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Delegations will find in the Annex an updated version of the Joint Investigation Teams Manual, prepared in the framework of the joint JITs Project of Eurojust and Europol.

## JOINT INVESTIGATION TEAMS MANUAL

### 1. 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.

What is a JIT?

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.

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 and promote mutual trust between practitioners from different jurisdictions and work environments.
- A JIT provides the best platform to determine the optimal investigation and prosecution strategies
- Ability for Europol and Eurojust to be involved with direct support and assistance
- Ability to apply for available EU, Eurojust or Europol funding
- Participation in a JIT raises awareness of the management and improves **delivery of international investigations**

## 2. 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”)<sup>1</sup>. 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 2003<sup>2</sup>. Member States were convinced that the JITs tool in particular would be an important benefit to the law enforcement agencies of the European Union.

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

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<sup>1</sup> 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.).

<sup>2</sup> Framework Decision 2002/465/JHA on joint investigation teams (OJ L 162 20.06.2002).

### 3. Legal Framework

#### JITs set up between Member States of the EU (“EU” JITs)

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 only Italy has not yet implemented the Framework Decision or 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”

#### JITs set up between EU Member States and third States

JITs can be set up with and between countries outside of the European Union, provided that a legal basis for the creation of such JITs exists. The legal basis can take the form of:

- An international legal instrument,

- A bilateral Agreement,
- A multilateral Agreement,
- National legislation (e.g. Article(s) of the Code of Criminal Procedure).

The following international legal instruments are already available and might provide a suitable legal basis for a JIT between an EU Member State and a third State:

- The Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Article 20)
- UN Convention against Transnational Organized Crime, 15 November 2000 (Article 19)
- The Convention on mutual assistance and co-operation between customs administrations (Naples II Convention), 18 December 1997 (Article 24)
- Police Cooperation Convention for Southeast Europe (PCC SEE), 5 May 2006 (Article 27)
- Agreement on Mutual Legal Assistance between the European Union and the United States of America; (Article 5 and national implementation thereof)

#### **4. Requirements for a JIT**

Article 13(1) of the 2000 MLA Convention and Article 1 of the Framework Decision of 13 June 2002 on Joint Investigation Teams approach the JIT concept not so much from the seriousness of a crime but rather from the crime's international and cross-border dimension.

Article 13(1) of the 2000 MLA Convention<sup>3</sup> 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.

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<sup>3</sup> Hereafter, the respective provisions of the Framework Decision on Joint Investigation Teams apply *mutatis mutandis*.

- 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 considered when investigating more serious forms of criminality. However, when considering setting up a JIT, national legislation and operational guidelines should be checked to determine whether the creation of a JIT is subject to a seriousness threshold or any other qualifying criteria.

That said, JITs may also prove useful in the investigation of smaller cross-border 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.

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

It is recommended that investigators, prosecutors, magistrates and/or judges from the Member States considering the creation of a JIT, 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
- A JIT is a flexible investigative tool to be used for the benefit of the investigator

## **5. Structure and operation of a JIT**

### **5.1 The team**

The team is set up in the Member State in which investigations are expected to be predominantly carried out.

The wording of Article 13 of 2000 MLA Convention allows for a group of investigators and other personnel, from two or more Member States, to be assembled together in close proximity to the investigation. This implies a number of people temporarily working outside of their own Member States as it might, in many cases, be an 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 team based in one “headquarter country” could include a member representing all participating countries, whilst the other team members act in their home countries. A number of scenarios are possible and organisational issues of the JIT have to be decided on a case-by-case basis, taking into account factors such as costs, availability of personnel, length of enquiry, nature of the investigation, judicial authority, etc.

