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Subject: Conclusions of the 11th Annual Meeting of National Experts on Joint Investigation Teams (11 - 12 June 2015, The Hague)

Delegations will find in the Annex the conclusions from the 11th Annual meeting of the National Experts on Joint Investigation Teams held on 11 and 12 June 2015 in the Hague.



Conclusions
of the
Eleventh Annual Meeting of National Experts
on
Joint Investigation Teams(JITs)

11 and 12 June 2015, Eurojust, The Hague

On 11 and 12 June 2015, the 11th Annual Meeting of National Experts on Joint Investigation Teams took place at Eurojust. Around 90 participants attended the meeting, including National Experts, practitioners and representatives of EU institutions and agencies.

The main topic of this year's meeting was *'Enhancing access to JITs: what tools to support innovative practice?'*

In the first years of implementation of JITs, Eurojust, Europol and the JITs Network jointly developed several tools to facilitate effective access to JITs by all practitioners: the JITs Manual, the JIT model agreement and the Operational Action Plan (OAP). In 2013, a web platform was developed - the so-called *JITs restricted area* - to operate as a 'single repository' for JIT-related information and support communication among contact points of the Network.

These tools have proved to be useful in practice. However, since their adoption, the number of JITs in the EU has significantly increased and JITs are used in a wide range of crime areas, offering an efficient framework to support new disruptive methods against organised crime (asset recovery, simultaneous operations...). Also, considering that some of the tools were designed more than five years ago, it was seen as necessary to revisit them and ensure they continue to meet practitioners' needs.

Conclusions of the workshops held during the meeting give clear guidance to modernising the JITs supporting tools and enhancing their accessibility to practitioners (1). In their concluding remarks, the President of Eurojust and the Deputy Director of Europol indicated that these conclusions will be implemented thanks to close cooperation between Eurojust and Europol.

The meeting also gave the opportunity to take stock of the progress made in the JITs Network's projects and to consider next steps (2).

1. Enhancing access to JITs: what tools to support innovative practice?

To measure progress achieved since the first JITs supporting tools were designed, during the introductory sessions, experts were given several presentations and case studies reflecting innovative practice in the field.

Representatives of the BES – Bureau for Euregional Cooperation (BES), a multinational structure established in Maastricht to support judicial cooperation in the border area between the Netherlands, Germany and Belgium - presented examples of JIT cooperation in such border area, where national authorities are confronted by the same criminal activities on different sides of the border and may trust each other more easily since they cooperate regularly. The particular effectiveness of JITs in dismantling the components of a criminal organisation operating on all sides of a common border was outlined in this context. Several examples of best practice were also identified: drafting of a logbook of evidence exchanged, working methods (original version of police reports remain in the Member State where they are drafted, while a copy is immediately handed over or sent to the JIT partner(s), and use of common language for the drafting of a JIT agreement, which sometimes allows a reduction in the setting-up phase to a couple of days).

BES also suggested establishing more permanent structures to combat crime in border areas, which triggered a discussion among experts on the possibility of establishing 'permanent JITs', focusing on defined priority crime areas. On this issue, different views were expressed. Some experts mentioned that applicable instruments on JITs should be interpreted in a flexible manner, thus allowing the use of JITs for more long-term cooperation arrangements. For other participants, while the current legal framework does not prevent the use of JITs from supporting proactive investigations, this framework still refers to JITs established for a *limited duration* in relation to *specific* investigations requiring concerted effort.

Two case presentations were also made by Eurojust and Europol.

In the case presented by Eurojust, a JIT was established between Spain and Bulgaria to dismantle a criminal group involved in counterfeiting the means of payment. The case benefitted from Eurojust's support throughout the setting-up and operating phases of the JIT, including during simultaneous actions (coordination centre) and of Europol's support (through expertise, analysis and staff participation in the coordination meetings at Eurojust). Due to operational needs, several successive action days took place, which required detailed arrangements on disclosure. The case illustrates the added-value of a coordinated approach on prosecution, since the JIT partners agreed to a transfer of the Bulgarian proceedings to Spain. In this context, the usefulness of Eurojust's JITs funding to cover translation costs was emphasized.

