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Delegations will find in the Annex a Joint Investigation Teams (JITs) Practical Guide, as presented by the JITs Network Secretariat. The Guide has been developed by the JITs Network, in cooperation with Eurojust, Europol and OLAF. It enhances the previous JITs Manual in light of the practical experience acquired.

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# JOINT INVESTIGATION TEAMS

## Practical Guide

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# 1. Objective

The objective of this Practical Guide is to provide information, guidance and advice to practitioners on the formation of joint investigation teams (JITs). It was developed by the JITs Network - in cooperation with Eurojust, Europol and OLAF - and enhances the previous *JITs manual* in light of the practical experience acquired.

## ***The JITs Network***

*The EU Network of National Experts on JITs (the JITS Network) was established in 2005 to promote the use of JITs by practitioners. Each Member State has appointed one or more national experts who represent both the judicial (judges, prosecutors, Ministries of Justice) and law enforcement (police officers, Ministries of Interior) dimensions of a JIT. At national level, the experts act as contact points that practitioners willing to set up a JIT can address for advice. As members of the JITs Network, they have expertise in the functioning of JITs in their Member State and have access to information concerning the practicalities of JITs with other Member States. Hosted by Eurojust since 2011, the Secretariat promotes, supports and stimulates the activities of the JITs Network.*

*Should you need to contact your JIT National Expert(s), please check available domestic channels (intranets, etc.). If you cannot find the necessary information, please e-mail [jitsnetworksecretariat@eurojust.europa.eu](mailto:jitsnetworksecretariat@eurojust.europa.eu).*

## 2. Concept of JITs and legal framework

### 2.1. Definition

A joint investigation team is an international cooperation tool based on an agreement between competent authorities - both judicial (judges, prosecutors, investigative judges...) and law enforcement - of two or more States, established for a limited duration and for a specific purpose, to carry out criminal investigations in one or more of the involved States.

Compared to traditional forms of police and judicial cooperation, JITs have the following added value:

- JITs enable the direct gathering and exchange of information and evidence without the need to use traditional channels of mutual legal assistance (MLA). Information and evidence collected in accordance with the legislation of the State in which the team operates can be shared on the (sole) basis of the JIT agreement; and
- *Seconded members* of the team (i.e. those originating from a State other than the one in which the JIT operates) are entitled to be present and to take part – within the limits foreseen by national legislation and/or specified by the JIT leader – in investigative measures conducted outside their State of origin.

For these reasons, JITs constitute a very efficient and effective cooperation tool, which facilitates the coordination of investigations and prosecutions conducted in parallel across several States.

## 2.2. Legal Framework

The EU legal framework for setting up JITs between Member States can be found in Article 13 of the 2000 EU Mutual Legal Assistance Convention<sup>1</sup> and the 2002 Framework Decision on JITs<sup>2</sup>. To date, all Member States have implemented one or both of these legal bases.

The European investigation order cannot be used to request the setting up of a JIT<sup>3</sup>.

JITs can also be set up on the basis of other international instruments, particularly with and between competent authorities of States outside the European Union. The following instruments include a legal basis for setting up JITs:

- Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto<sup>4</sup>;
- Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America<sup>5</sup>;
- Article 27 of the Police Cooperation Convention for South-East Europe (PCC-SEE)<sup>6</sup>, applicable between several Member States (Austria, Bulgaria, Hungary, Romania, Slovenia) and countries of the Balkans (Albania, Bosnia and Herzegovina, FYROM, Moldova, Montenegro, Serbia);
- Article 20 of the Second Additional Protocol to the European Convention on Mutual legal Assistance<sup>7</sup>;

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<sup>1</sup> Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.07.2000, pp. 1-23. [Accessible here](#).

<sup>2</sup> Council Framework Decision of 13 June 2002 on Joint Investigation Teams, OJ L 162, 20.06.2002, pp. 1-3. [Accessible here](#).

<sup>3</sup> Directive of the European Parliament and the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130/1, 1.5.2014, pp.1-36. [Accessible here](#).

<sup>4</sup> OJ L 26, 29.01.2004, pp. 3-9.

<sup>5</sup> OJ L 181, 19.07.2003, pp. 34-42.

<sup>6</sup> Registration with the Secretariat of the United Nations: Albania, 3 June 2009, No 46240; see <http://www.pccseesecretariat.si/>.

<sup>7</sup> CETS No.182; see <http://www.conventions.coe.int/?lg=fr>.

- Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>8</sup>;
- Article 19 of the United Nations Convention against Transnational Organised Crime (UNTOC)<sup>9</sup>;
- Article 49 of the United Nations Convention against Corruption (UNCAC)<sup>10</sup>;
- Bilateral agreements between the States involved.

Not all of the above instruments are applicable between the same States. Therefore, referring to several of these legal bases in the JIT agreement may be necessary in JITs involving non-EU States. Furthermore, the content of the provisions related to JITs, which may vary from one instrument to another, may justify that specific arrangements – supplementing the applicable instrument(s) – are introduced in the JIT agreement itself.

Conclusions from the 10th annual meeting of JITs experts can be consulted to get an overview of the specific challenges of JITs involving non-EU States and possible solutions.

### 3. Setting up of a JIT

EU practitioners who wish to set up a JIT can easily avail themselves of expert advice and guidance by contacting the JITs National Expert(s) appointed in their Member States. They can also request support from Eurojust and/or Europol to assess the suitability of the case and determine the legal/practical steps to be taken to establish the JIT<sup>11</sup>.

