



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 September 2009

13598/09

**COPEN 178
ENFOPOL 218
EUROJUST 55
EJN 35**

NOTE

from : General Secretariat
to : Delegations

Subject : Joint Investigation Teams Manual

Delegations will find in Annex the Joint Investigation Teams Manual, prepared by Eurojust and Europol under the JIT's project run jointly by them.



JOINT INVESTIGATION TEAMS MANUAL¹

Introduction

The main goal of this Joint Investigation Teams (JITs) Manual, which supplements the existing Eurojust/Europol document “Guide to EU Member States’ legislation on Joint Investigation Teams”, is to inform practitioners about the legal basis and requirements for setting up a JIT and to provide advice on when a JIT can be usefully employed. Other goals are to clear up possible misunderstandings about JITs, to encourage practitioners to make use of this new tool which can add value to their investigations, and help develop international cooperation in criminal matters in general. This Manual seeks to draw upon shared practical experiences as well as material from seminars and meetings.

As a living document, the Manual will be updated regularly, particularly in response to practical casework experience.

A JIT is an investigation team set up on the basis of an agreement between two or more Member States and/or other parties, for a specific purpose and limited duration.

The general benefits of a JIT compared to traditional forms of international law enforcement and judicial co-operation, such as “mirror” or “parallel” investigations and letters of request, are briefly summarised in the box below. There will also be many specific advantages to working in a JIT depending on the particular circumstances of the individual case.

¹ As at June 2009.

Advantages of using a JIT:

- Ability to share information directly between JIT members without the need for formal requests
- Ability to request investigative measures between team members directly, dispensing with the need for Letters Rogatory. This applies also to requests for coercive measures
- Ability for members to be present at house searches, interviews, etc. in all jurisdictions covered, helping to overcome language barriers in interviews, etc.
- Ability to co-ordinate efforts on the spot, and for informal exchange of specialised knowledge
- Ability to build mutual trust between practitioners from different jurisdictions working together and deciding on investigative and prosecution strategies
- Ability for Europol and Eurojust to be involved with direct support and assistance
- Ability to secure potentially available funding

The concept of JITs

On 29 May 2000, the EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters (“2000 MLA Convention”)². The objective of this Convention is to encourage and modernise co-operation between judicial and law enforcement authorities within the European Union as well as in Norway and Iceland by supplementing provisions in existing legal instruments and facilitating their application.

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 2003³. Member States were convinced that the JITs tool in particular would be an important benefit to the law enforcement agencies of the European Union.

² Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.07.2000 p. 3.).

³ Framework Decision 2002/465/JHA on joint investigation teams (OJ L 162 20.06.2002).

The concept of JITs arose from the belief that existing methods of international police and judicial co-operation were, by themselves, insufficient to deal with serious cross-border organised crime. It was felt that a team of investigators and judicial authorities from two or more states, working together with clear legal authority and certainty about the rights, duties and obligations of the participants, would improve the fight against organised crime.

- JIT provisions in 2000 MLA Convention
- Because of slow ratification of the Convention, JIT provisions were agreed by Member States in Framework Decision of 2002 for quicker implementation
- Existing methods deemed insufficient to effectively combat serious cross-border crime in some cases

Legal Framework

The legal framework for setting up JITs can be found in Article 13 of the 2000 MLA Convention as well as in the Framework Decision. The latter repeats in fact Articles 13, 15 and 16 of the 2000 MLA Convention in almost identical terms. The Framework Decision has been implemented in the Member States in different ways. While some countries have adopted specific laws on JITs or 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 latter has entered into force in the majority of the Member States. The Framework Decision itself will cease to have effect once the 2000 MLA Convention has entered into force in all Member States.

To date (June 2009) Italy has not yet implemented the Framework Decision or ratified the 2000 MLA Convention. Greece has implemented the Framework Decision but has not ratified the 2000 MLA Convention.

In *Annex 1* reference is made to the respective national legislations.