- 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 JIT 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 7 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
- Communication is crucial to the successful management of a JIT

### **5.3. The activities**

Team members carry out their tasks under the leadership of the JIT 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 and the JIT Agreement, be allowed to be present when operational activities such as searches of premises are carried out. This support for operational activities can include 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 JIT 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 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 kind of evidence can be used in subsequent court hearings
  - Internal line-management structures
- Ability for third parties to be "participants" in "EU" 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 from third States and their agencies, e.g. the FBI

## 6. 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 1 (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. Indeed, both organisations can assist in the administrative management of the JIT and also assist in and advise on obtaining funding. Under the Eurojust JIT Funding Project, financial assistance for travel/accommodation and interpretation/translation costs, and logistical support (loan of equipment) is available (further details on [http://www.eurojust.europa.eu/jit\\_funding.htm](http://www.eurojust.europa.eu/jit_funding.htm)). Also, operational meetings can be funded via Europol as well as coordination meetings via Eurojust (see to this effect the website of Europol and Eurojust).

Eurojust National Members, their Deputies and Assistants can be members of a JIT when their Member State has defined, as required by Article 9f of the revised Eurojust Decision<sup>4</sup>, their participation in the Joint Investigation Team “as national competent authority”. Officials from Europol, OLAF, and National Members of Eurojust, their Deputies or Assistants, not acting as national competent authority, may be participants in the operation of a JIT, but cannot lead or be a member of it.

In accordance with Article 6 of the Europol Council Decision<sup>5</sup> Europol officials may participate in a JIT in a “support capacity” but are not permitted to take part in any coercive measures.

- 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/support on current availability, conditions and procedures for funding and equipment loans

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<sup>4</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16 December 2009 on the Strengthening of Eurojust.

<sup>5</sup> Council Decision establishing the European Police Office (Europol) of 06 April 2009, (OJ L 121, 15.05.2009), see in particular Articles 5(1)(d) and 6.

## 7. 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.

The Council of the European Union first adopted a Recommendation on a Model Agreement<sup>6</sup> for setting up a Joint Investigation Team on 8 May 2003, then a Resolution on 26 February 2010<sup>7</sup>. The latter is now being used and its Appendix 1 includes a new Recommendation for the conditions of participants to JIT, and also contains specific provisions applicable to Europol's participation. Additionally, some Member States have already agreed draft JIT templates between themselves to speed up the agreement process.

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<sup>6</sup> 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).

<sup>7</sup> Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) (OJ C 70 of 19.03.2010)

Furthermore, according to the practice in use in a number of countries, the new Model Agreement makes reference to, and includes in its Appendix IV a draft checklist for, an Operational Action Plan, which is a separate document from the JIT Agreement, whose purpose is laying down actual operational details, strategy and planning. This allows flexibility in case of changes and is also meant to reduce the volume and level of detail of the underlying JIT Agreement.

The Model Agreement can be found in Annex 2 of this Manual. It should be emphasized that Eurojust and Europol are available at any time to assist Members States in drafting their agreement.

- The content of the JIT Agreement may be subject to disclosure proceedings in certain jurisdictions. Thus, consideration needs to be given to:
  - the definition of the purpose of the JIT, to avoid disclosing details about other possible suspects still subject to other investigations
  - the identity of the team members, which can be annexed or sent separately, possibly removing the need to disclose identities of, for example, 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



## 8. Conclusion

JITs are designed as a flexible tool for supporting investigations involving cross-border crime and building mutual trust. In addition to the main objective of improving the effectiveness of Member States in investigating international serious and organised crime, there are many other clear benefits for those who participate in a JIT. Countries that have participated in a JIT have frequently endorsed the concept and demonstrated a marked willingness to use JITs to investigate and prosecute cross-border crime.

JITs may not always be the most 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](http://www.europol.europa.eu)) and Eurojust ([www.eurojust.europa.eu](http://www.eurojust.europa.eu)) websites.

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## **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 in 2012 or 2013.

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 No. 144/1999). Law No. 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 21<sup>st</sup> on joint investigation teams in the framework of the European Union, and Organic Law 3/2003 of May 21<sup>st</sup> 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.

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**MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM**

**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 2000<sup>8</sup> (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams<sup>9</sup> (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 the first competent agency/administration of a Member State as a Party to the agreement)

and

2. (Name of the second competent agency/administration of a Member State as a party to the agreement)

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<sup>8</sup> OJ C 197, 12.7.2000, p. 3.