#### 3.1. A JIT for which case?

##### 3.1.1. Suitable cases

EU instruments describe two particular situations in which a JIT can be established:

- ***Demanding cross-border investigations:*** a JIT can be set up when ‘a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States’.
- ***Connected investigations requiring coordination:*** a JIT can be set up when ‘a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved’.

Similar provisions can be found in several of the other instruments referred to above (PCC-SEE Convention, COE Protocol).

<sup>8</sup> United Nations, Treaty Series, vol. 1582, p. 95; see <http://www.unodc.org/unodc/en/commissions/CND/conventions.html>.

<sup>9</sup> United Nations, Treaty Series, vol. 2225, p. 209; see <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

<sup>10</sup> United Nations, Treaty Series, vol. 2349, p. 41; see <http://www.unodc.org/unodc/en/treaties/CAC/index.html#UNCACfulltext>.

<sup>11</sup> More details concerning the operational support provided by Eurojust and Europol can be consulted in the annexes.

### 3.1.2. Practical considerations

Apart from legal requirements, practical considerations are taken into account in practice when assessing the need for a JIT, some of which are provided below:

- the complexity and sophistication of the criminal network/activities under investigation,
- the number and complexity of investigative measures to be carried out in the States involved, and
- the degree of connection of the investigation between States involved.

In the vast majority of cases for which JITs are established, parallel investigations are ongoing in the concerned States. However, investigations may not always have been opened in all concerned States when a JIT is considered (but only in one or several of them). In such situations, the first step is often to trigger the opening of domestic investigations in the other concerned States.

When already ongoing, the *respective stage of national investigations* can play a role: in particular, national authorities may be more inclined to engage in a JIT when their investigation is still at a relatively preliminary stage and when investigations carried out in other countries are at an equivalent stage.

When the case presents connections between more than two countries, their *respective level of involvement* is also taken into account: sometimes it is agreed as a first step that a JIT will not be established between all countries concerned but between the most involved ones, while the cooperation of others will be sought via MLA.

In case one or several countries would like to join the JIT at a later stage, it is always possible to amend the initial agreement.

Having this in mind, it is recommended that law enforcement and judicial authorities from the States considering the creation of a JIT meet to discuss the matter *at the earliest opportunity* before a formal proposal and agreement is made.

Eurojust and Europol can play a key role in this respect by allowing - during operational or coordination meetings - national authorities:

- to get a more complete international picture of the case,
- to discuss the advisability and modalities of opening parallel investigations, with a view to setting-up a JIT, and
- to clarify domestic requirements concerning the submission of a formal request to set-up a JIT (which in some States constitutes a prerequisite to its setting up)<sup>12</sup>.

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<sup>12</sup> See para.2 of Article 13 of the 2000 EU Mutual Legal Assistance Convention. In practice, the submission of a formal letter of request is rarely required. Specific information on national implementing legislation - including on this issue - can be found in the *JITs restricted area*, a web platform managed by the JITs Network Secretariat to which EU judicial and law enforcement authorities can be granted access. To request access, please e-mail [jitsnetworksecretariat@eurojust.europa.eu](mailto:jitsnetworksecretariat@eurojust.europa.eu).

## 3.2. The JIT agreement

A model agreement<sup>13</sup> has been developed to facilitate the setting up of JITs. This document can be downloaded, in all official languages and in editable format, on the websites of Eurojust and Europol.

The JIT model agreement represents a common *non-binding baseline* that practitioners can tailor to the specific needs of a case. Hence, standard provisions are sometimes reworded to reflect the requirements of national legislation or *ad hoc* arrangements. The model agreement also provides a useful *checklist* covering most of the points that need to be addressed for a JIT to perform its activities in a secure manner.

In practice, the EU model is used in the vast majority of JITs set up between EU Member States. Furthermore, this model has proven to be sufficiently flexible to serve as a basis for discussions with non-EU States with some adaptation to the different legal bases. Some Member States have also developed bilateral model agreements that may be helpful in anticipating issues that are likely to arise in this specific context and speed up discussions on the content of the JIT agreement.

After an agreement is reached in principle to establish a JIT, Eurojust can provide assistance in drafting the JIT agreement and discussing – via the National Members of the Member States involved – clauses required to supplement or to deviate from the model agreement. A best practice in this respect consists of completing the model agreement in a common working language and translating it in the official languages of the Member States involved only when the partners have agreed on the content of the document.

During the lifetime of the JIT, the initial agreement can be amended by mutual agreement between the parties in the event a change in content is needed (*e.g.* changes in crimes investigated, involvement of a new party, composition of the team, purposes or extension of duration).

## 3.3 Structure of the team

### 3.3.1 Composition of the team

Each party to the JIT agreement appoints the following persons:

- The JIT leader(s), in charge in particular of supervising JIT activities when the team operates on the territory of the concerned State. National legislations usually specify which authority is competent to establish a JIT (where applicable, following an authorisation mechanism) and which authority is competent to act as a JIT leader<sup>14</sup>.
- The JIT members – in most cases law enforcement authorities– who will perform the investigative measures/operational activities. When present and taking part in investigation outside of their State of origin, appointed members operate with the status of ‘seconded JIT members’.

A JIT can be established between competent authorities of at least two States. In practice, it is not rare that JITs are set up between a higher numbers of partners, which may justify that specific arrangements are taken to facilitate the exchange of information and evidence.

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<sup>13</sup> 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. *References to be updated upon adoption and publication of the new model agreement.*

<sup>14</sup> Specific information on national legislation on this point can be found in the *JITs restricted area*.

