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NOTE

From:	Presidency
To:	CATS
No. prev. doc.:	12887/16
Subject:	Proposal for a Council Resolution on a Model agreement for setting up a Joint Investigation Team

Delegations will find in the Annex a Proposal for a Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT), aimed at replacing the existing JITs Model Agreement set out in Council Resolution 2010/C 70/01.

The Model agreement, which is not binding, has proven to be an useful supporting tool to facilitate defining the modalities of cooperation for the Joint Investigation Teams. Based on the experience developed in last years in this respect, and on the analysis of existing agreements carried out by the JITs network, the JITs experts have identified the need to simplify the existing Model Agreement in order to better respond to the practical needs and streamline the process of setting up JITs.

At the 12th annual meeting of the JITs network, experts agreed on a revised version of the Model Agreement, which includes amendments in particular on the following issues: disclosure, gathering and access to information and evidence, exchange of information and evidence obtained prior to the setting up of the JIT, sharing of evidence obtained from States which are not parties to the JIT, EU financial support, consultation and coordination, communication with the media, and evaluation.

At the CATS meeting on 18 November 2016, the Presidency intends to invite delegations to express their views on the draft Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT) set out in the Annex to this document.

The Presidency will also invite delegations to provide possible written comments on the above draft Council resolution by 28 November 2016, with a view to its adoption by Coreper and Council as a I/A point.

**DRAFT COUNCIL RESOLUTION ON A MODEL AGREEMENT FOR SETTING UP A
JOINT INVESTIGATION TEAM (JIT)**

THE COUNCIL OF THE EUROPEAN UNION,

HAVING REGARD to Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ¹ (hereinafter referred to as ‘the Convention’) and to the Council Framework Decision of 13 June 2002 ² on Joint Investigation Teams (hereinafter referred to as the ‘Framework Decision’),

HAVING REGARD to Council Resolution 2010/C 70/01 on a Model Agreement for setting up a Joint Investigation Team (JIT) ³ adopted on 26 February 2010,

AWARE that a significant number of JITs have been set up since 2010 between an increasing number of Member States and that, in this context, the JIT Model Agreement is widely used by practitioners and found useful to facilitate the setting up of JITs, since it represents a flexible framework enabling cooperation despite differences in national legislations,

CONVINCED that, on the basis of best practices derived from recent practical experience in the establishment and operation of steadily increasing number JITs, there is room for simplifying the existing Model Agreement and speeding up the setting-up process,

BEARING IN MIND the conclusions of the network of JIT experts set up in 2005, particularly the conclusions reached at its 9th, 10th, 11th, and 12th annual meetings,

CONVINCED that based on the experience gained in the last years in the involvement of third States in Joint Investigation Teams, the Model Agreement should also enable the establishment of JITs with non-EU States, on the basis of the relevant international instruments,

¹ OJ C 197, 12.7.2000, p. 3

² OJ L 162, 20.6.2002, p. 1

³ OJ C 70, 19.3.2010, p. 1

TAKING INTO ACCOUNT, in line with Article 5(1) of Regulation (EU) 2016/794 of 11 May 2016 (the "Europol Regulation")⁴, the need to specify in the Model Agreement the conditions relating to the participation of Europol staff in a JIT,

ENCOURAGES the competent authorities of the Member States that wish to set up a Joint Investigation Team with the competent authorities from other Member States, in accordance with the terms of the Framework Decision and the Convention, or from non-EU States, on the basis of the relevant international instruments, to use, where appropriate, the Model Agreement set out in the Annex to this Resolution in order to agree upon the modalities for the Joint Investigation Team.

⁴ OL L 135 of 24.5.2016, p. 53

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with:

[Please indicate here the applicable legal bases, which may be taken from – but not limited to - the instruments listed below:

- *Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000⁵;*
- *Council Framework Decision of 13 June 2002 on joint investigation teams ⁶;*
- *Article 1 of the 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 of 29 December 2003 ⁷;*
- *Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America ⁸;*
- *Article 20 of the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 ⁹;*
- *Articl 9(1)(c) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) ¹⁰;*
- *Article 19 of the United Nations Convention against Transnational Organized Crime (2000) ¹¹;*
- *Article 49 of the United Nations Convention against Corruption (2003) ¹²;*
- *Article 27 of the Police Cooperation Convention for South East Europe (2006) ¹³.]*

⁵ OJ C 197, 12.7.2000, p. 3.