- Some Member States have given direct effect to the provisions
- Some have enacted specific legislation
- The position is set out in Annex 1
- Detailed analysis can be found in “Guide to EU Member States’ legislation on Joint Investigation Teams”

Requirements for a JIT

Article 13(1) of the 2000 MLA Convention approaches the JIT concept not so much from the seriousness of a crime but rather from the crime’s international and cross-border dimension.

The article states that JITs may, in particular, be set up where:

A Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States.

A number of Member States are conducting investigations into criminal offences in which the nature of the case necessitates co-ordinated and concerted action in the Member States involved.

JITs will usually be limited to the more serious forms of criminality and national legislation or operational instructions should be checked to see if there is a seriousness threshold or other qualifying criteria. However, JITs may be useful even in smaller cases. This is because a JIT can facilitate co-operation in the specific case and also prepare the groundwork for future JITs by building mutual trust and providing experience in cross-border co-operation.

There are many practical instances where a JIT might be the right tool, but at least two crime areas can be mentioned by way of example:

- Drug investigations in which it is known from the outset that the residence of the trafficker differs from the final destination of the drugs, and
- Terrorism cases in which the venues of a planned attack differ from the locations where the first intelligence will be gathered.

Requests for setting up a JIT may often come from a Member State but will also often come from Europol and Eurojust. In some Member States this initial request must be in the form of a Rogatory Letter.

When considering a JIT it is recommended that investigators, prosecutors and/or judges from the Member States, together with delegates from Eurojust and Europol, meet to discuss the matter *at the earliest opportunity* before a formal proposal and agreement is made. As some countries have implemented domestic administrative rules which, for example, stipulate notification of the competent ministries in the preparatory stage, the early involvement of all competent persons is of the utmost importance so as not to jeopardise or delay the whole process.

- Whether a JIT is suitable in a particular case depends on the individual circumstances, but JITs can be considered in smaller as well as bigger cases
- Involve Eurojust and Europol at earliest opportunity to discuss possible benefit of the creation of a JIT and concrete steps in formation
- JITs can serve as basis for future co-operation by facilitation of mutual trust and contacts
- Creation of a JIT can be suggested by a Member State, as well as Eurojust and Europol

Structure and operation of a JIT

The team

The team is set up in the Member State in which investigations are expected to be predominantly carried out. Although one fixed “headquarters” should be agreed upon, it is not necessary for all members of the JIT to be located in the same place.

It was obviously envisaged that there would be a group of investigators and other personnel, from two or more Member States, assembled together in close proximity to investigate the case, with a number of people temporarily working outside of their own Member States. The wording of Article 13 2000 MLA Convention certainly suggests this and it might, in many cases, be the ideal arrangement. However, there is no requirement that a member of the JIT has to work outside of his home country, even if the JIT is permanently based in another country. Indeed, a JIT can quite properly be formed with members from two or more Member States when nobody works outside their own Member State. For example, Sweden and Finland could agree to operate a JIT based in

Helsinki, with a single Swedish member undertaking enquiries in Stockholm and never going to Finland. Similarly, a few members could compose the group assembled in one “headquarters” whilst the other team members act in their home countries. In view of the cost and commitment required to second personnel abroad, this types of arrangement might prove appealing to Member States.

- Need to consider geographic basis and to allow flexibility if the investigation reveals a different area of operation
- No "obligation" to second members abroad
- Consideration should be given to linguistic abilities of team members to encourage communication