### 3.3.2 Participants in the team

Besides the parties, optional participation of “*officials of (other) bodies*” is usually set out in the applicable instruments; these include EU bodies, Eurojust National Members in accordance with Article 9f of Eurojust Decision, Europol staff in accordance with Articles 6 of Europol Decision and OLAF Staff.

Details of Eurojust’s, Europol’s or OLAF’s participation are usually included in a dedicated appendix to the agreement, a model of which can be found in the JITs model agreement.

### 3.4. Informing Eurojust of the setting-up of JITs

In accordance with Article 13.5 of Eurojust Decision<sup>15</sup>, even if not involved with the status of participants, Eurojust’s national member(s) of the Member State(s) involved should be informed by their competent national authorities of the setting-up of the JIT.

## 4. The operation of the JIT

### 4.1. Legal framework

Applicable instruments include the following principles concerning JIT operations:

- JIT activities are carried out in accordance with the legislation of the State in which it operates (‘State of operation’) and under the supervision of the JIT leader appointed by this State;
- Seconded members are entitled to be present during the investigation, unless the JIT leader of the State of operation decides otherwise for specific reasons;
- Seconded members can be tasked by the JIT leader to carry out investigative measures, with the consent of the State of operation and the State having seconded them;
- Seconded members are entitled to share with the team information available in the State having seconded them. Should the need arise they can request the competent authorities of this State to carry out investigations according to the conditions foreseen by their national legislation in a domestic case.

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<sup>15</sup> Council Decision 2002/187/JHA on Eurojust as amended by Council Decision 2009/426/JHA.

Use of the information exchanged within a JIT (and that could not be obtained otherwise) is limited by a speciality rule: such information may in principle be used (only) for the purposes for which the team was set up. However, the team can agree on a more extensive use of the information, for example, in the JIT agreement<sup>16</sup>.

Seconded members shall be regarded in the performance of their duties in the State of operation as officials of this State with respect to offences committed against them or by them<sup>17</sup>.

Against this background, practice reveals considerable variety in the use of JITs, thus showing the flexibility of the tool and its capacity to adapt to the specific needs of a case. In a large number of cases, for instance, investigations are carried out first in parallel by the different States involved, and evidence collected is exchanged periodically between them. In a second stage, JIT members are seconded by each State to support a coordinated operational phase.

## 4.2. Planning and coordination of operational activities

To achieve their purposes, JITs require the effective coordination of domestic proceedings and planning of investigative/prosecutorial steps. Coordination and planning also facilitate requests for financial support, which are based on the estimated costs of planned operational activities.

For these reasons, practitioners have identified the need to address these practicalities within the team and to agree on specific arrangements. A checklist has been developed so that arrangements taken can be included in a dedicated document, if deemed appropriate (a so-called 'operational action plan').

However, in practice, a clear preference for more informal solutions has been reported. Periodic meetings –particularly those supported by Eurojust and Europol - are used as planning tools. Conclusions of the meetings reflect the arrangements made.

Whatever format is found preferable, discussion and, if possible, recording practical arrangements concerning JIT operational activities that are not already set out in the JIT agreement are recommended. For this purpose, practitioners are invited to consult Annex IV of this Practical Guide, which contains a list of issues relevant in this context.

For more information concerning the support provided by Eurojust, Europol and OLAF during the operational phase, please see also the relevant annex of this Practical Guide.

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<sup>16</sup>Article 13.10 of the EU MLA Convention also enables the exceptional use of the information exchanged within a JIT (without prior consent of the State in which the information became available) for preventing an immediate and serious threat to public security, if a criminal investigation is subsequently opened.

<sup>17</sup> See Article 15 of EU MLA Convention. Detailed rules concerning civil liability can be found in Article 16 of the same instrument.

## 5. The closure and evaluation of the JIT

A JIT is set up for a limited duration that can be prolonged if needed, as agreed by the partners. Partners are recommended to consult and coordinate in due time on a possible extension to avoid discontinuity in the cooperation framework. Unilateral decisions to leave an ongoing JIT should be avoided if possible.

Special attention should be given to situations in which, due to different timeframes, the competent authorities of one State need to conclude their investigation – and therefore to put an end to their involvement in a JIT – while cooperation needs still exist from the other partners. According to the feedback received, this issue should be adequately anticipated and *ad hoc* solutions may need to be found.

At the latest before the closure of the JIT<sup>18</sup>, settlement of jurisdiction and practical steps related thereto (e.g. review of the scope of respective proceedings, sharing and/or possible transfer of jurisdiction, etc.) may need to be considered among JIT partners, although the arrangements taken can be implemented after the closure of the JIT.

Evaluation of the JIT by the actors involved is of crucial importance to enhance knowledge and to improve the functioning of the tool. A JIT Evaluation Form has been developed to assist practitioners in this process. When the JIT is due to expire, practitioners are encouraged to jointly perform this evaluation, ideally during a dedicated meeting. Evaluation is required for JITs having received financial support from Eurojust. Detailed information and guidance on the evaluation of JITs and support that can be provided to practitioners can be found here.

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<sup>18</sup> The issue may need to be considered at an earlier stage, since it could impact the conduct of the investigation and the operational phase (e.g. execution of European arrest warrants).

# ANNEXES

## Annex I - Frequently asked questions

### 1. What are the main practical steps in the establishment of a JIT?

A JIT requires, primarily, that competent authorities of the States concerned identify a *common purpose and interest* to establish such a cooperation framework, which presupposes that the connections of the investigation in the different States are established and verified. In most cases, this process is done by way of an exchange and analysis of information between national law enforcement authorities, with the support of Europol, if applicable.

