpetrators with international crime and with international criminal groups.

In case of crimes being committed on a large scale by an organized action of a complicated network of criminal groups, it is essential in the interest of a successful investigation to establish investigation teams based on the cooperation of different investigating authorities. When shaping the rules of the sphere of authority and competence, three conditions of a successful investigation have to be kept in view, including quickness of intervention, the scene of intervention and expertise of intervention.

Obviously, if we stand facing organized crimes committed by a larger number of perpetrators, investigation requires more complex innovations and methods in the instrument-storage of criminalistics. Instead of the previously mentioned obsolete “one crime one detective” principle, it is necessary for investigation authorities to build a wide cooperation network both inside the country and at the international level in the interest of a successful investigation.

It has become obvious that cooperation between investigation authorities should not be restricted only to exchanging information or sending experts or liaison officers to one another, but they have to create a closer cooperation by coordinating their investigation processes for a more effective and successful result. It is a general tendency in European countries that the instruments and methods used by investigation authorities are becoming more and more “international.”

One of the newest and most coordinated investigation methods of the present days is the institution of *joint investigation teams (JITs)*, the subject of this article.

## 2. The legal background of joint investigation teams

### 2.1. Historical background

The development of international criminal, prosecutorial and police cooperation was powerfully determined by the traditional attitude of countries that criminal law, law enforcement and the legal base of calling perpetrators to account for their crimes are indispensable parts of national sovereignty. Consequently, all kinds of initiation aimed at developing criminal cooperation and building a new type of law enforcement strategy based on international division of labour evoked powerful and harmonious political and constitutional resistance from national states.

However, the causes of crime also became “international” in Europe, and the political and social institutions of the member states of the European Union were less and less able to prevent these causes. The creation of the internal market and the abolition of internal frontiers intensified and accelerated this process which got a partial reflection in the phenomenon that usual crimes also became “international” as any kind of crime may include an international element, partly owing to the fact that new and complex types of crimes surfaced and spread widely (such as human trafficking, money laundering, drug trafficking and other organically committed crimes).

This task was by far beyond the possibilities of law enforcement authorities operating based on national criminal material and procedure law. Science and politics unanimously admitted the importance of the problem of international crime, as well as the fact that there was and there is a need for a new approach, wider cooperation, increased harmonization in the actions of national states, new instruments and methods, and international coordination. In practice, this has brought two essential outcomes: countries have signed international agreements (both bilateral and multilateral) on the subject of fighting international crime, on the other hand countries have recognized the outstanding importance of international police cooperation.

Practical causes brought into being the establishment of JITs since the practice of investigation in cross-border crimes has justified the following: an investigation can be carried out more effectively and more successfully (for example, in case of crimes classified as organized crime) if investigation authorities of those countries take part in the investigation of any element of a committed crime. That is why many bilateral agreements on the subject of mutual legal assistance already contain some disposition for the establishment of JITs.

## 2.2. Possibility of JITs for Customs and Police Officers

With regard to the European Union, the Naples II Convention of 1997 can be mentioned as the first document concerning JIT. Article 24 of the aforesaid Convention regulated for the first time the possibilities and requirements of establishing JITs. Admittedly, it applied “only” to the cooperation of customs authorities of the member states. Under the Naples II Convention JITs can only be set up in case of criminal activities listed in Article 19.2 of the Convention. This list is broad: from trafficking in prohibited goods (drugs, chemical weapons, nuclear materials) to illegal cross-border trade in taxable goods.

Previously, in relation to police cooperation a lack of regulation of frame-requirements impeded similar type of cooperation, but Article 13 of the 2000 MLA Convention filled this legal gap. This regulation established the possibility of creating such investigation teams in which members (investigators, prosecutors and/or judges) delegated from member states work together with delegates of Eurojust, Europol and OLAF.

## 2.3. From the Treaty of Amsterdam to the Stockholm Programme

*Article 29 of the Treaty of Amsterdam in 1997* states that the area of freedom, security and justice within the EU must be achieved by preventing and combating crime, organized or otherwise. Article 30 of the treaty states that for the promotion of cooperation through Europol, Europol must be enabled to support and facilitate the operation of joint teams.