5.2. The team leader

Every JIT needs to have a team leader or leaders. Article 13 of the 2000 MLA Convention offers several possibilities and again leaves room for national interpretation. It is not specified whether the team leader should be a public prosecutor, a judge or a senior police or customs officer. As this issue is very much dependent on national legislation, no suggestions will be given here. However, since the JIT is considered in some Member States as a “particular form of mutual legal assistance”, it is recommended that a representative from the judiciary should be the leader in those cases where investigating magistrates or prosecutors direct operations. In other jurisdictions and dependant on the national framework, it may be appropriate that a law enforcement officer leads the JIT. Article 13 of the 2000 MLA Convention provides that: "... the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates...". One interpretation of this is that the JIT is under one permanent leadership, based on the JIT’s main seat of operations. On another interpretation, the team leader should come from the Member State in which the team happens to be at any time when carrying out its operations. Some support for this interpretation can be obtained from the model agreement (see section 6 and *Annex 2*), which states that a leader “shall be a representative of the competent authorities in the Member State(s) where the team is operating (...) and under whose leadership the members of the JIT must carry out their tasks in the Member State to which he belongs”. Experiences so far suggest that Member States prefer the option of having more than one team leader rather than opting for one team leader with overall responsibility.

- Clear leadership structure is essential for members of the JIT
- A "flowing" leadership structure, dependent on geographic sphere of operations, is allowed provided leadership structure remains clear
- Thought should be given to type of leader, i.e. police/customs officer, judge, prosecutor – dependent on respective roles in the legal systems of the Member States involved

5.3. The activities

Team members carry out their tasks under the leadership of the team leader, taking into account the conditions set by their own authorities in the agreement on setting up the JIT. This is an issue that needs to be fully considered when drafting the JIT agreement, so that team members, particularly those seconded from another Member State, are aware what line-management structure or structures are in place.

Article 13, paragraph 4, distinguishes between “members” and “seconded members” acting in a JIT. Seconded members of the JIT are from Member States other than the Member State in which the team operates. They may, in accordance with the law of the Member State where the team operates, be allowed by the team leader/leaders to be present when operational activities such as searches of premises are carried out and may even be entrusted to undertake certain investigative measures where this has been approved by the competent authorities of the Member State of operation and by the seconding Member State. The team leader has the right to make exceptions to that general rule. The approval to be present and/or to undertake investigative actions should also be considered in the formal agreement.

The most innovative and possibly most helpful elements of Article 13 of the 2000 MLA Convention are provided for in paragraphs 7 and 9. Where the JIT needs investigative measures to be taken in one of the Member States, members seconded to the team may request their own competent authorities to take those measures. The request should be considered under the conditions which would apply in a national investigation. The purpose of this provision is to avoid the need for Rogatory Letters, even when the investigative measure requires the exercise of a coercive power, such as the execution of a search warrant. This is one of the main benefits of a JIT. For example, a Dutch police officer seconded to a JIT operating in Germany could ask his police colleagues in the Netherlands to execute a search warrant, issued in accordance with Dutch law, in the Netherlands

on behalf of the JIT. However, it must be remembered that Article 13 of the 2000 MLA Convention does not override national legislation. For example, a Dutch officer may ask his British counterpart to request phone intercepts in the UK. The subsequent possibility of using this information in court proceedings however will always depend on the two relevant domestic legislations, and as such this needs close examination.

This need to consider national legislation also applies to paragraphs 9 and 10, although these provisions give another valuable advantage to investigators: members of a JIT may, again in accordance with their national law, provide the team with information available in their country. For example, a team member may provide information concerning subscriber details, car registrations and criminal records from his home country directly to the JIT, without channelling the information via the competent national central bodies. However, consideration should be given to admissibility requirements if the provided information is also to be used as evidence in the criminal file.

Whilst only appropriate authorities from Member States of the European Union are permitted to be members of a JIT, third parties, whether or not from the EU, may *participate* in the operation of the JIT. For example, in a JIT between Belgium and the Netherlands, an FBI officer from the United States of America could be a participant but never a member or seconded member.

The rights conferred upon members of the team by virtue of Article 13 (for example, the right to be present when investigative measures are taken) do not apply to these persons unless the agreement expressly states otherwise.