As a second step, an agreement to establish the JIT should be reached between the competent authorities, in the States concerned, to make such a decision. Practitioners can find an overview of national rules in this respect in the *JITs restricted area*. In the majority of Member States, the decision requires the involvement of a prosecutorial or judicial authority (sometimes with the prior authorisation of a central authority). The decision may need to be (but in practice is rarely) preceded by the transmission of an official request to set-up a JIT.

When a JIT is considered the adequate cooperation option, the drafting of the agreement can be initiated, often with the support of Eurojust. Special effort and attention should be given to swiftly completing this process to avoid delaying the investigation or losing momentum. In particular, to simplify discussions, the content of the agreement should be kept concise and, to the extent possible, all unnecessary details should be omitted (e.g. detailed case summaries in the *purposes* section should be avoided).

*See also sections 3.1 and 3.2 of the Practical Guide*

### 2. Do JIT cases require more time and resources than other cross-border cases?

JITs are used in complex cross-border investigations, which as such require a sufficient allocation of time and resources at national level. As already mentioned (see question 1 above), the drafting of the agreement should be completed as quickly as possible to avoid delaying operations.

No reports have been received of the timeframe of investigations supported by JITs having exceeded other cross-border cases, and, in this respect, the flexibility of the JIT is usually considered to bring speed to the investigation. In addition, no reports have been received that JITs would require financial or human resources in excess of those in other cross-border cases.

Operational meetings and participation of JIT seconded members may generate additional costs (travel and accommodation), for which the support of Eurojust and Europol may be sought (see Annex II below).

*See also section 4.1 of the Practical Guide*

### **3. Are JITs suitable for urgent cases?**

Once established, JITs offer a flexible framework, enabling real-time cooperation between competent authorities and facilitating the performance of urgent operations, such as: controlled deliveries, simultaneous and coordinated operations, and investigation of major international incidents.

When urgent action is required before the JIT is established (e.g. arrests or controlled deliveries that could not be postponed), initiating cooperation via other channels (police exchange of information and/or mutual legal assistance) and considering the setting up of a JIT at a later stage are always possible options.

*See also sections 3.1, 3.2 and 4.2 of the Practical Guide*

### **4. Does a JIT have a ‘leading country’?**

The setting up and operation of a JIT derive from a mutual agreement between national authorities. Cooperation is based on equal footing, meaning that JIT cooperation does not interfere with the exercise of the powers of law enforcement and judicial authorities under national legislation.

In practice, parties may agree that one of them, e.g. the State that is most significantly affected or has the most complete view of the activities of the organised crime group, takes more of an initiative and/or *de facto* organises cooperation between national authorities. Such an arrangement may be useful to ensure appropriate coordination within the JIT, in full compliance with national authorities’ prerogatives.

*See also section 3.3 of the Practical Guide*

## **5. Is involvement of Eurojust or Europol in a JIT mandatory? What is required to be eligible for EU funding? Can other bodies participate?**

Eurojust's and/or Europol's participation in a JIT is optional. National authorities decide whether they wish to benefit from the support they can offer (for an overview of the support provided, see Annex II).

For the JIT to be eligible for Eurojust funding, Eurojust National Members of the Member State(s) concerned must be invited to participate in its activities. The fulfilment of this requirement is certified by ticking the corresponding box in the application form. Ideally, this invitation should be included in specific documentation (e.g. the annex to the JIT agreement related to the role of participants, a clause in the agreement itself or a mention included in the information supplied to Eurojust in accordance with Article 13.5 of the Eurojust Decision, etc.).

The applicable EU and international instruments also generally refer to the participation of 'other bodies' in the JIT. Apart from Eurojust and Europol, OLAF has so far been the only other body involved in a JIT.

*See also subsection 3.3.2 and section 3.4 of the Practical Guide*

## **6. Should domestic investigations be ongoing in all States concerned for the establishment of a JIT?**

EU instruments do not explicitly require that domestic investigations are ongoing in all the States involved when a JIT is established.

In the two situations referred to in subsection 3.1.1, only one of them (*connected investigations requiring coordination*) clearly refers to the existence of parallel proceedings, whereas in the other one (*demanding cross-border investigations*), the existence of an investigation in one of the States involved seems sufficient. Furthermore, the analysis of implementing legislations shows that in some Member States, the initiation of a domestic investigation is not a prerequisite to the establishment of the JIT<sup>19</sup>.

However, in the vast majority of cases, parallel proceedings are in place when the JIT is established.

*See also section 3.3 of the Practical Guide*

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<sup>19</sup> Specific information on national implementing legislations – including on this issue – can be found on the *JITs restricted area*.

## **7. Should each Party to the agreement appoint a JIT leader?**

The existing instruments on JITs do not specify if each party to the agreement must appoint one leader. They mention however 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'*, which may indicate that at least one JIT leader should be appointed for each of the States in which the team operates. This is indeed the practice in the vast majority of cases.

*See also subsection 3.3.1 of the Practical Guide*

## **8. Can several JIT leaders be appointed for the same State?**

The existing instruments on JITs do not specify if each party must appoint one leader only.

In practice, in Member States in which both an investigative judge and a prosecutor are involved in the same case, appointing two JIT leaders is possible.