The idea of arranging the legal basis of JITs came to light during the *European Council in Tampere, Finland on 15 and 16 October, 1999*. Conclusion no. 43 called for “joint investigative teams to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism.” (Rijken, 2006).

As the next outstanding step, the EU Council of Ministers adopted the *Convention on Mutual Assistance in Criminal Matters on 29 May 2000*, with the objective of encouraging and modernizing cooperation between judicial and law enforcement authorities within the EU as well as in Norway and Iceland by supplementing provisions in existing legal instruments and facilitating their application. Article 13 refers to JITs (Rijken, 2006).

Within a few days after the 11 September 2001 attacks, the proposal for a draft Framework Decision on JITs was completed. At an extraordinary *Council Meeting on Justice, Home Affairs and Civil Protection (20 September 2001)*, the Council had to adopt numerous measures, including the Framework Decision on JITs.

In view of the slow progress towards the ratification of the 2000 MLA Convention the Council adopted on *13 June 2002 a Framework Decision on Joint Investigation Teams* which the Member States were to implement by 1 January 2003. This Framework Decision reproduced Articles 13, 15 and 16 of the 2000 MLA Convention explaining when and how a JIT can be set up, concerning the criminal and civil liability, respectively, of officials. The Framework Decision has been implemented in different ways in the Member States. Some countries have adopted specific laws on JITs or, as another method, they have inserted JIT provisions in their respective codes of criminal procedure, others have simply referred to the direct applicability of the 2000 MLA Convention in their legal order. The Framework Decision will cease to have effect once the MLA Convention has entered into force in all MS.

In the *Council Act of 28 November 2002* drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol, it was stated that Europol officials can take part in the operation of JITs.

The Council adopted a *recommendation on 8 May 2003 on a model agreement* for setting up a JIT.

Within a few days after the 11 March 2004 attacks in Madrid the *European Council in its official statement on 25 March 2004* hurried the Member States to bring all the necessary measures in order to be able to implement completely the Framework Decision till June 2004, and so that the representatives of Europol and Eurojust should be involved as much as possible in the work of JITs.

The *Hague Programme in November 2004* mentioned first that in all Member States it was necessary to appoint national JIT experts. It also stressed the importance of JITs and the fact that Member States should be encouraged to use this tool in fighting cross-border organized crimes and other serious crimes and terrorism with the support of Europol and Eurojust.

In *April 2005 the Luxemburg Presidency* initiated building up a JIT expert network and appointing a contact person in every Member States. In July all the requirements were drawn up towards the national experts and the expert network.

The *Stockholm Programme* following the Hague Programme also contains instructions and tasks in connection with JITs in its 4th Chapter under the title "A Europe that protects" as the followings: "...The prime objective of EU law enforcement cooperation is to combat forms of crime that are typically cross-border in their dimension. Europol should become a hub for information exchange

between the law enforcement authorities of the Member States, a service provider and a platform for networks in the field of police and customs cooperation. Europol and Eurojust should be systematically involved in major cross-border operations and informed when joint investigative teams are set up..." (The Stockholm..., 2009).

#### 2.4. Other legal bases

There are other EU and non-EU legal bases in the "legal evolution" process of JITs – apart from bilateral agreements – that can directly or indirectly be used in setting up a JIT. The following instruments should be emphasized among others:

- UN Convention against Transnational Organized Crime Article 19 (15 November 2000).
- Council of Europe Second Additional Protocol to the European Convention on mutual assistance in criminal matters Article 20 (8 November 2001).
- Agreement on mutual assistance between the EU and USA Article 5 (19 July 2003).
- UN Convention against Corruption Article 49 (31 October 2003) (Long, 2009).
- Convention on the establishment of a European Police Office (amended by Council Act of 28 November 2002).
- Council Recommendation of 28 September 2000 to Member States in respect of requests made by Europol to initiate criminal investigations in specific cases.
- Council Recommendation of 30 November 2000 to Member States in respect of Europol's assistance to joint investigative teams set up by the Member States of 30 November 2000 to Member States in respect of Europol's assistance to joint investigative teams set up by the Member States.
- Decision of The Management Board of 20 March 2007 laying down the rules governing the arrangements regulating the administrative implementation of the participation of Europol officials in Joint investigation Teams.
- Agreement between Eurojust and Europol (article 6).
- Council Framework Decision of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.
- Decision on setting up Eurojust.