- JITs in general and JIT agreements cannot and do not override domestic law and obligations
- Clear information and guidelines need to be provided to participants, specifically as to:
 - Differences in authorities required for certain coercive measures
 - Conditions for effective use as evidence in eventual court proceedings
 - What may be disclosed at any subsequent court hearings
 - Internal line-management structures
- Ability for third parties to be "participants" in JITs, but not "members":
 - Roles, purpose and duties of participants need to be clearly described in JIT Agreement, specifically liability provisions
 - Participants may come not only from EU bodies/agencies, e.g. Europol, Eurojust, OLAF, etc., but also e.g. from the FBI

Participation of Eurojust and Europol

As both institutions have been created to support Member States in their fight against organised serious cross-border crime, their respective competences and tasks imply that Eurojust and Europol play a central role in Joint Investigation Teams.

In accordance with Article 12 of the Framework Decision, as well as provisions in the 2000 MLA Convention, Eurojust and Europol can participate in JITs, separately as well as jointly. Further, Article 6 of the Co-operation Agreement between Europol and Eurojust, enables both parties together, at the request of one or more Member States, to participate in the setting up of JITs, and support national judicial and law enforcement authorities in the preliminary discussions concerning the setting up of JITs.

Thus, in close co-operation, both organisations will be at the disposal of requesting Member States when these are considering a JIT. Particularly in the preparatory assessment and negotiation phase both may support the Member States by providing legal advice as well as expertise from prior JIT participation. In addition, facilities for meetings and interpretation are available to Member States. Furthermore, from their role in exchanging information and co-ordinating mutual legal assistance, Europol and Eurojust may be in a position to identify suitable cases for a JIT and consequently request Member States to act upon such a request.

Whilst it is not mandatory to involve Eurojust and Europol when establishing and operating a JIT, both could play a crucial role in ensuring the efficiency and operational capacity of the JIT and the overall success of the investigation. Both organisations can also assist in the administrative management of the JIT. Both parties can also act as an intermediary in the obtaining, as well as advice on the current availability, of any funding. For specific examples, please see the box below. Eurojust National Members acting on the basis of their national law can be members of a JIT. Officials from Europol, Eurojust and OLAF, not acting on the basis of their national law, may participate in the operation of a JIT, even though they cannot lead or be a member of it.

In accordance with Article 3a⁴ of the Europol Convention, Europol officials may participate in a JIT in a “support capacity” but are not permitted to take part in any coercive measures.

⁴ See in particular Article 5 para 1 (d) and Article 6 of the Council Decision of 06 April 2009 establishing the European Police Office (EUROPOL), OJ L 121 of 15 May 2009, p.37. This new decision will be applicable as of 01 January 2010.

- Early advice as to suitability of a case for a JIT vs. traditional means (coordination meetings, parallel investigations, etc.)
- Early practical and legal advice regarding the JIT agreement and provisions to be contained therein
- Provision of facilities for meetings, incl. translations and secure surroundings, for agreement negotiations as well as co-ordination meetings
- Provision of gained experience in JITs, as well as core tasks of co-ordination and support in cross-border investigations
- Provision of analytical support
- Facilitation of exchange of information as well as the execution of international mutual legal assistance with other non-participating countries
- Advice on current availability, conditions and procedures for funding

The JIT Agreement

The 2000 MLA Convention stipulates that JITs are established on the basis of a written agreement. As previously explained, the legal framework to set up and operate a JIT allows for a wide range of discretionary powers and therefore the agreement is of crucial importance to all parties.

On the one hand, experience so far suggests that it is preferable to agree from the outset on detailed arrangements in order to avoid the need for time-consuming discussions during the operation of the JIT. On the other hand, it should be remembered that investigative action and evidence gathering must often commence quickly so that lengthy discussions about the agreement can be avoided. As Article 13 of the 2000 MLA Convention allows the agreement to be amended at any time, a speedy processing of the agreement should be given preference rather than holding lengthy discussions about every detail. Against this background, one purpose of this Manual is to enable the competent authorities and practitioners to consider all elements of the legislation in the written agreement while at the same time enabling them to start the investigation in a short period of time.