The case presented by Europol relates to the first JIT established in the field of counterfeiting of medicine. It was established – among many other countries involved in the case - between Spain, France, Austria and the United Kingdom and illustrates in particular the added-value of cooperation with the private sector in this crime area.

Several common features of the cases were outlined:

- The added value of an inter-agency approach, since both cases were supported jointly by Europol and Eurojust, including during the action days ;
- The necessity of more thoroughly developing the financial aspects of the investigations,
- The usefulness of the evaluation which was carried out by the national authorities involved with the support of the *JIT evaluation form* developed by the JITs Network.

a. **The JITs Manual: Added value and possible enhancement**

The *Joint Investigation Teams Manual* was jointly prepared by Eurojust and Europol and distributed among Member States in November 2011. Its goals were, *inter alia*, to inform practitioners of the legal basis and requirements for setting up a JIT, to provide advice on when a JIT can be usefully employed, to clear up possible misunderstandings, and to encourage practitioners to make use of JITs. The *JITs Manual* is currently available on Eurojust's and Europol's websites in all official EU languages. It is widely recognised as a tool of reference in the field and used as a supporting document in many training events both inside and outside the European Union.

However, the awareness and knowledge of JITs among EU practitioners is much more important than at the time of the publication of the *JITs Manual*. In addition, more experience and feedback on the operation of JITs has been collected. In the first workshop, experts discussed the need for an update of the *JITs Manual* and, more generally, a possible refinement of its purpose, scope and format to best support JIT practitioners.

- Conclusions

Generally, participants stated that the *JITs Manual* is not used by national experts or by practitioners when setting up and running a JIT. However, it is considered a useful tool for raising awareness, particularly for practitioners dealing with JITs for the first time.

Therefore, the current version of the *JITs Manual* is perceived as outdated and not practical. It needs to be thoroughly revised to make it more practical, dynamic and attractive.

More specifically, theoretical aspects of JITs need to be revised and updated with comprehensive and easily accessible information (*e.g.* section 5. 'Structure and operation of a JIT'). New sections should be developed, such as Frequently Asked Questions (FAQs) on JITs (essential questions and answers on practical aspects), funding possibilities, evaluation, and reference to the JITs Network and its main projects. Hyperlinks to current JIT tools should also be included.

The target audience of the *JITs Manual* should be practitioners from Member States (i.e. not limited to national experts on JITs) and all colleagues willing to become more familiar with JITs as a special investigative technique. It should be conceived both as an awareness-raising tool and a practical guide. JITs training requested by practitioners both at EU and national level should be used as an opportunity to promote the new *JITs Manual*. In terms of dissemination, the *JITs Manual* should remain a public document, whereas information with access restricted to practitioners is also necessary.

According to experts, practitioners need only one updated *JITs Manual*, not separate sets of documents. In terms of format, participants expressed a preference for an electronic version of the *JITs Manual*, available online on Eurojust's and Europol's websites. More interactive tools could also be developed (such as thematic documents and FAQs accessible online).

Although national guidelines may represent a useful complement to the *JITs Manual*, there is no need to formally link them, since the issue is already covered through the project on national legislation.

b. JIT model agreements: how to maximise their usability for practitioners?

The first version of a model agreement to facilitate the setting up of JITs was adopted by way of a Council recommendation of 8 May 2003.¹ In 2009, during the 5th meeting of the JITs Network and in line with the Stockholm Programme, a recommendation was made to update the JIT model agreement. A proposal for a new Council Resolution was therefore put forward at the beginning of the Spanish Presidency and adopted on 26 February 2010.²

In practice, the JIT model agreement is routinely used when setting-up a JIT, as it represents a common baseline that practitioners can tailor to the specific needs of the case. Hence, standard provisions are sometimes reworded to reflect the requirements of national legislation. The Secretariat began in 2014 to store, in a structured manner, these provisions elaborated by the practice to allow their re-use upon request (project on JITs agreement database presented during the meeting).