### 3. General information about JITs

#### 3.1. Advantages of using a JIT

Criminal cooperation reached that phase in Europe when building mutuality into the existing structure of cooperation poses the hardest task. Mutuality is very important, partly because it increases the effectiveness (instead of the simple “buying and selling” of information, cooperation is based on the division of information and responsibility) and partly because European databases have been created (such as EURODAC). Thirdly, mutuality contributes to a more effective utilization of sources and possibilities. JITs are one of the deepest manifested forms of this mutuality with the following advantages:

- ability of sharing information directly between JIT members without the need for formal requests;
- ability of requesting directly investigative measures between JIT members, dispensing with the need for Letters Rogatory (this applies also to requests for coercive measures);
- ability for members to be present at interviews, house searches, etc. in all jurisdictions covered (helping to overcome language barriers as well);
- ability to build up mutual trust between practitioners from different jurisdictions working together and deciding on prosecution and investigative strategies;
- ability of coordinating efforts on the spot and informal exchange of specialized knowledge;
- ability of involvement of Europol and Eurojust with direct support and assistance; and
- ability of securing potentially available funding.

#### 3.2. Requirements for a JIT

Article 13(1) of 2000 MLA Convention approaches the JIT concept from the international and cross-border dimension of crime rather than from its seriousness.

A joint investigation team may, in particular, be set up where:

- (a) a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States;
- (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

Currently JITs are mainly used in case of more serious forms of criminality (drug trafficking, terrorism, trafficking in human beings, counterfeiting of Euro), but may be useful even in smaller cases by facilitating cooperation in the specific case preparing the groundwork for future JITs by building mutual trust and providing experiences in cross-border cooperation.

Two crime areas have to be mentioned where a JIT might be the right tool for a successful investigation:

- drug trafficking: it is known from the outset that the residence of the trafficker is often located in a different country than where the final destination of the drugs is. In its Communication to the Council and the European Parliament on an EU Drug Action Plan 2009–2012, the Commission emphasized the importance of using JITs to a greater extent in cooperation with Europol;
- terrorism cases: in which the venues of a planned attack differ from the location where the first intelligence will be gathered, relevant information is often spread through many different countries. For example, in 2007 a JIT was set up by Spain and Portugal to investigate the Spanish separatist group ETA's activities in Portugal (Long, 2009).

JIT may be set up by mutual agreement of competent authorities of two or more Member States to carry out criminal investigations in one or more of the Member States setting up the team. A request for setting up a joint investigation team may be made by any of the Member States concerned and shall include proposals for the composition of the team. Requests for setting up a JIT may often come from Europol and Eurojust as well. A team shall be set up in one of the Member States in which the investigations are expected to be carried out.

### **3.3. Structure and operation of JITs**

#### *3.3.1. Members and participants of JITs*

A JIT is set up in the Member State in which investigations are expected to be carried out predominantly. One fixed “headquarters” should be specified, but it is not necessary for all the members of the JIT to be present in the same place. Police officers, customs officers, judges or prosecutors can potentially be members or seconded members of the JIT.

There is no requirement that a member of the JIT has to work outside of their own country; indeed a JIT can work quite properly with members from different countries when nobody works outside their own Member State. For

example, State A and B can agree to set up a JIT based in the capital of A with a single member of B undertaking enquiries in the territory of B and never going to A. Similarly, a few members can compose a group located in the “headquarters” whilst the other team members act in their own countries. In respect of the costs and commitment required to second personnel abroad, this type of arrangement might be more “attractive” for countries. There is no obligation for any JIT Member State to second a member to the team.

Members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being ‘seconded’ to the team. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may decide otherwise. Seconded members of the joint investigation team may be entrusted by the leader of the team with the task of taking certain investigative measures.

Member States setting up a team have the possibility to decide to let persons not representing the competent authorities of Member States take part in the activities of the team, including representatives of, for example, Europol, Eurojust, the Commission (OLAF) or representatives of authorities of third countries. For example in a JIT between Belgium and the Netherlands, an FBI officer from the United States of America could be *participant*, but never as a member or a seconded member.