On 8 May 2003 the Council of the European Union adopted a Recommendation on a Model Agreement⁵. Additionally, some Member States have already agreed draft JIT templates between themselves to speed up the agreement process.

⁵ Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (OJ C 121 of 23.05.2003, p.1).

In *Annex 2*, reference is made to the Model Agreement, including proposals that should be considered within the relevant sections of the agreement. Furthermore, proposals for the wording of the agreement are provided. Given the complexity of criminal investigations and the variety and differences in national legislations, it is almost impossible to give conclusive advice and recommendations with regard to the content of the agreement. Nonetheless, the attached agreement reflects the Model Agreement of the Council of the European Union as well as practical experiences and written agreements collected by Europol and Eurojust to date. It should be emphasized that both organisations are available at any time to assist Members States in drafting their agreement.

- JIT Agreement may be discloseable in certain circumstances at subsequent court proceedings; therefore, consideration needs to be given to:
 - the definition of the purpose of the JIT, to avoid disclosing other possible suspects still subject to other investigations
 - the identity of the team members can be annexed or sent separately, possibly removing the need to disclose identities of, e.g., undercover officers, specialists, etc.
- Agreement should contain main provisions and clear definitions of roles of members and participants
- During negotiations of an agreement, the core objective of the JIT should be borne in mind, along with differences in legal procedure, rules of evidence and authority required for certain coercive measures
- As every JIT is individual, the JIT Model Agreement may not suit all circumstances; however, it provides a useful guide to issues which should be covered in any agreement

Conclusion

JITs are a tool for assisting and facilitating a specific investigation involving cross-border crime, and also for building mutual trust. Countries that have participated in a JIT have frequently demonstrated a marked increase in willingness to use JITs and other forms of cross-border co-operation.

JITs are not the appropriate tool in every cross-border investigation but practitioners should be aware of their considerable benefits and be in a position to make informed decisions about their use. For further information please contact your national Eurojust / Europol desk or see the JIT website via links from both the Europol (www.europol.europa.eu) and Eurojust (www.eurojust.europa.eu) websites.

National Legislation on Joint Investigation Teams

Austria

Federal Law of Mutual Legal Assistance in Criminal Matters (Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union), Articles 60 - 62 and 76-77 EU-JZG.

Belgium

Art. 8 - 10 of Law of 9 December 2004 concerning mutual international legal assistance in criminal matters and modifying Article 90 of the Penal Procedure Code.

Bulgaria

Art. 476, paragraph 3 of the Criminal Procedure Code and Art. 13 of the 2000 MLA Convention.

Cyprus

Joint Investigation Act 2004, Law No. 244 (I)/2004.

Czech Republic

Code of Criminal Procedure, Sections 442 and 443 (Act. No. 141/1961 Coll. as amended by Act No. 539/2004 Coll.).

Denmark

Implementation through specific provisions was considered not necessary. This has been done within the Explanatory Memorandum to the draft implementing the Convention on Mutual Legal Assistance of 2000.

Estonia

Division 3 (Mutual Assistance in Criminal Matters) of the Code of Criminal Procedure, Section 471.

Finland

Finnish Act. No. 1313/2002, Section 8.

France

Article 17 of a law enacted on 9 March 2004, introducing two new Articles in the Code of Criminal Procedure, namely Articles 695 – 2 and 695 – 3 Art. D15-1-4.

Germany

Article 93 of the Mutual Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen; IRG) and Art 13 of 2000 MLA.

Greece

Greece has not yet ratified the 2000 MLA Convention. The implementation of the JIT Framework Decision however can be found in Law 3663/2008, Articles 13 to 24.

Hungary

Articles 55-59 and 36-49 of Act no. CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union.

Articles 20-24 of the Act no. LIV of 2002 on International Cooperation of the Law Enforcement Agencies.