<sup>9</sup> OJ L 162, 20.6.2002, p. 1.

3. (Name of the last competent agency/administration of a Member State 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 Appendix I.

## 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. This should include the circumstances of the crime(s) being investigated (date, place and nature).

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

## 3. Approach

The parties to the agreement may agree on an operational action plan (OAP) setting out the orientations according to which the purpose of the JIT is to be achieved<sup>10</sup>.

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<sup>10</sup> In the light of the relevant national legislation and its disclosure requirements, the OAP could be included in the JIT agreement, or as an appendix to the agreement or treated as a separate confidential document. In all cases the competent authorities which sign the agreement shall be aware of the content of the OAP. The OAP must be a flexible document containing practical agreements on a common strategy and on how to achieve the purpose of the JIT set out in Article 2, including the practical arrangements not otherwise covered by this agreement.

A check list regarding the points related to the possible content of the OAP is set out in Appendix IV to this model agreement.



#### **4. 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 the form provided for in Appendix II to this model agreement.

#### **5. 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 at any particular time. Should the JIT move its operational basis to another Member State, the law of this Member State shall then apply.

## 6. JIT Leader(s)<sup>11</sup>

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:

Member State	On secondment from (name of body)	Name	Rank and affiliation (judicial, Police or other competent authority)
-	-	-	-
-	-	-	-

Should any of the abovementioned persons be prevented from carrying out their duties, a replacement will be designated without delay by mutual consent of the parties in an appendix to the agreement. In urgent cases, it will be sufficient for the parties to the JIT to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

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<sup>11</sup> 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.

## 7. Members of the JIT

In addition to the persons referred to in Article 6, the following persons<sup>12</sup> shall be members of the JIT:

Member State	On secondment from (name of body)	Name/identification number (1)	Rank and affiliation (judicial, Police or other competent authority)	Role
-	-	-	-	-
-	-	-	-	-

(1) If there are good grounds for protecting the identity of one or more members of the JIT, such as, in cases of covert investigations or in cases of terrorism that require maximum security, identification numbers must be assigned to those persons, as far as it is compatible with the national legislation of the Member State, party to the agreement. The numbers assigned must be included in a confidential document. Should it not be possible to assign an identification number, it may be agreed that the identity of the members is set out in a confidential document, which is attached to this agreement and which is made available to all parties thereto.

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<sup>12</sup> The JIT may include representatives of judicial, police or other competent authorities with investigative functions. Under this heading, it may also include members of Eurojust when they operate as competent national authorities as referred to in Article 9f of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime. These are the national members of Eurojust, their deputies and assistants — as well as other persons who, in line with their national legislation, are also members of the national office, i.e. seconded national experts.  
The police authorities may 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. Also the liaison officers of the Member States at Europol retain their capacity to act as national police authorities.

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated without delay in an appendix to this agreement or by a written notification sent by the competent leader of the JIT.

## **8. Participants in the JIT**

The provisions on participants<sup>13</sup> in the JIT are dealt with in the relevant appendix to this agreement.

## **9. Evidence**

The parties entrust the leader or a member (s) of the JIT with the task of giving advice on the obtaining of evidence. His or her role includes providing guidance to members of the JIT on aspects and procedures to be taken into account in the taking of evidence. The person(s) who carry out this function should be indicated here.

In the OAP the parties may inform each other about giving testimony by members of the JIT.

## **10. 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.

## **11. Amendments to the agreement**

Amendments to this agreement, including but not limited to the following:

(a) the incorporation of new members of the JIT;

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<sup>13</sup> Participants in the JIT are designated by third countries, Eurojust, Europol, the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties and international organisations which participate in the activities of the JIT, as parties to the agreement provided for in Appendix I to this model Agreement.

(b) changes to the purpose provided for in Article 2 of this agreement;

(c) additions or changes to the current articles.

shall take the form provided for in Appendix III to this model agreement, shall be signed by the parties and shall be attached to the original version.

## **12. Internal evaluation**

Every six months at least, the JIT leaders shall evaluate the progress achieved as regards the general purpose of the JIT, while determining and addressing any problems thus identified.