Every JIT needs to have a *team leader (or leaders)*, who is one of the team members originating from the Member State of the team’s location. It is not determined whether the leader should be a judge, a public prosecutor or a laws enforcement officer (police or customs), since this issue depends on the national legislation. However, since in some Member States a JIT is considered to be a “particular form of mutual legal assistance,” it is recommended that in cases where investigating magistrates or prosecutors direct operations, the team leader should be a representative from the judiciary. Depending on the national legislation law enforcement officials may also lead the JIT in other cases. On the basis of the instruction of 2000 MLA Convention there are two interpretations: the JIT can be under permanent leadership based on its main seat of activities, or the team leader might change from country to the other if the team is active in more than one country. Experience shows that Member States prefer having more than one leader rather than assigning one with overall responsibility.

### 3.3.2. *The operation*

A JIT shall operate in the territory of the Member States setting up the team under the following general conditions:

- Team members carry out their task under the leadership of the team leader, taking into account the conditions set in the agreement on setting up a JIT by their own authorities.
- The team shall carry out its operations in accordance with the law of the Member State in which it operates.
- The Member State in which the team operates shall make necessary organizational arrangements.
- JITs in general and JIT agreements cannot override domestic law and obligations.
- It is necessary to provide clear information and guidelines for all participants of the JIT such as differences in authorities required for certain coercive measure and conditions for an effective use of evidence in court proceedings.

Where a JIT needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.

Where the JIT needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

A member of the joint investigation team may provide the team with information (subscriber details, car registrations and criminal records) available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

Information lawfully obtained by a member or seconded member while part of a JIT may be used for the following purposes:

- for the purposes for which the team has been set up;
- for detecting, investigating and prosecuting other criminal offences
- for preventing an immediate and serious threat to public security if subsequently a criminal investigation is opened;
- for other purposes to the extent that this is agreed between Member States setting up the team.

### 3.4. Participation of Europol and Eurojust

Both Europol and Eurojust were established to support Member States in their fight against serious organized cross-border crime; playing a central role in JITs is deduced from their competences and tasks. Europol and Eurojust can participate in JITs separately as well as jointly. It is not mandatory to involve them when establishing and operating a JIT, but both could play a crucial role in ensuring the efficiency and operational capacity of the JIT. Both institutions may support the Member States particularly in the preparatory assessment and negotiation phase by providing legal advice and expertise. They can assist in the administrative management of the JIT, also advice of the current availability, conditions and procedures for funding. They can provide early legal and practical advice regarding to the JIT agreement and provisions to be contained in them. They can facilitate the exchange of information, as well as the execution of international mutual legal assistance with other non-participating countries. They have the infrastructural possibilities to provide facilities for agreement negotiations and co-ordination meetings (including secure surroundings and translation as well).

The role of Europol Officials in a JIT:

- Place Europol's knowledge of the criminal world at the disposal of JITs: Europol could place its knowledge of the criminal world at the disposal of members of the JITs in accordance with the Europol Convention which allows Europol to aid investigations in the Member States by forwarding all relevant information to the national units and to assist the Member States by providing advice on investigative procedures (also taking into account Europol's linguistic capabilities).
- Assist with coordination of operations by JITs: Europol could assist Member States with centralized coordination of operations by JITs in accordance with the Europol Convention which enables Europol to facilitate the exchange of information between Member States.
- Provide advice to JITs on technical matters: Europol could advise Member States on appropriate techniques for use in investigations with a cross-border dimension which enables Europol to give advice on organization, equipment of authorities and on technical and forensic police methods.
- Help with the analysis of offences: If Europol already has an analysis file (AWF) on the facts being investigated by the JIT, members of the team may seek the assistance of the relevant analytical group. Europol by cross-checking the data gathered by the team with its own databases and analyzing them can give additional information to the JIT.

Eurojust has the capacity to make an official request to the competent authorities in EU Member States to set up a JIT.