One difficulty may arise when the offences investigated by the JIT are the subject of several connected investigations carried out within the same State by different authorities. This situation may potentially affect the efficiency of the team if the authorities in charge do not have the same views on the case. Whenever possible, coordination of (interlinked) investigations should therefore be ensured at national level prior to the establishment of the JIT, so that only one leader is appointed for each participating State concerned.

*See also subsection 3.3.1 of the Practical Guide*

## 9. Can persons other than law enforcement or judicial authorities be involved in JIT operations?

As in other investigations, contributions from persons who are neither law enforcement nor judicial authorities may be beneficial to the outcome of the case (e.g. forensic experts or non-governmental organisations, particularly for victim support). Should this participation be envisaged, discussion of the matter between the partners when the JIT is established may be useful.

When seconded, JIT members may be entrusted by the JIT leader of the State in which the team operates to carry out investigative measures. This explains why in practice JIT members are officials having the capacity to carry out such measures in the State which has seconded them.

*See also subsection 3.3.1 of the Practical Guide*

## 10. How are information and evidence exchanged within a JIT? How is this exchange reflected in national proceedings?

EU and international instruments mainly regulate the *access* and *use* by JIT members of information and evidence collected by the team, not the conditions applying to the *exchange* of such information/evidence. Therefore, domestic legislation and usual practice must be followed by JIT leaders and members.

Experience shows a strong preference of practitioners for informal communication channels. In terms of data protection and security, the use of SIENA<sup>20</sup> may be advisable, or, alternatively, Eurojust's dedicated equipment and secure e-mail made available in the framework of the JITs funding programme. Furthermore, protection of personal data should be addressed between JIT partners, taking into account the applicable EU framework<sup>21</sup>.

*See also section 4 of the Practical Guide*

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<sup>20</sup> Secure Information Exchange Network Application (SIENA) is a tool designed by Europol to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence.

<sup>21</sup> See Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.05.2016, p. 89.

## **11. How can information and evidence collected prior to the setting-up of the JIT be exchanged?**

This issue has been addressed in various ways in practice: exchange of MLA requests, spontaneous exchange of existing evidence (Article 7 of 2000 EU MLA Convention), etc. However, in most cases, to be efficient, JIT partners specify initially in the JIT agreement that this evidence will be exchanged within the framework of the JIT agreement itself.

*See also section 4 of the Practical Guide*

## **12. Under which conditions is the evidence collected by a JIT admissible before national courts?**

Applicable instruments foresee that the team carries out its operations in accordance with the law of the State in which it operates at any particular time. Applicable instruments do not specify, however, that evidence collected by the team under these conditions are, as such, admissible before national courts of the States involved.

The matter is regulated by national legislation, an overview of which can be found by practitioners in the *JITs restricted area*. However, in practice, the admissibility of evidence collected within the JIT is rarely challenged: very often, the flexibility offered by the JIT enables – already at the time of gathering of evidence – the anticipation of possible admissibility issues and the finding of appropriate arrangements. Giving a JIT leader or member responsibility to deal with admissibility issues – as suggested in the model agreement – as well as the support of JIT experts and/or Eurojust, can be beneficial in this respect.

*See also section 4 of the Practical Guide*

### **13. How to clarify disclosure requirements stemming from national legislations of the JIT partners?**

One added value of JITs in comparison to exchange of mutual legal assistance requests is the possibility to share information directly between JIT members.

However, national legislation may vary regarding:

- the extent to which information received can (or have to) be included in the proceedings and serve as evidence in court; and
- the extent to which this information may (or have to) be disclosed to interested parties and the stage of the proceedings when such disclosure is to take place.

A lack of full awareness by the JIT partners of the applicable legal regime in the other involved States might impact negatively on the effectiveness of the investigation and/or prosecution.

To facilitate the operation of the JIT, clarifying applicable domestic rules at the setting-up stage may be advisable. Practitioners may also wish to consult the information on national legislation available in this field in the *JITs restricted area*. As is common practice, a copy or a summary of domestic legislations can also be annexed to the agreement.

*See also section 4 of the Practical Guide*

### **14. How is evidence obtained via MLA shared within a JIT?**

As a JIT can only operate on the territory of the States that are parties to the agreement, the cooperation of other States will be sought via MLA (or, alternatively, using an instrument giving effect to the principle of mutual recognition).

In practice, since evidence collected is often of interest to all parties, parties to the JIT usually coordinate with each other, although the request is formally submitted by one of them.

To ensure that evidence collected is made available within the JIT, an advisable approach may be the insertion of a clause in the agreement clarifying that in the event of the need for an MLA request to be sent to a State not party to the JIT, the agreement of the requested State will be sought to share with the other JIT party(ies) the evidence obtained as a result of the execution of the request.

*See also section 4 of the Practical Guide*

## 15. Does the JIT exclude the use of other police and judicial cooperation instruments?

JITs facilitate the gathering and exchange of information and evidence, which should in principle exclude the use between the parties of judicial cooperation instruments that have the same purpose and scope (particularly *MLA*).

As already mentioned, cooperation within a JIT is often combined with the use of *MLA* towards States 'outside' of the JIT. Furthermore, the setting up of a JIT does not prevent the use of instruments with a different purpose or scope (particularly the surrender of a person, as in the *European arrest warrant*).

For other cooperation or mutual recognition instruments, the existence of parallel proceedings may *de facto* limit the interest of using them, since most of the measures concerned can be carried out by each party in the framework of domestic proceedings (e.g. the execution of a freezing order). However, no unified practice is followed in this field, and in a given situation the use of other instruments – none of which explicitly excludes its application in the context of JIT – may prove to be beneficial.