Ireland

Criminal Justice Act 2004. The act amends Sections 3 and 4 of the Garda Síochána Act 1989. It repeals Section 5 of the Europol Act 1997.

Italy

Italy has not yet implemented Framework Decision no. 465/2002 on joint investigation teams or ratified the 2000 MLA Convention.

Latvia

Criminal Procedure Code of Latvia, Articles 830 – 838.

Lithuania

Code of Criminal Procedure, Article 171 (3) and “Recommendations on the establishment and operation of joint international investigation teams” approved by Prosecutor General of the Republic of Lithuania order of 21.12.2004 (published No.186 – 6963).

Luxembourg

Law of 21 March 2006 on joint investigation teams (Memorial A n O 57, 31/3/2006).

Malta

Article 435E (5) of the Criminal Code of Malta (added by IX.2003.128 and amended by III.2004.77); additionally, Sections 628A and 628B of the Criminal Code refer to mutual assistance in criminal matters (added by IX.2003.128).

The Netherlands

Code of Criminal Procedure, Articles 552qa – 552qe.

Norway

There is no specific law concerning the participation in JITs in Norway. Norway will implement MLA 2000 and therefore also Art. 13. The implementation/ratification will probably be in place during 2010.

However, in principle there are no formal obstacles in the Norwegian legislation that will prevent Norway from participating in a JIT if invited to do so.

Poland

Articles 589b, 589c, 589d, 589e and 589f, Polish Code of Criminal Procedure.

Portugal

Law 48/2003 (mutual legal assistance in criminal matters). The chapter on mutual legal assistance in criminal matters (chapter I) is part of the law on “international judicial co-operation in criminal matters” (Law nr. 144/1999). Law nr. 48/2003 introduces new Articles (145 A & B) in this chapter. In addition, Article 145 of Law 148/2003 refers to JITs.

Romania

Law no. 302/2004 regarding international judicial cooperation in penal field modified by Law no. 224/2006 - article 169; Law no. 368/2004 that ratified the second Additional Protocol on European Convention for judicial assistance in penal field – annex – article 20.

Slovakia

Code of Criminal Procedure (Act No 301/2005), Paragraph 10 (9), Criminal Code (Act No 300/2005), Paragraph 128 (1).

Code of Criminal Procedure (Act No 301/2005), Paragraph 10 (9) - describes the rules related to a JIT (JIT members are considered as policemen; who is the head of a JIT; the reason when it can be established, etc.).

Criminal Code (Act No 300/2005), Paragraph 128 (1) - defines who is a public body (among others also JIT members because they are considered as policemen).

Slovenia

Article 160.b of the Criminal Procedure Act.

Spain

Law 11/2003 of May 21st on joint investigation teams in the framework of the European Union, and Organic Law 3/2003 of May 21st on the criminal responsibility regime of the members of joint investigation teams operating in Spain.

Sweden

“Act on Certain Forms of International Cooperation in Criminal Investigation”, Section 1, Section 2-9 and “Ordinance on Certain Forms of International Cooperation in Criminal Investigation”.

United Kingdom

Council Framework Decision and/or Art. 13 of the 2000 MLA Convention, also Police Reform Act 2002, sections 103 and 104 and Crime (International Cooperation) Act 2003, section 16.

Text of Council Recommendation of 8 May 2003 on a Model Agreement for setting up a Joint Investigation Team together with examples of phrasing to facilitate the use of this Model Agreement

[* N.B. Please note the publication in the Official Journal of both Council Decision 2009/426/JHA of 16 December 2009 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 138, 04.06.2009, p. 14); and Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.05.2009, p. 37)]

In accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000¹ (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams² (hereinafter referred to as the Framework Decision)

1. Parties to the Agreement

The following parties have concluded an agreement on the setting up of a joint investigation team, hereinafter referred to as "JIT":

1. [Name of first agency/administration of a Member State as a party to the agreement]

and

[Name of the second agency/administration of a Member State as a party to the agreement]

(...)