After the operation of the JIT ends, the parties may, where appropriate, arrange a meeting to evaluate the performance of the JIT.

The JIT may draw up a report on the operation, which may show how the operational action plan was implemented and which results were achieved.

**13. Specific arrangements of the agreement** (in order to avoid making the agreement too cumbersome some or all points indicated under 13.1-13.11 may be located in OAP).

The following special arrangements may apply to 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).

13.1. Terms under which seconded members of the JIT may be excluded when investigative measures are taken.

13.2. Specific conditions under which seconded members may carry out investigations within the MS of operation.

13.3. 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.

13.4. Conditions under which seconded members may share information derived from seconding authorities.

13.5. Provisions concerning the media, in particular the need for consultation prior to the presentation of press releases and official information briefings.

13.6. Provisions concerning the confidentiality of this agreement.

13.7. The language to be used for communication must be defined.

13.8. Specific provisions on expenditure:

13.8.1. Provisions on insurance for seconded members of the JIT;

13.8.2. Provisions concerning expenditure on translation/interpreting/telephone tapping, etc.

13.8.3. Provisions on the translation of, for example, the documents obtained into the language of other members of the JIT, as well as into the official language of communication (if different), since this can entail considerable (unnecessary) expenditure;

13.8.4. Provisions concerning expenses or income arising from seized assets.

13.9. Conditions under which assistance sought under the Convention and other arrangements may be given.

13.10. Specific data protection rules.

13.10.bis Confidentiality and use of information already existing and/or obtained during the operation of the JIT.

13.11. Conditions under which seconded members may carry/use weapons.

Done at (place of signature), (date)

(Signatures of all parties)

*Appendix I*

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

**Participants in a JIT**

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**

Name of the first party to the agreement that is not a Member State

Name of the last party to the agreement that is not a Member State (if there is more than one)

and

Name of the first competent agency/administration of a Member State as a party to the agreement



and

Name of the second competent agency/administration of a Member State as a party to the agreement
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(... and ...)

have agreed that the following persons from (*names of the parties to the agreement that are not Member States*) will participate in the joint investigation team, established by agreement on ... (*date and place of the agreement to which this appendix is attached*).

## 2. Participants in the JIT

The following persons will participate in the JIT:

State/Organisation	On secondment from (name of agency/body)	Name	Rank and affiliation	Role
-	-	-	-	-
-	-	-	-	-

The Member State ... has decided that its national members of Eurojust will participate in the joint investigation team as a competent national authority<sup>14</sup>.

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<sup>14</sup> Delete this paragraph if not applicable.

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated in an appendix to this agreement. In urgent cases, it will be sufficient for the party to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

### **3. Specific arrangements**

The participation of the above-mentioned persons will be subject to the following conditions and only for the following purposes:

#### *3.1. First party to the agreement that is not a Member State*

##### 3.1.1. Purpose of participation

##### 3.1.2. Rights conferred (if any)

##### 3.1.3. Provisions concerning costs

##### 3.1.4. Specific provisions concerning or enabling achievement of the purpose of participation

##### 3.1.5. Other specific provisions or conditions<sup>15</sup>

##### 3.1.6. Specific data protection rules

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<sup>15</sup> For example, references to basic or applicable legal frameworks, etc.

### 3.2. *Second party to the agreement that is not a Member State (if applicable)*

#### 3.2.1. ...

## **4. Specific arrangements related to the participation of Europol<sup>16</sup>**

### *4.1. Principles of participation*

4.1.1. Europol staff participating in the JIT shall assist the members of the team in accordance with the Europol Decision and in accordance with the national law of the Member State where the team operates.

4.1.2. The Europol staff participating in the JIT shall work under the guidance of the leader(s) of the team as identified in point [...] of the Agreement and shall provide any assistance necessary to achieve the objectives and purpose of the JIT, as identified by the leader(s) of the team.

4.1.3. Europol staff has the right not to perform tasks which they consider to be in breach of their obligations under the Europol Decision. In that case, the Europol staff member shall inform the Director or his representative thereof. Europol shall consult with the leader(s) of the team with a view to finding a mutually satisfactory solution.