*See also subsection 3.1.2 of the Practical Guide*

## Annex II - Support by EU Agencies/bodies to JITs

Participation by EU agencies and bodies is specifically provided for by EU instruments on JITs and is in practice foreseen in an appendix to the JIT agreement.

In practice, the vast majority of JITs benefit from the support of the EU agencies. Furthermore, the various forms of support described below are not seen as exclusive but as complementary: feedback received from practitioners shows the added value for the investigation of an 'inter-agency' approach, in which EU agencies/bodies contribute to the JIT in a coordinated manner.

### 1. Eurojust

#### 1.1 Mission and mandate

To fulfil their objectives, JITs require the adequate coordination of investigations and prosecutions, the facilitation of which is Eurojust's core mission.

Eurojust is the European Union's judicial cooperation unit. Its competence covers, in similar terms to Europol's mandate, the main forms of organised crime, serious crime and terrorism. For other types of offences, Eurojust may also assist in investigations and prosecutions at the request of a Member State.

Eurojust can provide support in proceedings carried out by the competent authorities of Member States. At the request of a Member State, it may also assist investigations and prosecutions concerning that particular Member State and a non-Member State, if a cooperation agreement has been concluded, or if an essential interest in providing such assistance is demonstrated.

Eurojust's specific role in JITs is reflected in its legal framework:

- *Information by Member States on established JITs (see also section 3.4 of the Practical Guide)*
- *Request to set up a JIT:* Eurojust, acting through its National Members or as a College, may ask the competent authorities of the Member States to set up a JIT;
- *Entitlement to participate:* National Members shall be entitled to participate in JITs, including in their setting up, concerning their own Member States;
- *Eurojust's participation and JIT funding:* National Members, or their Deputies or Assistants, shall be invited to participate in any JIT involving their Member States for which Community funding is provided.

## 1.2 Participation of Eurojust's National Members in the JIT

Eurojust can provide support to a JIT on the basis of its general missions and objectives. However, in accordance with Article 9f of the Eurojust Decision, its participation is in most cases formalised to ensure clarity on the applicable framework.

Details of National Members' participation are in most cases included not in the JIT agreement itself but in a dedicated appendix, which specifies whether, in each case, they act on behalf of Eurojust or as national competent authorities.

Though Article 9f refers explicitly to National Members' participation in JITs established between EU Member States, it does not prevent National Members from participating in JITs also involving non-EU States, if permitted in accordance with their national law.

## 1.3 Eurojust's support to JITs

- *Setting-up phase*

From the first contact with their home authorities, Eurojust's National Desks routinely assist potential JIT parties in assessing the suitability of a case for the establishment of a JIT.

Often, the need to set up a JIT appears in the course of a coordination meeting (i.e. a meeting between relevant national authorities organised and funded by Eurojust to stimulate and reach agreement on mutual cooperation and/or coordination of investigations and prosecutions). Such need may arise:

- in view of the connections identified between existing parallel proceedings, or
- when discussions trigger the initiation of investigations in the Member State(s) in which investigations have not yet commenced (in such cases, Eurojust may, e.g., facilitate the transmission of evidence enabling the receiving authority to initiate proceedings).

Once an agreement is reached on the principle to establish a JIT, Eurojust may provide assistance in drafting the JIT agreement and discussing – via the National Desks involved – its main clauses. If not discussed at an earlier stage, the signature of the JIT agreement at Eurojust offers an opportunity to discuss the first concrete steps in JIT cooperation.

- *Operational phase*

During the operational phase, Eurojust may specifically assist in relation to any practical and legal issues concerning the functioning of the JIT: such as disclosure, admissibility of evidence, involvement of seconded members, coordination between JIT partners, etc.

During the operational phase, Eurojust can deploy its coordination centre, which facilitates the real-time exchange of information during joint actions and the resolution of any related legal and practical issues.

As part of its operational support, Eurojust provides financing for JIT activities, including the reimbursement of:

- transport and accommodation costs (operational meetings, participation in investigative measures carried outside the State of origin);
- interpretation and translation costs; and
- transport costs for evidence and/or seized items.

Eurojust also lends laptops with secure connections, secure mobile telephones (communication costs included), mobile scanners and printers to JITs.

For more information, please consult the [JITs funding guide](#) published on the Eurojust website.

- *Closure of the JIT and follow-up*

If not envisaged at an earlier stage, Eurojust can also provide assistance concerning the settlement of jurisdiction and related measures. It can facilitate the evaluation of the JIT by offering a venue and assistance during evaluation meetings, or by providing videoconference facilities. JIT funding may also be used to finance evaluation meetings in the States involved.

## 2. Europol

### 2.1. Europol's mission and structure

Europol's competence covers organised crime, terrorism and other forms of serious crime affecting two or more Member States in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences.

Europol supports the law enforcement agencies of the Member States through its unique information and analysis capabilities and by providing the expertise of more than 700 staff to identify and track the most dangerous criminal and terrorist networks in the European Union.

The Member States and Europol's non-EU partners have seconded some 150 Liaison Officers (LOs) to Europol headquarters. These LOs guarantee fast and effective cooperation based on personal contact and mutual trust. They actively cooperate with Europol staff, support the analytical work conducted by Europol staff and facilitate the exchange of strategic and operational information.

LOs participate in operational meetings and coordinate/organise controlled deliveries and cross-border surveillance on a 24/7 on-call system. The Europol LOs also have an advisory role and liaise with their national experts to support the setting up of JITs.