Similarly, some Member States have developed bilateral model agreements to be used in relation to neighbouring countries or frequent JIT partners, which allow recurrent issues to be addressed in a standardised manner. As reported during the meeting, the French Ministry of Justice has, for instance, signed such bilateral agreements with Spain, Germany, Slovenia, Romania, the Netherlands, Belgium, Bulgaria and Cyprus.

In recent years, JIT experts have suggested several additions or changes to the current model.^{3,4} During the 10th annual meeting, in relation to JITs involving non-EU States, it was also assessed that the EU Model Agreement was 'not necessarily adequate' in this context and that a model agreement specific to JITs with non-EU States may need to be considered. However, it was reported during the introductory session of the meeting that in practice, the EU model proved to be flexible enough to serve as a basis even in discussions with non-EU States, while some aspects may depend on the setting resulting from a specific legal framework (for instance, the possible intervention of central authorities in the case of United Nations conventions).

Possible improvements to the JIT model agreement were addressed in a second workshop.

¹ Council recommendation of 8 May 2003 on a Model Agreement for setting up a Joint Investigation Team, OJ C 121, 23.5.2003, pp. 1-6.

² Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team, OJ C 70, 19.3.2010, pp. 1-12.

³ In 2013, a recommendation was made that a general clause providing that the evidence should be gathered in accordance with the laws of the different Member States, shall be included in the JIT agreements.

⁴ During the 9th meeting, experts agreed on 'the importance of the early involvement of national asset recovery offices and officers from the Europol ECAB team as soon as any discussion on the establishment of a JIT with a focus on asset recovery is taking place to quickly clarify legal issues (legal basis of asset recovery) in the countries concerned (...) To further stimulate this development, chapter 7 of the model agreement and the operational action plan (OAP: expand the wording related to "financial investigations" to cover asset recovery) should be amended to further encourage the involvement of asset recovery experts in the work of JITs'.

- Conclusions

According to the experts, the model agreement is often used by practitioners and found useful. It is considered an important 'check list' of topics for discussion, and not as a strict concept. It also represents a flexible framework allowing for common actions in spite of differences in national legislation.

It was also emphasized that the model should not be lengthened and remain simple. In terms of the amount of information offered by practitioners in the agreement, some experts expressed the view that insertion should be limited to the strict necessary without necessarily highlighting the difference in legislation as those differences can be identified by other means. The differences have, however, to be discussed for operational needs and judicial follow up, and the negotiation process actually contributes to mutual trust in this respect.

In terms of content, it was suggested to remove the clause related to the OAP and to simplify the procedure to amend the agreement. It should also be clarified that personal data of specific suspects are not to be included in the agreement or at least reduced to the minimum. The complete list of JIT members is perceived as not needed in the agreement itself (the identification of JITs leaders is enough) and might be included in an annex.

There was a general understanding among experts that no specific additional model agreement is needed: the EU model agreement can also be used as a basis and check list for JITs involving non-EU countries and for bilateral model agreements.

In terms of format, it was felt that the current version is suitable. An interactive PDF form could be created but should not replace the current format. At this stage, a *compendium* – similar to that developed by the European Judicial Network – was found not necessary. In contrast, it would be useful to develop the JIT agreements' database initiated by the Secretariat to analyse and use the existing experience.

c. The JITs Restricted Area: current features and future developments

The JITs Restricted Area was developed in 2013 on the infrastructure and functionalities of the Eurojust website as a password-protected area accessible from the Internet, with the following objectives:

- Operate as a single repository on JITs, by making available practical and legal information on the setting up and running of JITs (with the exclusion of case-related personal data); and
- allow practitioners to exchange views on issues related to the functioning of JITs.

To date, it is accessible to National Experts on JITs, Eurojust National Desks and Europol Focal Points (71 users registered at the date of the meeting).