¹ OJ C 197, 12.7.2000, p.3.

² OJ L 162, 20.6.2002, p.1.

[Name of the last agency/administration of a Member State as a party to the agreement]

The Parties to the agreement may decide by common agreement to invite other Member States' agencies/administrations to become Parties to this agreement. For possible arrangements with third countries, bodies competent by virtue of provisions adopted within the framework of the Treaties and international bodies involved in the activities of the JIT, see the Appendix.

2. Purpose of the JIT

The agreement shall cover the setting up of a JIT for the following purpose:

[Description of the specific purpose of the JIT]

The Parties may by common agreement redefine the specific purpose of the JIT.

Poss. Phrasing Suggestions: The JIT is set up to investigate the offence(s) of / the activities of the criminal organisation x with the aim of providing information and evidence for judicial proceedings.

The JIT will be established to dismantle the criminal organisation x.

3. Period covered by the Agreement

In accordance with Article 13(1) of the Convention and Article 1(1) of the Framework Decision, JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:
from

[insert date]

to

[insert date]

The expiry date stated in this agreement may be extended by mutual consent of the parties. In such case, the Agreement shall be updated.

Poss. Phrasing Suggestions: The JIT will operate for a period of six (6) months from the date of signature of this agreement. The JIT may be terminated at any time with the mutual consent of the parties involved, and may be extended for a specified period of time by mutual consent.

4. Member State(s) in which the JIT will operate

The JIT will operate in the Member State(s) designated hereafter.

[Designate Member State or States in which the JIT is intended to operate]

In accordance with Article 13(3)(b) of the Convention and Article 1(3)(b) of the Framework Decision the team shall carry out its operations in accordance with the law of the Member State in which it operates. Should the JIT move its operational basis to another Member State, the law of this Member State shall then apply.

5. JIT Leader(s)⁶

The parties have designated the following person who shall be a representative of the competent authorities in the Member State(s) where the team is operating as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the Member State to which he belongs:

⁶ Article 1(3)(a) of the Framework Decision shall apply, i.e. the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates

MEMBER STATE	NAME	RANK	SECONDMENT FROM [NAME OF AGENCY]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

6. Members of the JIT

The following persons will be members of the JIT:

NB: For the liability of JIT Members, seconded or not (but not for participants), see Articles 2 and 3 of the Framework Decision on JITs as well as mirror provisions in Articles 15 and 16 of the 2000 Convention on Mutual Assistance in Criminal Matters

6.1. Judicial Authorities

NAME	RANK	FUNCTION	ON SECONDMENT FROM [NAME OF AGENCY]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

6.2. Police Authorities⁷

NAME	RANK	FUNCTION	ON SECONDMENT FROM [NAME OF AGENCY]

⁷ These police authorities may also comprise members of the Europol national units of the Member States. These national units are based in the Member States and are national police authorities. Even the liaison officers of the Member States at Europol in principle retain their capacity to act as national police authorities.

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

6.3. National members of Eurojust acting on the basis of their national law⁸

NAME	ROLE: OPERATIONAL OR SUPPORTIVE	MEMBER STATE

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

7. Participation by officials from Europol/Eurojust/the Commission (OLAF) or other bodies set up under the Treaty on European Union as well as officials of third countries

The Parties to this agreement, agree to request/accept the proposal for^{9 10} participation by Europol/Eurojust/the Commission (OLAF) according to the arrangements set out in the Appendix to this agreement.

[Should officials from Europol/Eurojust/the Commission (OLAF) participate in the JIT, this could be mentioned in this chapter. As far as Eurojust is concerned this relates to the participation by Eurojust acting as a college, not acting through the national members. The Parties agree that the exact arrangements under which Europol/Eurojust/Commission (OLAF)

⁸ It flows from Article 9(3) of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1) that national members of Eurojust may act in relation to foreign judicial authorities (i.e. also take part in JITs) as defined by each Member State.