To facilitate cooperation, Europol, since 2010, finances mission costs of experts from competent authorities in the Member States and third States to attend its operational meetings, during which, *inter alia*, the suitability of a JIT in an international case can be one of the discussion points.

## 2.2. Legal basis - Europol's participation in JITs

Europol staff may participate in a supporting capacity in JITs. Europol staff may, within the limits provided for by the law of the Member States in which a JIT is operating and in accordance with the arrangement, assist in all activities and exchange information with all members of the JIT. Europol staff shall not take part in any coercive measures.

## 2.3. Europol's operational support to JITs

Europol's added value in supporting a JIT is not only present at the preparatory stage of a JIT; it is equally helpful throughout all phases of a JIT.

- *Setting-up phase*

For the assessment of the case, Europol's capabilities are particularly suitable, as intelligence and information available on a potential JIT case can be checked against Europol's databases, helping to identify further links and allowing Europol's analysts to draw a comprehensive picture of a case, rather than assessing solely from the national perspective(s).

Europol is therefore in an excellent position to:

- Provide the international picture (through information exchange and analysis)
- Identify appropriate support (to enhance the intelligence picture further through expertise and knowledge)
- Contribute to the drafting of the JIT agreement and arrangement, drafting of the Operational Action Plan and/or facilitating the discussion on the tactical and technical way forward in an investigation

- *Operational phase*

Europol, through operating different systems for data collection and data processing, and hosting the LO network of the Member States and all third States and organisations with which Europol has signed a cooperation agreement, has the means at hand to provide for:

- Quick access to relevant information available in other States than those in which the JIT operates
- Facilitate the exchange of information between participants/involved parties through a dedicated secure network (SIENA)
- Logistic, analytical and forensic support

During this operational phase, Europol is able to assist with any practical and coordination issues arising from the functioning of the JIT and the information exchange therein.

At this stage, Europol frequently offers the use of its secure operational centre, located at its headquarters, allowing for rapid real-time coordination between all actors involved, as well as providing direct, on-the-spot support by offering a number of technical tools for the use of the JIT.

On request, Europol deploys analysts and specialists on the spot to support on-going investigations and operations in Member States and third States, including remote access to Europol's secure network outside the organisation's premises (mobile office, forensic toolkit, etc.).

The most frequent analytical products delivered by Europol are cross-match reports (CMRs), operational analysis reports (OARs) and technical analysis reports.

- *Closure of the JIT and follow-up*

Europol offers its facilities at the conclusion of an international investigation or a JIT by helping with the evaluation, sharing best practice and developing a lessons learned log for future cases.

Activities of involved Member States can again be funded in the course of an operational meeting, particularly to support new investigations initiated as a result of the JIT.

## 3. OLAF

### 3.1. Mission and mandate

The mission of the European Anti-Fraud Office (OLAF) is threefold:

- it protects the financial interests of the European Union by investigating fraud, corruption and any other illegal activities;
- it detects and investigates serious matters relating to the discharge of professional duties by members and staff of the EU institutions, bodies, offices or agencies that could result in disciplinary or criminal proceedings; and
- it supports the EU institutions, bodies, offices or agencies, particularly the European Commission, in the development and implementation of anti-fraud legislation and policies.

OLAF has budgetary and administrative autonomy, designed to make it operationally independent.

OLAF is receiving an increasing quantity of information about possible fraud and irregularities from a wide range of sources. In most cases, this information results from controls by those responsible for managing EU funds within the EU institutions, bodies, offices or agencies or in the Member States.

An allegation received by OLAF undergoes an initial assessment to determine whether the allegation falls within the remit of OLAF and meets the criteria for opening an investigation.

An OLAF fraud investigation case may be opened under one of the following three categories:

*Internal investigations:* Internal investigations are administrative investigations within the EU institutions and bodies for the purpose of detecting fraud, corruption, and any other illegal activity affecting the financial interests of the European Communities; including serious matters relating to the discharge of professional duties.

*External investigations:* External investigations are administrative investigations outside the EU institutions and bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons.

*Coordination cases:* OLAF contributes to investigations carried out by national authorities or other Community departments by facilitating the gathering and exchange of information and contacts.

### 3.2. Legal basis for OLAF participation in a JIT

OLAF staff may participate in a supporting capacity in JITs established in crime areas falling under its competence. OLAF staff may, within the limits provided for by OLAF legislation<sup>22</sup>, assist in all activities and exchange information with all members of the JIT.

OLAF's participation in a JIT is laid down in an arrangement signed between the OLAF Director General and the competent authorities of the Member States participating in the JIT. The arrangement is to be signed as an annex to the JIT agreement.

OLAF staff participating in the JIT can assist in the gathering of evidence and can provide expertise to the members of the team in accordance with OLAF legislation and taking into account the national law of the Member State in which the team operates.

OLAF can provide any assistance and expertise necessary to achieve the objectives and purpose of the JIT, as identified by the leader(s) of the team. Those can include, *inter alia*, providing administrative, documentary and logistical support, 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.

OLAF staff shall not perform any coercive measures. However, participating OLAF staff can, under the guidance of the leader(s) of the team, be present during operational activities of the JIT, to render on-the-spot advice and assistance to the members of the team executing coercive measures, provided that no legal constraints exist at national level in the Member State in which the team operates.