In December 2014, the design, functionalities and information available on this web-based platform were developed and updated, especially by including details related to ongoing projects and products developed by the JITs Network. Progressively, the JITs Restricted Area is being used as the main channel of communication between the experts, as well as between the Secretariat and the Network.

This workshop was organised to assess whether, particularly in light of the upgrade carried out in 2014, the existing tool meets expectations and to provide guidance on possible developments. It was preceded, in preparation of the meeting, by a survey disseminated among registered users.

- Conclusions

Experts recommended that more visibility be given among practitioners on the existence and content of the JITs Restricted Area. The insertion on Eurojust's and Europol's websites of a specific announcement and brief directions on gaining access should be envisaged. JIT National Experts should also promote the tool via relevant national Intranet sites, while the Secretariat should approach systematically National Experts having not registered yet.

Regarding the access, there was a general understanding that, due to the nature of some of the content, maintaining the website 'restricted' is the viable approach. However, the experts were in favour of widening access to other relevant practitioners:

- Representatives of judicial and law enforcement authorities at the national level or other relevant practitioners (legal advisors...), following the filtering of the JITs National Experts on a case-by-case basis, regardless of the fact that they are involved in a funded JIT. The reasoning for this was the need of practitioners to have access to the content of the restricted area in the preparation of the setting up of a JIT; in addition, JIT leaders of funded JITs should be systematically approached in order to obtain access ;

- Europol Liaison Bureau, and
- EJN contact points, upon request.

Taking into account the extension of access, attention should be given to the management of the accounts and regular checks should be done through the JITs National Experts or contact points of institutions.

Concerning access by other identified networks of JIT experts from non-EU States (e.g. the network established under the Police cooperation convention for South-East Europe (PCC-SEE), it was suggested, as a first step, to add the list of the experts of this network to the Restricted Area, provided that PCC-SEE Secretariat will make it available. The experts also suggested approaching other relevant judicial networks (EJN, CARIN, IberRed....) to enlarge the visibility of the Restricted Area and its content. For CARIN (Asset Recovery Network), it was recommended that the list of national experts be placed in the Restricted Area. In terms of usability of the tool, several technical difficulties were raised: length of expiry of the password, lack of possibility for the user to regenerate the password after it has expired, length of expiry for log off. Also, the difficulty of changing the automated password was mentioned, but in practice there is the possibility to change it at the first log-in.

Suggestions were provided concerning the user-friendliness of the JITs Restricted Area, for instance by adding more colour to the user interface of the website, enhancing the quality of navigation and modernising the layout.

In terms of content, a few suggestions were made to upload additional documents, such as bilateral model agreements and standard presentations on JITs. In a long-term perspective, experts mentioned the possibility to implement an automated 'custom search' function/engine. Additional links to JIT-related websites should be added to the existing ones.

The development of a forum functionality was not seen as a priority, but the need for such tool might arise with an increase in the number of registered users. At this stage, the experts identified the need to publish an overview of already registered JITs experts and to display the logged-on visitors on the home page. Until the development of a forum, the use of group mailing lists (JITs National Experts, registered users) is a useful alternative tool. The experts also suggested that email notifications are automatically sent to users when a new content is added to the Restricted Area.

d. Operational Action Plan and other planning tools

Since JITs are set up in relation to investigations requiring *coordinated* and *concerted* action, the need to ensure the effective coordination of ongoing proceedings and to plan investigative/prosecutorial steps accordingly forms – to a large extent – an integral part of the JIT concept.

Since the first years of implementation of the tool, JIT practitioners have identified the need to address these practicalities within the team and to include the arrangements taken in a dedicated document. JIT experts have echoed this need for a so-called Operational Action Plan (OAP), which was reflected in the conclusions of the 5th annual meeting and included as a point for consideration in view of a revision of the JIT model agreement.

The revised JIT model agreement, adopted one year later as a Council Resolution, includes a checklist for the establishment of an OAP in Annex IV. However, since then, an OAP does not seem to have been systematically (formally) prepared after the establishment of the JIT. Concerns have been raised in relation to the possible disclosure of this document.