⁶ OJ L 162, 20.6.2002, p. 1.

⁷ [OJ L 26, 29.01.2004, p. 3-9.](#)

⁸ OJ L 181, 19.07.2003, p. 34-42.

⁹ CET No 182.

¹⁰ United Nations, *Treaty Series*, vol. 1582, p. 95.

¹¹ United Nations, *Treaty Series*, vol. 2225, p.209 Doc. A/RES/55/25.

¹² United Nations, *Treaty Series*, vol. 2349, p.41; Doc. A/58/422.

¹³ Registration with the Secretariat of the United Nations: Albania, 3 June 2009, No. 46240.

1. Parties to the Agreement

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

1. *[Insert name of the first competent agency/administration of a State as a Party to the agreement]*

And

2. *[Insert name of second competent agency/administration of a State as a party to the agreement]*

The parties to this agreement may decide, by common consent, to invite other States' agencies or administrations to become parties to this agreement.

2. Purpose of the JIT

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

[Please provide a description of the specific purpose of the JIT.

This description should include the circumstances of the crime(s) being investigated in the States involved (date, place and nature) and, if applicable, reference to the ongoing domestic procedures. References to case-related personal data are to be kept to a minimum.]

3. Period covered by this agreement

The parties agree that the JIT will operate for *[please indicate specific duration]*, starting from the entry into force of this agreement.

This agreement shall enter into force when the last party to the JIT has signed it. This period may be extended by mutual consent.

4. States in which the JIT will operate

The JIT will operate in the States of the parties to this agreement.

The team shall carry out its operations in accordance with the law of the States in which it operates at any particular time.

5. JIT Leader(s)

The leaders of the team shall be representatives of the competent authorities participating in criminal investigations from the States in which the team operates at any particular time, under whose leadership the members of the JIT shall carry out their tasks.

The parties have designated the following persons to act as leaders of the JIT:

Name	Position/Rank	Authority/Agency	State

Should any of the abovementioned persons be unable to carry out their duties, a replacement will be designated without delay. Written notification of such replacement shall be provided to all concerned parties and annexed to this agreement.

6. Members of the JIT

In addition to the persons referred to in point 5, a list of JIT members shall be provided by the parties in a dedicated annex to this agreement¹⁴.

Should any of the JIT members be unable to carry out their duties, a replacement will be designated without delay by written notification sent by the competent leader of the JIT.

¹⁴ When needed, the JIT may include national asset recovery experts.

7. Participants in the JIT

Parties to the JIT agree to involve [*Insert here e.g., Eurojust, Europol, OLAF...*] as participants in the JIT. Specific arrangements related to the participation of [*Insert name*] are to be dealt with in the relevant appendix to this agreement.

8. Gathering of information and evidence

The JIT leaders may agree on specific procedures to be followed regarding the gathering of information and evidence by the JIT in the States in which it operates.

The parties entrust the JIT leaders with the task of giving advice on the obtaining of evidence.

9. Access to information and evidence

The JIT leaders shall specify the processes and procedures to be followed regarding the sharing between them of information and evidence obtained pursuant to the JIT in each Member State.

[In addition, parties may agree on a clause containing more specific rules on access, handling and use of information and evidence. Such clause may in particular be deemed appropriate when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Article 13(10) of the Convention).]

10. Exchange of information and evidence obtained prior to the JIT

Information or evidence already available at the time of the entry into force of this agreement, and which pertains to the investigation described in this agreement, may be shared between the parties in the framework of this agreement.

11. Information and evidence obtained from States not participating in the JIT

Should a need arise for a mutual legal assistance request to be sent to a State that does not participate in the JIT, the requesting State shall consider seeking the agreement of the requested State to share with the other JIT party(ies) the information or evidence obtained as a result of the execution of the request.