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<sup>22</sup> As set up by Commission Decision 1999/352/EC, ECSC, Euratom, of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), last amended by Commission Decision (EU) 2015/512 of 25 March 2015 and as mandated by Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (hereinafter referred to as the 'OLAF legislation').

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 States shall also provide office, communication and other technical equipment necessary for the (encrypted) exchange of data. These costs are to be paid by the Member States.

OLAF shall cover the costs incurred as a result of the participation of OLAF staff in the JIT.

### 3.3. OLAF support to JITs

- *Operational phase*

OLAF staff may participate in a support capacity in JITs in the framework of an OLAF administrative investigation, which could be:

#### Internal investigations

OLAF shall carry out administrative investigations within the institutions, bodies, offices and agencies, in accordance with the conditions set out in OLAF Regulation (EU, Euratom) No 883/2013, and in the decisions adopted by the respective EU institutions, bodies, offices or agencies. OLAF's staff shall have the right to carry out inspection of premises and shall have access to any relevant information, including information in databases held by the institutions, bodies, offices and agencies. In addition, it can take a copy of any relevant document and carry out digital forensic analysis.

#### External investigations

To protect the financial interests of the European Union, OLAF shall exercise the powers conferred by Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 to carry out on-the-spot checks and inspections in the Member States and, in accordance with the cooperation and mutual assistance agreements and other legal instruments in force, in third States and on the premises of international organisations. The Member States concerned shall ensure, in accordance with Regulation 2185/96, that the staff of OLAF are allowed access, under the same terms and conditions as its competent authorities and in compliance with its national law, to all information and documents relating to the matter under investigation which prove necessary for the on-the-spot check and inspections to be carried out effectively and efficiently. OLAF staff may conduct investigative missions in third States when the evidence necessary to establish the existence of fraud, corruption or other illegal activity is not available in the Member States. A mission in a third State should be conducted with the agreement and cooperation of the competent authorities of the concerned third State and may relate to fraud, corruption or other illegal activity in the following areas:

Customs

Traditional own resources

Expenditure of EU funds

Expenditure of EU funds through international organisations or financial institutions, or funds managed by an EU institution, body, office or agency

In its role of coordinating the fight against fraud at EU level, OLAF cooperates closely with its counterparts, including police, customs and judicial bodies, both within the European Union and beyond its borders, to ensure a rapid exchange of information and swift follow-up actions, through a network of anti-fraud coordination services (AFCOS).

In addition, OLAF can provide expertise on the subject matter under investigation and on the laws and regulations applicable in the Member States.

- *Closure of the JIT and follow-up*

When all investigative activities have been completed, a Final Report shall be drawn up and should include all findings and conclusions established over the course of an investigation and coordination case. The Final Report shall also set out the actions taken to ensure the respect of procedural guarantees (including data protection) and the rights of persons concerned, and shall detail any comments made by the person concerned in relation to facts concerning him.

The report shall be accompanied by Recommendations of the Director-General on whether or not action should be taken. Those Recommendations shall, if appropriate, indicate any disciplinary, administrative, financial and/or judicial action to be taken by the relevant EU institution, body, office or agency and by the competent authorities of the concerned Member States, and shall specify the estimated amounts to be recovered as well as the preliminary classification in law of the facts established.

In drawing up such reports and recommendations, OLAF investigators shall take into account the national law of the concerned Member State. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports.

## Annex III - JIT model agreement

*To be included upon publication of the new JIT model agreement*

## Annex IV - Checklist for the planning and coordination of operational activities

### 1. General issues

To enable the JIT to operate efficiently, JIT partners may wish to agree – if not already included in the JIT agreement itself - on practical arrangements concerning, *inter alia*, the following issues:

Investigative objectives (both short- and medium-term);

Exchange of information and evidence: channels of communication and frequency, i.e. use of SIENA available via Europol as a secure means for communication of personal or sensitive information, or secure e-mail available with Eurojust's equipment;

Coordination of investigative measures: frequency and modalities (face-to-face or video-link) of operational briefings;

Role of seconded members: timing and duration of secondment; possible assignments in the State of operation;

Administration and logistics: working language, equipment (office accommodation, vehicles, IT equipment, other), resources, personnel;

Disclosure and admissibility requirements: clarification of respective domestic rules and identification of specific requirements that may be relevant in view of JIT operations;

Financial support: roles and responsibilities for the submission of funding applications and reimbursement requests;

Prosecution strategies: arrangements on jurisdiction, including possible transfer of proceedings.

## 2. Crime-specific issues

JIT partners may also wish to consider these additional arrangements for the following offences:

*Trafficking in human beings:* special arrangements for support to victims;

*Drug trafficking:* handling of samples and their further forensic examination, including coverage of expenses;

*Euro counterfeiting:* cooperation with the European Central Bank and/or national banks; also with Europol's Forgery of Money group;

*Money laundering and asset recovery:* coordination of cooperation with third States; specific arrangements to tackle the financial dimension of investigations, arrangements concerning tracing, freezing, confiscation, management and sharing of assets among JIT partners (and, if applicable, with States not involved in the JIT), including the need for urgent measures to prevent dissipation of assets, use of existing networks (such as CARIN and other regional asset recovery networks);

*Counterfeiting:* terms of involvement of private parties; initiation and coordination of financial investigations;

*Property crime:* storage of seized items, including sharing of storage expenses;

*Cybercrime:* terms of involvement of private parties; involvement of non-EU States;

If clarification of specific aspects of different types of offences is required, Europol experts and analysts and Eurojust National Desks can be addressed and solutions can be found during operational/coordination meetings (*see supra* Annex II).