In the framework of a common project Europol and Eurojust promote the use of JITs with the following instruments:

- By dedicating a specific webpage to JITs ([www.eurojust.europa.eu](http://www.eurojust.europa.eu), [www.europol.europa.eu](http://www.europol.europa.eu)),
- By producing a Manual to guide practitioners,
- By hosting and co-organizing the meetings of the National Experts on JITs. A Network of National Experts on JITs was established in July 2005. The Network, consisting of at least one expert per Member State, promotes the use of JITs by helping to facilitate the setting up of the teams, assisting in the sharing of experiences and best practice, and dealing with legal considerations. The experts assist practitioners in the Member States with setting up JITs. Europol and Eurojust provide support to the Network and the experts in their work (Long, 2009).

### 3.5. The JIT Agreement and Model Agreement

According to the Article 13(1) of 2000 MLA Convention, a JIT must be established by mutual written agreement between two or more Member States of the EU. The agreement is a crucially important document because the legal framework of setting up and operating a JIT allows for a wide range of discretionary powers. It has to set out among others the specific purpose and the composition of a JIT, as well as the expected period of operation.

The agreement may be amended at any time, in particular to extend the period of time of operation. A Model Agreement for a JIT was adopted as a Council Recommendation on 8 May 2003 (Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team). Additionally, some Member States have already agreed draft JIT templates between themselves to speed up the agreement process.

The Agreement should describe:

- parties to the agreement (agency/administration from each Member State);
- purpose of the JIT;
- period covered by the agreement (limited period of time – may be extended by mutual consent);
- member State(s) in which the JIT will operate;
- JIT leader(s) (representative of the competent authorities in the Member State(s) where the team is operating);

- members of the JIT (judicial authorities, police authorities, national members of Eurojust, undercover officers, specialists);
- specific arrangements of the Agreement:
  - terms under which seconded members of the JIT may be excluded when investigative measures are taken,
  - specific conditions under which seconded members may carry out investigations within the Member State of operation,
  - specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request,
  - conditions under which seconded members may share information derived from seconding authorities,
  - conditions under which seconded members may carry/use weapon.
- organizational arrangements.

Since every JIT is specific and given the complexity of criminal investigations and the variety and differences in national legislation, the JIT Model Agreement may not suit all individual circumstances; however, it offers a useful guide to issues which should be covered in any agreement, also proposals for the wording of the agreement are provided.

It should be remembered that Europol and Eurojust are available at any time to help Member States to draft their agreement.

#### **4. International experience, practical issues and difficulties**

##### *The “active” French.*

France is one of those Member States which, recognizing the outstanding possibilities of JITs, regularly initiates and sets up JITs to make investigations more effective. By the end of 2008 France had been involved in 20 JITs, and the first was established with Spain in 2004. Eleven out of the 20 were related to organized crime and 9, to terrorism activities (12 JITS were concluded with Spain, 4 with Belgium, 2 with Germany, one with the Netherlands and one with Romania) (Long, 2009).

##### *Admissibility of evidence in court.*

As a result of differences in national legislation, it might happen that evidence gathered in a Member State according to its national laws might not be admissible in the Court of the other participant Member State where the judicial proceedings is carried out. The issue of admissibility of evidence in court is

governed by the national law of the Member State where the court proceedings take place. Therefore, it is very essential to make a close examination of this question in the negotiation phase and in the phase of drafting the agreement before any operational activities have been undertaken by the JIT.

*Financial issues.*

It is an experimental fact that JITs are projects with high expenditures, including mostly accommodation, travel and telecommunication cost. Basically, the participating Member States have to agree when setting up a JIT in the ratio of bearing the costs, but there are also other financial opportunities available for Member States to ask for.

The European Commission has established a grant for Eurojust entitled “Financial, administrative and logistic support to JITs with establishment of a centre of expertise with a central contact point.” With this grant, Eurojust intends to meet perceived difficulties with JITs. Eurojust considers it important to support JITs financially by assisting with two main common areas of expenditure, namely travel and accommodation and interpretation/translation costs. Further, to address locally lacking facilities/ infrastructure, a small number of laptops and mobile phones are available following duly substantiated requests.