4.1.4. Europol staff participating in the JIT shall not be involved in the taking of any coercive measures. However, participating Europol staff can, under the guidance of the leader(s) of the team, be present during operational activities of the JIT, in order to render on-the-spot advice and assistance to the members of the team who execute coercive measures, provided that no legal constraints exist at national level where the team operates.

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<sup>16</sup> To be included only where Europol is a participant to the JIT. These rules were adopted by the Europol Management Board on 9 July 2009 (file No 3710-426r6) and a model JIT arrangement was adopted by the Europol Management Board on 18 November 2009 (file No 2610-74r2), as required under Article 6(2) of the Europol Decision. For updated information please refer to the Europol's website: <http://www.europol.europa.eu>

4.1.5. Article 11(a) of the Protocol on the Privileges and Immunities of the European Union shall not apply to Europol staff participating in the JIT<sup>17</sup>.

4.1.6. During the operations of the JIT, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

#### *4.2. Type of assistance*

4.2.1. Participating Europol staff will provide full range of Europol's support services, in accordance with the Europol Council Decision as far as required or requested. Those will include, inter alia, operational and strategic analytical support, in particular through the analysis work file(s) (AWF) (name(s) of the work file(s) and related projects).

Where required and when requested by the leader(s) of the team, Europol may support the JIT by deployment of a Europol 'mobile office' or of other technical equipment, if available and in compliance with Europol's security standards.

4.2.2. Europol staff participating in the JIT may assist in all activities, in particular by providing a communication platform, strategic, technical and forensic support and tactical and operational expertise and advice to the members of the JIT, as required by the leader(s) of the team.

4.2.3. Europol shall, within the boundaries of its legal framework facilitate the secure exchange of information between the parties of the JIT and non-participating States and/or EU bodies and international organisations, if requested by the leader(s) of the team.

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<sup>17</sup> Protocol on the Privileges and Immunities of the European Union (consolidated version) (OJ C 115, 9.5.2008, p. 266).

### *4.3. Access to Europol information processing systems*

4.3.1. Europol staff participating in the JIT shall have access to Europol's information processing systems, referred to in Article 10 of the Europol Decision. This access shall be in accordance with the provisions of the Europol Decision and in line with the applicable security and data protection standards for the duration of their membership of the JIT.

4.3.2. Europol staff may liaise directly with members of the JIT and provide members and seconded members of the JIT, in accordance with the Europol Decision, with information from any of the components of the information processing systems referred to in Article 10 of the Europol Decision. The conditions and restrictions on the use of this information must be respected.

4.3.3. Information obtained by a Europol staff member while part of the JIT may be, with the consent and under the responsibility of the Member State which provided the information, included in any of the components of the information processing systems referred to in Article 10 of the Europol Decision, under the conditions laid down therein.

### *4.4. Costs and equipment*

4.4.1. The Member State in which investigative measures are taking place is responsible for providing the technical equipment (office accommodation, telecommunication etc.) necessary for the accomplishment of the tasks and shall pay the costs incurred. The respective Member State shall also provide office communication and other technical equipment necessary for the (encrypted) exchange of data. The costs are to be paid by that Member State.

4.4.2. Europol shall cover the costs incurred as a result of the participation of Europol staff in the JIT, in particular concerning insurance and salaries for staff as well as accommodation and travel costs. Europol shall also bear the costs for the special equipment mentioned in points 4.1 and 4.2 above.

Date/signatures<sup>18</sup>

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<sup>18</sup> Signatures of the parties to this arrangement.

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

**Agreement to extend a joint investigation team**

In accordance with Article 13(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000<sup>19</sup> and Article 1(1) of the Council Framework Decision of 13 June 2002 on joint investigation teams<sup>20</sup>:

The parties have agreed to extend the joint investigation team (hereinafter ‘JIT’) set up by agreement of [*insert date*] done at [*insert place of signature*], a copy of which is attached hereto.

