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(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

**COUNCIL RESOLUTION ON A REVISED APPENDIX I TO THE MODEL AGREEMENT FOR
SETTING UP A JOINT INVESTIGATION TEAM (JIT) ⁽¹⁾**

(2022/C 44/01)

THE COUNCIL OF THE EUROPEAN UNION,

WHEREAS:

1. Article 13 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union ⁽²⁾ ('the Convention') contains provisions on joint investigation teams.
2. On 13 June 2002, the Council adopted Framework Decision 2002/465/JHA on joint investigation teams ⁽³⁾ ('the Framework Decision').
3. Each year, a significant number of joint investigation teams (JITs) are set up between the competent authorities of Member States and with the competent authorities of third countries, while EU agencies, in particular Eurojust, Europol and OLAF, also often participate in JITs.
4. The model agreement for setting up a JIT, as set out in Council Resolution 2017/C 18/01 ⁽⁴⁾, is widely used and appreciated by practitioners.
5. At the 17th annual meeting of the JITs Network, held on 13 and 14 October 2021, the JIT experts concluded that it would be advisable to modify Appendix I to the model agreement in order to take account of changes in the legal framework governing Eurojust, Europol and OLAF, and the need to reflect the specific conditions relating to their participation in a JIT,

HEREBY ADOPTS THIS RESOLUTION:

The competent authorities of the Member States that wish to set up a joint investigation team with the competent authorities of other Member States, in accordance with the terms of the Framework Decision and the Convention, or with the competent authorities of third countries, on the basis of the relevant international instruments, are encouraged to use, where appropriate, the model agreement set out in Council Resolution 2017/C 18/01 in order to agree upon the arrangements for the joint investigation team, it being understood that Appendix I to that model agreement should read as set out in the Annex.

⁽¹⁾ Resolution approved by the Council by written procedure on 22 December 2021 (ST 15085/21 and CM 5966/21).

⁽²⁾ OJ C 197, 12.7.2000, p. 3.

⁽³⁾ OJ L 162, 20.6.2002, p. 1.

⁽⁴⁾ OJ C 18, 19.1.2017, p.1.

Appendix I

**TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM
(2017/C 18/01)****Participants in a JIT****I. Arrangement with Eurojust/Europol/the Commission (OLAF):****Eurojust's participation in the JIT**

The following persons shall participate in the JIT:

Name	Position

According to point [insert relevant point] of the JIT Agreement, [insert name of Member State] has decided that its National Member of Eurojust (Deputy/Assistant to the National Member of Eurojust*) shall participate in the joint investigation team.

Eurojust shall support the JIT's activities by providing its expertise and facilities for the coordination of the investigations and prosecutions in line with the applicable legal framework.

[Insert name of third country] has decided that its Liaison Prosecutor posted at Eurojust shall participate in the joint investigation team as a formal representative of [insert name of third country] in accordance with a cooperation agreement signed between Eurojust and [insert name of third country].

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

Date/signature* (* if applicable)

Europol's participation in the JIT

Parties to the JIT (ISO codes preferred):

Date JIT signed by parties:

References (optional):

1. Europol participants in the JIT

The following persons (identified by staff number) shall participate in the JIT:

Europol Staff number	Position	Team/Unit

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

2. Conditions of participation for Europol staff

- 2.1. 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 measures. However, participating Europol staff may, 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.
- 2.2. 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 JIT¹. 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.
- 2.3. 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

Date/signature

¹ Protocol on the Privileges and Immunities of the European Union (consolidated version) (OJ C 326, 26.10.2012, p. 266).

OLAF's participation in the JIT

agreed between the competent judicial authorities of [Member States] on [date]

OLAF¹ shall participate in an assistance, expertise and coordination capacity (if agreed) in the JIT. This participation shall take place under the conditions laid down in this arrangement and as provided for in the applicable EU instruments.

Participants

The following persons from OLAF shall participate in the JIT:

Name	Function

OLAF shall notify the other parties of the JIT in writing of any addition to or removal from the above list of persons.

Specific arrangements related to the participation of OLAF

1. Principles of participation

- 1.1. OLAF staff participating in the JIT shall assist with gathering evidence and provide expertise to the members of the team in accordance with the OLAF legislation and in accordance with the national law of the Member State where the team operates.
- 1.2. The OLAF staff participating in the JIT shall work under the guidance of the leader(s) of the team as identified in point [*insert relevant point*] of the agreement, 'JIT leaders', and shall provide any assistance and expertise necessary to achieve the objectives and purpose of the JIT, as identified by the leader(s) of the team.
- 1.3. OLAF staff have the right not to perform tasks which they consider to be in breach of their obligations under the OLAF legislation. In such cases, the OLAF staff member shall inform the Director-General of OLAF or a representative thereof. OLAF shall consult with the leader(s) of the team with a view to finding a mutually satisfactory solution.
- 1.4. OLAF staff participating in the JIT shall not take any coercive measures. However, participating OLAF staff may, under the guidance of the leader(s) of the team, be present during operational activities of the JIT, in order to render on-the-spot advice and assistance to the members of the team who execute coercive measures, provided that no legal constraints exist at national level where the team operates.

2. Type of assistance

- 2.1. Participating OLAF staff shall provide the full range of OLAF's assistance services, in accordance with the OLAF legislation, as far as required or requested. This includes providing operational and technical assistance and expertise to the criminal investigations, and providing and verifying information, including forensic data and analytical reports.
- 2.2. OLAF staff participating in the JIT may assist in all activities, in particular by 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.

3. *Access to OLAF's information processing systems*

- 3.1. OLAF staff may liaise directly with members of the JIT and provide members and seconded members of the JIT, in accordance with the OLAF legislation, with information from relevant files in the OLAF Case Management System. The conditions and restrictions on the use of this information must be respected.
- 3.2. Information obtained by OLAF staff members while part of the JIT may, with the consent and under the responsibility of the Member State which provided the information, be included in the relevant files of the OLAF Case Management System.

4. *Costs and equipment*

- 4.1. The Member State in which investigative measures are being undertaken shall be responsible for providing the technical equipment (office equipment, accommodation, telecommunications, etc.) necessary for the accomplishment of the tasks and shall pay the costs incurred. That Member State shall also provide office communication equipment and other technical equipment necessary for the (encrypted) exchange of data. The costs shall be paid by that Member State.
- 4.2. OLAF shall cover the costs incurred as a result of the participation of OLAF staff in the JIT.

Date/signature

¹ 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 (referred to herein as 'the OLAF legislation').

II. **Arrangement with bodies competent by virtue of provisions adopted within the framework of the Treaties, and other international bodies:**

1. The following persons shall participate in the JIT:

Name	Position/Rank	Organisation

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

2. Specific arrangements:

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