*Other experience and difficulties:*

- Steps have to be taken in that direction so that JITs set up in specific cases should not appear as isolated phenomena next to one another but should fit through Eurojust into a European system that will necessarily lead over time to building a *common European investigative strategy*.
- Europol and Eurojust could become *professional advising centers* in the service of the authorities of Member States. They could play an outstanding role in setting up JITs and handling competence conflicts. In addition to a lack of mutual trust, Member States are afraid of the “bureaucracy” by involving Europol and Eurojust in the investigation, fearing that the process will lose its flexibility. In some countries investigation – as one tool of sovereignty – is still carried out as “absolute home affair.”
- Because of geographical considerations and fewer linguistic limits, experience shows that it is worth practicing first with the *neighbouring countries* in cooperating and working together within a JIT to acquire experience.
- It is very essential to *train specialists* at the national and international levels in order to be able to embed the institution of JIT into practice on a wider scale.

- Practitioners feel the want of an *overall evaluation of JITs*, similarly to the European Arrest Warrant (EAW) that would be useful and stimulating for helping them to improve their skills in this field. In case of EAW a global operational efficiency evaluation covering the EU (operational difficulties encountered, the number of persons arrested, etc.) has been carried out; and this is really useful and beneficial for Member States in their cooperation (Long, 2009).
- In a JIT there are people working together with a different professional and cultural background. It is important not to underestimate the “*human dimension*” of the team during the whole process. Therefore, from the beginning of the operation it is necessary to create the conditions of various forms of communication: meetings and discussions in every phase of the project (Long, 2009).
- An interesting issue regarding the goal of a JIT: The *goal of a JIT* may be only an investigation in a concrete case or a JIT may be set up for a concrete problem when there is still no suspect or an accurately specified criminal case that the JIT would investigate. Two answers are formulated by Member States. Some states agree that JITs should be set up only for concrete cases, since solving “criminal politics” problems is not the role of JITs. On the other hand, in order to use the information collected by a JIT in the judicial process, it is necessary to determine the concrete goal of the JIT. Some other Member States think that it is necessary to differentiate between “*recherche pro-active*” and “*recherche reactive*.” In certain cases it might be expedient to set up a JIT before specifying the goals (pro-active), because if we do not act this way, what will assure us to be able to step at an appropriate time in case of terrorism activities.
- Experience shows that all JITs set up until now have been based on bilateral agreements. This is the simplest solution for Member States. Authorities of the states are still afraid to undertake setting up more *complex multilateral JITs* covering more countries of the EU fighting against criminal groups acting in many countries of Europe. This is still an “utopia” since this level of cooperation between law enforcement authorities of Member States is still “unthinkable” (technical difficulties of realization). In such multilateral cases Eurojust might be a useful instrument in cooperation in the future.

## Conclusions

Joint investigation teams are instruments for assisting and facilitating specific investigation involving cross-border crime and also involving the building of mutual trust between Member States.

Because of the complexity of criminal networks, it is obvious that the implementation of JITs at the European level should be coordinated more and more by Eurojust, jointly with Europol. Countries that have already participated in a JIT show a significant increase in willingness to use JITs again. This willingness seems to be fed by mutual trust, and this means that mutual trust is essential for closer cooperation through a JIT (Rijken, 2006).

Even though this tool could be used more often, all the participants of closed JITs are satisfied with the outcome of the operation, and they consider JITs to be considerably beneficial and agree that this tool contributes to a European Criminal Justice Area.

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## About joint investigation teams in a nutshell

Judit Nagy

### SUMMARY

This paper analyzes the phenomenon of joint investigation teams (JITs) which are new fundamental instruments in the cooperation of law enforcement authorities, mostly against organized crimes. This paper gives a picture of this tool by introducing the special element of JITs.

First, social and criminal “environments” as well as the legal background are introduced to draw the framework of this tool, with focus on two essential legal documents, the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 and the Framework Decision on Joint Investigation Teams of 13 June 2002.

The next part of the paper provides general information about JITs, such as advantages of JITs, requirements for a JIT, the structure and operation of JITs, members and participants, and participation of Europol and Eurojust. The paper emphasizes the importance of JIT Agreement by listing key contents through a Model Agreement.

The last part of the article describes international experiences and practical issues and difficulties regarding the instrument, including the problem of admissibility of evidence in court and financial problems.

Since it is advisable to use JITs on a wider scale, one of the main goals of this paper was to give a brief but exhaustive picture about this possibility in order to motivate practitioners to use this “weapon” against the complex and serious criminal network.

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