12. Specific arrangements related to seconded members

[When deemed appropriate, parties may, under this clause, agree on the specific conditions under which seconded members may:

- carry out investigations in the State of operation (if deemed appropriate, domestic legislations may be quoted here or, alternatively, annexed to this agreement)*
- request measures to be carried out in the State of secondment*
- share information collected by the team*
- carry/use weapons]*

13. Amendments to the agreement

This agreement may be amended by mutual consent of the parties. Unless otherwise stated in this agreement, amendments can be made in any written form agreed upon by the parties¹⁵.

14. Consultation and coordination

The parties will ensure they consult with each other whenever needed for the coordination of the activities of the team, including, but not limited to:

- the review of the progress achieved and the performance of the team
- the timing and method of intervention by the investigators
- the best manner in which to undertake eventual legal proceedings, consideration of appropriate trial venue, and confiscation.

¹⁵ Examples of wordings can be found in Appendices 2 and 3.

15. Communication with the media

If envisaged, timing and content of communication with the media shall be agreed upon by the parties and followed by the participants.

16. Evaluation

The parties may consider evaluating the performance of the JIT, the best practice used and lessons learned. A dedicated meeting may be arranged to carry out the evaluation.

[In this context, parties may refer to the specific [JITs evaluation form](#) developed by the EU Network of JITs experts. EU funding may be sought to support the evaluation meeting.]

17. Specific arrangements

[Please insert, if applicable. The following sub-chapters are intended to highlight possible areas that may be specifically described.]

17.1. Rules of disclosure

[Parties may wish to clarify here applicable national rules on communication to the defence and/or annex a copy or a summary of them.]

17.2. Management of assets/asset recovery arrangements

17.3. Liability

[Parties may wish to regulate this aspect, particularly when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Articles 15 and 16 of the Convention).]

18. Organisational arrangements

[Please insert, if applicable. The following sub-chapters are intended to highlight possible areas that may be specifically described.]

18.1. Facilities (office accommodation, vehicles, other technical equipment)

18.2. Costs/expenditures/insurance

18.3. Financial support to JITs

[Under this clause, Parties may agree on specific arrangements concerning roles and responsibilities within the team concerning the submission of applications for EU funding.]

18.4. Language of communication

Done at [place of signature], [date]

[Signatures of all parties]

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, and other international bodies.

1. Participants in the JIT

The following persons will participate in the JIT:

Name	Position/Rank	Organisation

[Insert name of Member State] has decided that its national member of Eurojust will participate in the joint investigation team on behalf of Eurojust/as a competent national authority¹⁶.

Should any of the above-mentioned persons be unable to carry out their duties, a replacement will be designated. Written notification of such replacement shall be provided to all concerned parties and annexed to this agreement.

¹⁶ Please strike through, as applicable.

2. Specific arrangements

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

2.1. First participant in the agreement

2.1.1. Purpose of participation

2.1.2. Rights conferred (if any)

2.1.3. Provisions concerning costs

2.1.4. Purpose and scope of participation

2.2. Second participant in the agreement (if applicable)

2.2.1. ...

3. Conditions of participation for Europol staff

3.1. Europol staff participating in the joint investigation team shall assist all the members of the team and provide the full range of Europol's support services to the joint investigation as provided for and in accordance with the Europol Regulation. They shall not apply any coercive measure. However, participating Europol staff can, if instructed and under the guidance of the leader(s) of the team, be present during operational activities of the joint investigation team, 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.

3.2. Article 11(a) of the Protocol on the Privileges and Immunities of the European Union shall not apply to Europol staff during their participation in the JIT¹⁷. 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.

3.3. Europol staff may liaise directly with members of the JIT and provide all members of the JIT with all necessary information in accordance with the Europol Regulation.

¹⁷ Protocol on the Privileges and Immunities of the European Union (consolidated version) (OJ C 326, 26.10.2012, p. 266-272).

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

Agreement to extend a joint investigation team

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 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 for an additional period of [*please indicate specific duration*] from the entry into force of this agreement. The above period may be extended further by the parties by mutual consent.

Date/signature

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

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 following articles shall be amended as follows:

1. (Amendment ...)

2. (Amendment ...)

The circumstances requiring the JIT agreement to be amended have been carefully examined by all 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