⁹ Eurojust, in accordance with Article 7(a) of the Eurojust Decision, may *proprio motu* propose the setting up of a JIT. Also, the future Article 3b of the Europol Convention, which will be inserted upon the entry into force of the Protocol amending the Europol Convention, drawn up by the Council Act of 28 November 2002 (OJ C 312, 16.12.2002, p. 3), will allow Europol to make a request to Member States to initiate or coordinate criminal investigations.

¹⁰ Note that such participation is not mandatory but depends of the circumstances of the investigation and the competence of each body to participate in the activities of a JIT.

officials will participate in the JIT, will be the subject of a separate arrangement¹¹ with Europol/Eurojust/the Commission (OLAF) annexed to this agreement.]

8. General Conditions of the Agreement

In general the conditions laid down in Article 13 of the Convention and the Framework Decision shall apply as implemented by each Member State in which the JIT operates.

9. Specific Arrangements of the Agreement

The following special arrangements may apply in this Agreement (note that a number of these aspects are also regulated in the Convention and the Framework Decision):

(To be inserted, if applicable. The following sub-chapters are intended to highlight possible areas that need to be specifically described).

- 9.1. Terms under which seconded members of the JIT may be excluded when investigative measures are taken
- 9.2. Specific conditions under which seconded members may carry out investigations within the Member State of operation
- 9.3. 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
- 9.4. Conditions under which assistance to be sought under the Convention and other arrangements may be given

¹¹ This separate agreement will, amongst other things, have to specify whether the rights conferred upon the members and seconded members by virtue of the Framework Decision or by Article 13 of the Convention, will also apply to the officials from this body that participate in the JIT

- 9.5. Conditions under which seconded members may share information derived from seconding authorities
- 9.6. Specific data protection rules
- 9.7. Conditions under which seconded members may carry/use weapons
- 9.8. Reference to any other already existing provisions or arrangements on the setting up or operation of JIT's

10. Organisational Arrangements

The competent authorities of [insert Member State] shall make the necessary organisational arrangements for enabling the JIT to carry out its work.

Those areas that are subject to an exclusive competence either on behalf of [insert Member State] or the other parties or to a burden sharing between the competent authorities of [insert Member State] and the other parties are described below.

(The following list should just serve as an example for fields that may have to be described)

- 10.1. Cost for the JIT during its operation
- 10.2. Office accommodation
- 10.3. Vehicles
- 10.4. Other technical equipment
- 10.5. Allowances for seconded members of the JIT
- 10.6. Insurance for seconded members of JIT
- 10.7. Use of liaison officers

10.8. Use of the European judicial network

10.9. Language to be used for communications

Done at [place of signature], [date]

[Signatures of all parties]

APPENDIX TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

Arrangement with Europol/Eurojust/the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties, other international bodies or third countries

1. Parties to the arrangement

Eurojust/Europol/ the Commission (OLAF).... and the [name of the first agency/administration of a Member State as a party to the agreement], the [name of the second agency/administration of a Member State as a party to the agreement] and the [name of the agency/administration of a Member State as a party to the agreement] have agreed that the officials of [Eurojust]/[Europol]/[the Commission (OLAF)]¹² will participate in the joint investigative team, that they have agreed to set up by agreement of.... [date and place of the agreement, to which this arrangement is annexed]. This participation will take place under the following conditions.

2. Participating Officials

The following Europol/Eurojust/Commission (OLAF) /officials will participate in the JIT

NAME	RANK	FUNCTION	ON SECONDMENT FROM [NAME OF BODY]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

¹² Delete if not applicable.

3. Specific Arrangements

3.1. Type of assistance

3.2. Technical equipment provided

4. Rights conferred upon the officials from Eurojust/Europol/the Commission (OLAF)/bodies competent by virtue of provisions adopted within the framework of the Treaties, other international bodies or third countries that participate in the JIT.

5. Arrangements for the participation of third countries in the JIT.

Date/signatures