The parties consider that the JIT should be extended beyond the period for which it was set up [*insert date on which period ends*] since its purpose as established in Article [*insert article on purpose of JIT here*] has not yet been achieved.

The circumstances requiring the JIT to be extended have been carefully examined by all the parties. The extension of the JIT is considered essential to the achievement of the purpose for which the JIT was set up.

The JIT will therefore remain in operation until [*insert date on which new period ends*]. The above period may be extended further by the parties by mutual agreement.

Date/Signature

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<sup>19</sup> OJ C 197, 12.7.2000, p. 3.

<sup>20</sup> OJ L 162, 20.6.2002, p. 1.

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

**Suggested wording for changes other than the period for which a JIT is set up**

In accordance with Article 13(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000<sup>21</sup> and Article 1(1) of the Council Framework Decision of 13 June 2002 on joint investigation teams<sup>22</sup>, under which the present joint investigation team was set up:

The parties have agreed to amend the written agreement setting up a joint investigation team (hereinafter ‘JIT’) of [*insert date*], done at [*insert place*], a copy of which is attached hereto.

The signatories have agreed that the above agreement should be amended as follows:

1. (Amendment ...)
2. (Amendment ...)

The circumstances requiring the JIT agreement to be amended have been carefully examined by all the parties. The amendment(s) to the JIT agreement is/are deemed essential to achieve the purpose for which the JIT was set up.

Date/Signature

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<sup>21</sup> OJ C 197, 12.7.2000, p. 3.

<sup>22</sup> OJ L 162, 20.6.2002, p. 1.



**Proposal for a check list for the Operational Action Plan (OAP) <sup>(23)</sup>**

The following points may be addressed by the parties:

**Introduction** — describe the purpose of the JIT. The text used under ‘purpose of the JIT’ in the JIT agreement would normally be sufficient

**Operational procedure** — identify the location(s) where the JIT is likely to operate, describe how the JIT will be managed and the investigation conducted, taking note of national legislation, guidelines and procedure

**Role of members and/or participants of the JIT** — identify and describe the different operational roles and tasks of each member and/or participant in the JIT (EU MS, Europol, Eurojust, OLAF) if not yet described in the JIT agreement

**Special or specific measures to be implemented** — identify and describe investigative activity that requires special measures or procedure e.g. child suspects, victims, dangerous/hostile working environment

**Operations and investigative powers** — identify and describe special operations/investigative techniques that will be employed during the investigation e.g. intrusive surveillance, informants, undercover officers, communication intercepts etc. and related legislation/procedure

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<sup>23</sup> The content of the OAP is a living document reflecting the practical issues of a JIT. The OAP should be coherent with section 13 ‘Specific arrangements’ of the JIT Agreement. Some elements of section 13 may be located in the OAP.

**Information exchange and communication** — describe how information will be exchanged and the procedures for communication and identify competent partner or agency e.g. Europol, Eurojust, OLAF, SECI, Interpol; it may be necessary to agree upon a language of communication; consider the use of Europol’s secure means of communication (SIENA) and the Analytical Work Files (AWFs) as a means for a secure environment to store sensitive information

**Intelligence assessment and tasking** — describe the process of intelligence collection and development and any related guidelines

**Financial investigations** — consider the need for following the ‘money trail’

**Evidence gathering** — identify according to the jurisdiction(s) any legislation, guidelines, procedure etc. which must be taken into account including responsible agency/individual, requirement to translate evidence

**Prosecution** — identify the competent authority in each country/jurisdiction and any guidelines related to decisions to prosecute including the role of Eurojust in this respect

**Testimony** — identify the likelihood and procedures in place for each jurisdiction in respect of the requirement for JIT members to give evidence

**Disclosure** — describe the rules and procedures for all jurisdictions where the JIT is likely to operate

**Operational and strategic meetings** — identify and describe the meetings that will take place, their frequency and participants

**Administration and logistics** — any issues concerning administration, equipment (such as office accommodation, vehicles, IT equipment or any other technical equipment), resources, personnel, media, confidentiality issues, etc. should be dealt with here:

— Translation

— Office accommodation

— Vehicles

— Other technical equipment

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