Experts were invited to discuss whether the OAP in its current content and format still meets the needs and to what extent alternative planning methods/tools should be envisaged.

- Conclusions

For the experts, planning of JIT activities is necessary, but not in a formal way. They reported that the use of the OAP is not frequent, even decreasing. When it is used, it is not attached to the JIT agreement for disclosure reasons.

Additional burdens for JIT members should be avoided as far as possible, especially after the signing of the JIT, which is already seen as a big achievement. Also for practitioners, the starting of JIT activities should not be delayed by preparing an OAP.

Moreover, a certain flexibility should be retained in view of the development of criminal investigations and main arrangements should be part of the JIT agreement itself. Besides, less planning is needed if parties trust each other and experience in cooperation exists.

In practice, coordination and operational meetings are used as planning tools and meeting minutes and conclusions reflect the arrangements taken. In this context, the use of the existing checklist is good for planning and keeping focused, though not every point is relevant for every JIT.

The current checklist is seen as up-to-date. However, arrangements related to responsibility for applications for financial support and communication planning (between meetings) should be added.

For specific crime types, special aspects could be introduced:

- trafficking in human beings (special arrangements for victims)
- drug trafficking (handling of samples)
- euro counterfeiting (European Central Bank and national banks)
- money laundering (involvement of third States, specific arrangements to tackle the financial dimension of investigations),
- counterfeiting (involvement of private parties).

The current format of the OAP is seen as too formal and should not be annexed to the JIT agreement. Operational arrangements should be as informal as possible and as formal as necessary. The checklist – which should serve only as a basis for planning discussions – should be included in the *JITs Manual*.

2. Projects and activities of the JITs Network

a. 'Fiches espagnoles'

This project has been developed on the basis of a suggestion by the Spanish experts during the 9th annual meeting. The purpose is to collect and make available to practitioners via the *JITs Network restricted area* summaries of the national legislation of Member States that are relevant to the setting-up and operation of JITs.

It was announced during the meeting that eight new summaries of JIT national legislation (RO, LT, EE, AT, FR, CZ, SK and NL) had just been published on the restricted area. With the first summaries published in December 2014 (BE, BG, SE, ES), twelve *fiches espagnoles* are now available for practitioners, the aim being to complete the project in 2016. The possibility to include information about JIT legislation of non-EU States – such as Switzerland and Norway – is also explored, since JIT cooperation with these countries is developing.

b. JITs evaluation:

Following the adoption – during the 9th annual meeting – of a *JITs evaluation form* to support practitioners in assessing the performance of JITs, an 'interactive' version of the form has been developed by the JITs Network Secretariat in liaison with Eurojust relevant units and was made available to JITs National experts in April 2014.

Since the release of the tool, the Secretariat has received and processed 34 evaluation forms. A first analysis of these evaluations has been presented to the experts during the meeting.

Based on a list of relevant JITs established by the Secretariat, experts agreed to take the necessary steps at national level to perform – where possible - additional evaluations of closed JITs until 31 October 2015. Based on the material received, it is intended to finalise a first JIT evaluation report at the end of 2015.

3. Eurojust JITs funding

Since July 2013, Eurojust has provided financial support to JITs activities from within its regular budget. The JITs Network Secretariat manages grants awarded by Eurojust, and has provided an overview of latest developments in this field.

In 2014, 146 applications were received. Since this year, funding has been extended to JITs involving non-EU States and 12 applications originating from such JITs were received. In total, 67 JITs were financially supported, 48 of which were funded for the first time during this year. Between January and May 2015, Eurojust received 60 applications and supported 41 JITs (15 of which were funded for the first time).

In 2015, an enhanced version of the application form – including control of financial ceilings and automated calculation functionalities – was released and several other improvements were introduced to facilitate access to funding by practitioners, in particular a simplification of formalities (attachments) in case of repeat applications and the possibility to request support for costs incurred after expiry of the JIT, if directly linked to its activities.

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